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Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 165 OF 1997**

Shri Subhash Shankarrao Barge)
Resident of Koregaon,)
Azad Chowk, District Satara) Petitioner
(Original Applicant)

V/s

1] Shri Vilas Pandurang Bokil)
Residing at Vaibhav Kamat)
Institute, Vadgaon, Belgar,)
Near Vadgaon Police Chowki)
Belgaum, Karnataka State)
)
2] Shri Sambhaji Krishna Bhujbal)
)
3] Shri Krshinath Krishna Bhujbal)
Since Deceased through Legal Heirs,)
)
3A] Smt. Sunanda Kashinath Bhujbal,)
Age: 47 Years, Occ: Household.)
3B] Shri Jitendra Kashinath Bhujbal,)
Age: 28 years, Occ: Business.)
3C] Shri Ganesh Kashinath Bhujbal,)
Age: 24 Years, Occ: Business.)
All residing at Azad Chowk, Koregaon,)
District : Satara.)
)
3D] Sau Nirmala Mohan Dudhal,)
Age: 31 years, Occ: Household,)
Residing at Pirwadi, Tal. & Dist.Satara)
3E] Sau. Ujwala Ramesh Shirkar,)
Age: 26 years, Occ: Household,)
Residing at Sherkar Mala, Rahimatpur,)
Tal. Koregaon, Dist: Satara.)

4] The State of Maharashtra)
The Chief Secretary, Maharashtra)
State, Revenue Department, Mumbai.) ...Respondents.
(Original Respondents)

Mr. Kirankumar Phakade for the Petitioner.
Mr. Dilip Bodake for Respondent Nos. 2, 3A to 3E.
Mrs. M.S. Bane, AGP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 8, 2019

ORAL JUDGMENT:

1] In the order impugned dated 26/04/1996 passed by the Maharashtra Revenue Tribunal, Pune, at the behest of Respondent-landlord, an observation is made that powers exercised under Section 70(b) by Awal Karkun is without any legal authority while declaring the Petitioner as tenant and as such, the Tribunal quashed and set aside the order of Awal Karkun, declaring the Petitioner as tenant and remanded the matter for fresh decision.

2] Pursuant to the aforesaid observation, this Court on 18/07/2019 has called upon the Officer of the Respondent/State Government to file an affidavit clarifying the aforesaid position. An

affidavit dated 24/07/2019 sworn by Deputy Secretary, Revenue in categorical terms states that the powers to determine the issue as regards section 70(b) or such other powers pursuant to the provisions of the Maharashtra Tenancy and Agricultural Lands Act in view of sub-section (10) of Section 2 are vested in resident Mamlatdar (Tahsildar) and the Aval Karkuns and Extra Aval Karkuns in all Talukas, who are appointed to perform the duties of Mamlatdar under the Maharashtra Tenancy and Agricultural Lands Act, 1948. Support to that effect is also drawn from Government Resolution dated 08/02/1983.

3] In view of the aforesaid legal position, the order passed by the Tribunal impugned in the present Petition is not sustainable and as such liable to be quashed and set aside.

4] In the aforesaid background, the learned Counsel for the Respondent Nos. 2 and 3A to 3E submits that the matter be relegated to MRT for deciding the issue of tenancy afresh, so that, in case, if an order is adverse to the interest of either of the parties, they will get one more chance to agitate their claim before this Court.

5] The submission of the learned Counsel for the Respondents are objected by the learned Counsel for the Petitioner. According to him, this Court should decide the issue involved in the Petition on merit.

6] In the aforesaid backdrop, I have appreciated the submissions on the issue of remand. Considering the fact that the parties are litigating since last more than 30 years and the present Petition is pending before this Court for last 22 years, this Court is prompted to take up the Petition for its decision on merit.

7] The order passed by Awal Karkun in Tenancy Case No.1 of 1989, declaring the Petitioner as tenant was the subject matter of challenge before the Sub-Divisional Officer in appeal under Section 74 of the Act. The Sub-Divisional Officer in his appellate jurisdiction confirmed the finding in favour of the Petitioner, declaring him tenant under Section 70(b) of the Act. While questioning the aforesaid finding, the learned Counsel for the Respondent-landlord would urge that the provisions of Section 70(b) are required to be read with the provisions of Section 32-O wherein right is vested in the tenant whose

tenancy is created after tiller's day about purchase of the land. The learned Counsel for the Respondent-landlord submits that very proceedings at the behest of the Petitioner, claiming to be tenant after tiller's day under Section 70(b) are not maintainable as the Petitioner should have asserted his right under Section 32-O of purchase within a period of one year from the date of creation of tenancy. According to him, merely because Petitioner himself is claiming to be the tenant, that by itself would not permit him to take out proceedings under Section 70(b) in view of embargo under Section 32-O of the Act.

8] In addition, submissions of learned Counsel for Respondent-landlord are, once the Petitioner is unable to purchase the property under Section 32-O in the capacity of tenant within stipulated period, he ceases to have any right to continue as tenant. As such, according to him, both the orders are liable to be quashed and set aside.

9] Considered the rival submissions.

10] The fact remains that the authority, while deciding the claim of the Petitioner under Section 70(b) so as to declare him a tenant, has

relied on the evidence in the form of communication issued by the Respondent-landlord creating tenancy from 12/05/1977, after the Respondent-landlord secured the possession of the property in question under the provisions of the Act.

11] Oral evidence brought on record of the adjacent land owners and other persons who have provided technical support to the Petitioner in cultivating the land, in categorical terms speaks of the creation of tenancy in favour of the Petitioner from 12/05/1977.

12] The oral and documentary evidence which was brought by the Petitioner on record remained uncontroverted as the Respondent-landlord failed to contest on merit, though he has time and again changed the Advocates before the said authority.

13] In an appeal under Section 74 at the behest of the Respondent-landlord, the appellate authority re-appreciated the evidence brought by the Petitioner and recorded finding that the Petitioner is tenant of the land in question.

14] In the aforesaid backdrop, if one appreciates the contention of the learned Counsel for the Respondent-landlord that in view of legal fiction pursuant to provisions of Section 32-O, Petitioner is not entitled for declaration that he is a tenant pursuant to the provisions of Section 70(b) of the Act, is contrary to the very provisions of Section 32-O of the Act.

15] Under Section 32-O a right is vested in the tenant, like Petitioner, whose tenancy is created after tiller's day, to purchase the land of which he is tenant, provided he communicates his intention to purchase the land over which he has tenancy right within one year from the date of creation of tenancy. On plain reading of Section 32-O, it is clear that nowhere it provides for any consequence that in case if the intention of purchase is not communicated by tenant, he loses his status as that of tenant.

16] Though there is co-relation with Section 32-O of that of Section 70(b), however, in any case, Section 32-O would never operate before right of the tenant is declared under Section 70(b). In the case in hand, Respondent-landlord perhaps has disputed the

status of the Petitioner as tenant which prompted him to take recourse to the provisions under Section 70(b), seeking declaration under the Act. Merely because there exists a declaration under Section 70(b) in favour of the Petitioner that by itself will not act against the interest of Petitioner-tenant, to exercise purchase option provided under Section 32-O, unless ingredients thereunder are satisfied.

17] As such, keeping the option open to the parties to the Petition to agitate independent of the present proceedings their claim under Section 32-O, in my opinion, for the reasons recorded hereinabove, Petition needs to be allowed.

18] Petition is accordingly allowed. The order impugned passed by the Maharashtra Trevenue Tribunal, Pune dated 26/4/1996 as such is quashed and set aside and the order dated 6th March, 1991 passed by the Tenancy Awal Karkun, Koregaon is restored.

19] Rule is made absolute in the aforesaid terms.

(NITIN W. SAMBRE, J.)