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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8223 OF 2017**

Bhagoji Ravaji Mohite
since deceased through LR's

.....Petitioners

V/s.

Ramchandra Pandurang Mohite
since deceased through his LR's

.....Respondents

Mr. Dharam Juman i/b Kiran S. Mohite for the Petitioner

Mr. Saurabh Bu tala for respondent nos. 1(a) to 1(g)

Mr. Prajakt M. Arjunwadkar for respondent nos. 2(a) to 2(d)

Mr. Devendra Rajapurkar a/w Vaibhav Shah i/b Prashant Malik for
respondent nos. 3 to 5

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 30, 2019.

P.C.

Land bearing Survey No. 23 Hissa No. 4A admeasuring 1.46
Hector, Potkharab 0.11 Hector situated at village Jaalgaon, Taluka
Dapoli, District: Raigad locally identified as '*Kaajucha maal*' is
subject matter of present petition.

2 One Dinkar executed a Will being issueless in favour of his sister Gangabai. Dinkar during his life time created tenancy in favour of grandfather of present petitioner namely Bhiva. Bhiva had three sons namely Ravaji, Pandurang & Yashwant. It appears that all these three sons succeeded to the estate of Bhiva.

3 Present petitioner moved an application before Tahsildar claiming negative declaration that respondents are not tenant to the aforesaid property vide Tenancy Case No. 45 of 1997. Contentions of the petitioner therein are, his father was original tenant in whose favour, Tahsildar passed an order under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('the Act' for short) in 1962 and issued a Sale Certificate under Section 32M of the Act.

4 In view of the aforesaid Sale Certificate, it is claimed by the petitioner that on 17/02/1973, name of the petitioner's father namely Ravaji was mutated vide mutation entry no. 3617 in respect of the land in question.

5 It is then claimed that respondents to the petition who were in a civil dispute interse, arrived at settlement in 1980 in regard to 20 Guntha land and as such, a mutation entry was carried out being 4837. The clarification which is made by the petitioner is, that neither petitioner nor his father was a party to the aforesaid proceedings. The petitioner claimed that aforesaid entry was cancelled by an order of Sub-Divisoinal Officer ('SDO' for short) which was confirmed in Appeal before the Collector at the behest of the petitioner.

6 Petitioner initiated a Suit in the Court of Civil Judge, Junior Division, Dapoli against respondent no. 2 Govind claiming a permanent injunction. The said Suit, according to the petitioner came to be decreed vide Judgment and Order dated 21/01/1997. The issues which were answered in the said Suit are as under:

“ISSUES

FINDINGS

1) Does plff. Prove his exclusive possession, title and vahivat over the suit land?

Yes.

2) *Does he prove the alleged obstruction at the hands of defendant?* Yes.

3) *Is plaintiff entitled to relief of perpetual injunction against the defendant as prayed?* Yes.

4) *What order & decree?* As per final order.”.

7 In the aforesaid background, the claim of the petitioner is, he preferred an application before Tahsildar based on order under Section 32G and 32M of the Act in favour of his father seeking a declaration that respondents are not the tenants in the land in question. Said application came to be allowed by an order dated 31/05/1999 passed by Tahsildar. An Appeal preferred before SDO by respondents being Tenancy Appeal No. 29 of 1999 under Section 74 of the Act came to be allowed vide order dated 05/07/2001. The said order passed in Appeal was subject matter of challenge at the behest of petitioner before Maharashtra Revenue Tribunal ('MRT' for short) in Tenancy Revision No. 30/B/2002. The said Revision came to be dismissed on 14/02/2017. Hence, this petition.

8 While questioning the order impugned passed by the SDO on 05/07/2001 and the order of MRT passed on 14/02/2017, the learned counsel for the petitioner would urge that the fact that their exist 32G and 32M orders/certificate in favour of father of the petitioner is conclusive proof of the fact that it was father of the petitioner namely Ravaji who only succeeded to estate of Bhiva to the extent of tenancy right and thereafter became owner of property in question. He would also draw support from mutation entry no. 3617 in favour of Ravaji i.e. father of the petitioner. The learned counsel would rely upon the issues which were answered in R.C.S. No. 59 of 1997 which came to be decreed on 21/02/1997 against respondent no. 2. According to him, possession of the present petitioner, his title and Vahivat over the suit land is already answered by competent Civil Court in favour of the petitioner and that being so, the SDO and MRT ought not to have upset the findings recorded by the Tahsildar, declaring that respondents are not tenant of the land in question. The learned counsel would further urge that once a finding of fact is recorded that petitioner is in possession of property in question, the fact remains that for

almost 30 long years, petitioner's possession protected by virtue of 32G and 32M orders were never questioned by the respondent. He would then urge that since respondents have accepted the said orders, the petition is liable to be allowed as above orders are binding on the respondents also. The learned counsel by relying upon language of Section 32G and 32M would urge that certificates thereto since are conclusive proof of ownership of the father of the petitioner over the land in question and he being successor in title, respondents cannot claim that they are also tenant in common and as such, entitled for protection. The learned counsel for the petitioner so as to substantiate his contention had invited attention of this Court to observations made in the Judgment in the matter of **Ramkuwar w/o Ramkishan Pallod Vs. Krushnanath Sajan Belhekar and another**¹ particularly paragraph 10 so as to substantiate his claim that certificate issued under Section 32M is a conclusive proof of exclusive ownership of the petitioner over the disputed property. The learned counsel would also draw support from the Judgment in the matter of **Savitra Bapu Shinde and**

¹ {2010(6) Mh.L.J. 848]

others Vs. Rau Rama Shinde and another² so as to claim that respondents SDO and MRT have committed an error of law apparent on the face of record by recording a finding that cultivation was joint and as such, name of respondents are also recorded to be tenant in common of the property in question.

9 While resisting the aforesaid submissions, the learned counsel for respondents while vehemently supporting the order of SDO and that of MRT would urge that the issue of tenancy between legal heirs of common ancestor tenant, in the backdrop of provisions of Section 70b of the Act can be decided by the Tahsildar and the Civil Court has no jurisdiction to record any finding on the said issue. The learned counsel would then draw support from Full Bench Judgment of this Court in the matter of **Rajaram Totaram Patel Vs. Mahipat Mahadu Patel³**. It is also claimed by the respondents that once the relationship between the parties to the petition is not in dispute i.e. Bhiva being common ancestor to the fathers of petition and respondent, since Bhiva was declared as a tenant, respondents

² [2006(2) Mh.L.J. 243]

³ [1966 SCC OnLine Bom 66]

have every right to succeed to the tenancy rights over the land in question. They have also drawn support from provisions of Section 32G & 32M of the Act so as to claim that even if the Sale Certificate and the price fixation was ordered in favour of Ravaji, the fact remains that same was in the capacity of head of a Hindu family being Karta. The learned counsel for respondents would urge that so far as certificate issued under Section 32M of the Act is conclusive against the landlord and it does not prohibit family members from claiming their right in the land in question. According to him, unless the respondents in express terms communicate in writing that they are not willing to purchase the land in question, Section 32M certificate cannot be restricted to the extent of claim of the petitioner to the land in question. A support is drawn from the Judgment of this Court in the matter of **Yeshwant Hari Patil Vs. Shripati Hari Patil**⁴. The learned counsel for respondent would then urge that the petitioner to the petition was working in the office of Tahsildar and he has misused his position so as to delete the name of respondents from the revenue record of land in question and also other lands

4 [2018 SCC OnLine Bom 2775]

which he had offered in acquisition to Agricultural University. According to them, the only land which is left to the share of the respondent is also sought to be taken away by the petitioner by seeking illegal declaration under Section 70B of the Act. As such, the submissions are, the aforesaid issues prevailed before SDO and MRT for passing the order impugned dated 05/07/2001 and 14/02/2017, As such, it is prayed that the petition lacks merit and is liable to be dismissed.

10 Considered rival submissions.

11 Bhiva Mohite was a tenant of Dinkar who was original landlord who executed a Will in favour of Gangabai, his sister as he was issueless. Dinkar inducted Bhiva Mohite as a tenant. Bhiva was blessed with three sons namely Ravaji, Pandurang and Yashwant.

12 Petitioner Bhagoji, son of Ravaji whereas respondents are LR's of Pandurang & Yashwant. In the pleadings made by the petitioner in the petition so also other proceedings, the aforesaid factual matrix

is not in dispute.

13 Ravaji i.e. father of the petitioner is claimed to have succeed to the estate of Bhiva and as such 32G & 32M orders appears to have been passed in favour of Ravaji. However, it is not clear as to how Ravaji single handedly succeeded to the estate of Bhiva including that of tenancy right in the land in question. Even if the claim of the petitioner is that an adjudication under Section 32G and 32M is answered in favour of father of the petitioner Ravaji, still the burden is on the petitioner to demonstrate that LR's of Pandurang and Yashwant have not succeeded to the estate of Bhiva, as such are not entitled to succeed in the tenancy and then to the ownership rights accrued through the channel of Bhiva.

14 Though the petitioner has relied upon certain documents such as certificate issued by Tahsildar Dapoli on 06/09/1991 certifying that Ravaji has deposited purchase price for the land in question and accordingly a purchase certificate was issued on 22/06/1970 in favour of Ravaji. Revenue entry in favour of Ravaji, revenue entry no.

3617 carried out on 17/02/1973, communication issued by office of Tahsildar on 05/02/2002 certifying that 32M certificate in favour of father of the petitioner cannot be made available as same was destroyed in a fire and also the Judgment delivered by the Civil Court in R.C.S. No. 59 of 1991 initiated against respondent Govind for permanent injunction are relied on by the petitioner to justify his claim for grant of declaration. However, the fact remains that aforesaid documents are considered by both Authorities, particularly by MRT, and after analysis thereof, has answered the issue against the petitioner.

15 The fact remains that since the petitioner himself claims in the pleadings that Ravaji was cultivating the land in question with Pandurang and Yashwant. It is further claimed by him that it is only Ravaji who succeeded to the estate of Bhiva, the petitioner has not discharged his burden so as to establish the said fact. Apart from above, in Tenancy Case No. 45 of 1997 which was preferred by present petitioner before resident Nayab Tahsildar, petitioner has failed to demonstrate a detailed reasoned order passed by the said

Authority granting declaration in its favour that respondents are not tenants of land Survey No. 23, Hissa No. 4A, area 1.46 to 0.11 Hector.

16 Petitioner has relied upon the Judgment in the matter of **Ramkuwar w/o Ramkishan Pallod** [cited supra] so as to claim that certificate issued under Section 32M of the Act in favour of his father Ravaji is a conclusive evidence of the land being purchased by his father and as such, being exclusive owner thereof. However, the fact remains that in the said Judgment, the Court has observed that certificate issued under Section 32M of the Act is an evidence of payment of purchase price and that by itself does not grant declaration that the petitioner or his father are exclusive owners of the said property, particularly in the backdrop of the fact that they have succeeded to tenancy rights created in favour of Bhiva by the original owner Dinkar. Said issue was considered by this Court in the matter of **Yeshwant Hari Patel** [cited supra]. This Court while dealing with a similar issue, particularly effect of certificate issued under Section 32M has observed in paragraph nos. 18, 19, 20 & 21

as under:

“18] As regards the bar under Section 43 of the BT and AL Act, though in this judgment, it has been held that, in view of the said bar this land was no more available for the partition, it has to be stated that by way of the Amendment effected in [Section 43](#) of the B.T. and A.L. Act in the year 1982, the word "partitioned" has been deleted. Therefore, the said bar or restriction on transfer of the land purchased under the provisions of the B.T. and A.L. Act is no more applicable for the partition.

19] Even as regards the conclusiveness of the 'Certificate' issued under [Section 32-M](#) of the B.T. and A.L. Act, it has to be stated that it is conclusive against the landlord but that does not prohibit the family members of the tenant who had become purchasers, from claiming their right in the said land. Even if the 'Certificate', issued under [Section 32-M](#) of the B.T. and A.L. Act, is in the name of the one legal heir, unless and until the other legal heirs had expressly communicated in writing their unwillingness to purchase the land, required under [Section 40](#) of the B.T. and A.L. Act, the other legal heirs cannot be disentitled to get their share in the said land. This issue is also not required to be referred to the tenancy authorities, as held by this Court in the judgment of the Vithu C. Agaskar & Ors. Vs. Rama Gajanan Agaskar & Ors. In the said judgment, it was held that if the land was held in tenancy by the father of the family and as a result when the purchase is for and on behalf

of the joint family, the Certificate issued under [Section 32-M](#) of the B.T. and A.L. Act would at the most be conclusive proof of purchase against the owner of the land. However, the tenancy rights of the joint tenants cannot be negated solely on the ground that the Certificate of purchase was issued in favour of "karta" or any elderly person of a joint family. Thus, the Certificate of purchase cannot be the conclusive proof of title, vis- a-vis the joint tenants.

20] In a suit for partition of the tenanted land, which is purchased under the provisions of the B.T. and A.L. Act, it is therefore not necessary to refer the issue to the tenancy authorities, as the question before the Court is only to find out whether the contention of the party that the name of another party was entered for and on behalf of other members of the family or not and whether they had infact acquired necessary rights. Here, the issue is not whether the land was actually held in tenancy; but the issue is about the other legal heirs of the tenant in whose name the certificate is not standing are entitled to get their separate share from the said land. This position is very well made clear in the judgment of this Court in the case of Adam Mohmad Darwajkar & Ors. V/s. Appa Daud Darwajkar.

21] As held in the judgment of this Court in the case of Sarjerao Maruti Sathe V/s. Pralhad Laxman Sathe & Ors. 5, tenancy right which is heritable devolves upon such of heir or heirs who

are willing to continue the tenancy. Merely because the land is in possession of one of the co-heirs and the Certificate is issued in his name, that will not deprive the other legal heirs from getting share in the said land. Such purchase by Defendant No.1 in the present case must therefore enure for the benefit of other members of the joint family, unless of course they have expressly communicated their unwillingness to purchase the same as required under [Section 40](#) of the B.T. and A.L. Act. In this case, there is no such evidence on record. Conversely, the evidence on record proves that the Plaintiff has even contributed for purchase price of the suit lands, thereby expressly evidencing his interest to continue in possession and acquisition of the said lands”.

17 As a consequence of above referred observations, what can be inferred from the record is, the Judgment which is relied upon by the petitioner in the matter of **Ramkuwar w/o Ramkishan Pallod** [cited supra] can be termed to be further explained in the Judgment of **Yeshwant Hari Patil** [cited supra]. The scope of Section 32M is looked into in the matter of **Yeshwant Hari Patil** [cited supra] and this Court has further gone to the extent of observing that certificate issued under Section 32M of the Act is conclusive against landlord,

however, same will not act as an embargo on the right of family members of the tenant who later on became purchasers in claiming the share in the property.

18 In the case in hand, Dinkar created tenancy in favour of Bhiva i.e. grand father of the petitioner and the certificate issued under Section 32M of the Act was issued in favour of father of the petitioner namely Ravaji. It is the claim of the petitioner himself that Ravaji, Pandurang & Yashwant were commonly cultivating the land. In the aforesaid background, the claim of the petitioner that respondents are not entitled to succeed to the tenancy rights and as a consequences of order under Section 32G & 32M to the claim of ownership, is liable to be rejected. The respondents by virtue of law of succession have every right in law in claiming right in the land in question. The certificate issued under Section 32M at the most can be held to be conclusive against the original owner Dinkar or his sister Gangabai who have never questioned the entitlement of the present respondents to succeed to the tenancy right of deceased Bhiva. Apart from above, what can be noticed is, present

respondents or their ancestor namely Pandurang & Yashwant have never given up their right to succeed in the tenancy and as such, continued their interest, even till date in the land in question.

19 The entire pleadings of the petitioner and flowchart *qua* succession in the family *prima facie* demonstrates that the land in question was purchased by Ravaji in the capacity of Karta of the family. That being so, the purchase certificate in favour of Ravaji cannot be held to be conclusive proof of exclusive title of Ravaji and the petitioner.

20 In view of the above, the contention of the petitioner that the certificate issued under Section 32M of the Act vest absolute title and right in favour of the petitioner being successor to his father's interest is not sustainable and is liable to be rejected.

21 However, this will not preclude the petitioner from going before the Civil Court so as to establish his right for partition and separate possession by meets and bounds.

22 The learned counsel for the petitioner has relied upon the Judgment in the matter of **Savitra Bapu Shinde and others** [cited supra] so as to claim that under the Act, the Tribunal cannot go into an aspect of interse tenancy rights while deciding proceedings under Section 32M based on cultivation of the land jointly or by individual certificate holder. While dealing with the said issue, Full Bench in the matter of **Rajaram Totaram Patel** [cited supra] has observed thus:

"By [section 70](#) one of the duties imposed on the Mamlatdar is to decide whether a person is tenant or a protected tenant. That, in our view, contemplates a decision by the Mamlatdar of a dispute between a landlord and a tenant and not between two persons who claimed to be the owners of certain tenancy rights."

"17. In a recent decision of the Supreme Court in [Bhimaji v. Dundappa](#), the Supreme Court had occasion to consider the provisions of [sections 70](#) and [85](#) of this Act and as to the combined effect of those provisions the Supreme Court held as follows:

"The Mamlatdar has exclusive jurisdiction to entertain an application by a landlord for possession of agricultural lands against a tenant, and the Civil Court has no jurisdiction to entertain and try a suit by a landlord against a tenant for possession of agricultural lands. The Mamlatdar has no jurisdiction to try a suit by a landowner for recovery of possession of agricultural lands from a trespasser or from a mortgagee on redemption of a mortgage, and the Civil Court had jurisdiction to entertain such a suit; but if the defendant to the suit pleads that he is a tenant or a protected tenant or a permanent tenant and an issue arises whether he is such a tenant, Court must refer the issue to the Mamlatdar for determination, and must stay the suit pending such determination, and after the Mamlatdar has decided the issue, the Court may dispose of the suit in the light of the decision of the Mamlatdar."

"20. While we are in agreement with what is stated in the above passage, we respectfully dissent from the last clause in the above quotation "and not between two persons who claimed to be the owners of certain tenancy rights". As we have said the section is in plain English and in our opinion clear beyond any doubt. It is the

function of the Mamlatdar to decide whether a person is a tenant and when the Legislature has used that expression we can see no reason curtailing its amplitude by saying that the issue which the Mamlatdar has to decide is only an issue whether a person is tenant of a particular landlord. Whenever the issue is raised in any suit whether a person is a tenant, by whomsoever it is raised, the issue will have to be decided by the Mamlatdar.”

“23. That issue, in our opinion, involves the decision of a question whether the plaintiffs or the defendant or both were the tenants. That issue therefore, clearly falls within the ambit of [section 70 \(b\)](#). Therefore, that question cannot be tried by the Civil Court. It will have to be referred to the Mamlatdar for decision.”

23 Whether the respondents were tenant in common with that of petitioner is an issue which can be gone into under Section 70b of the Act, in the light of the position of the Apex Court and the observations made thereunder [referred supra]. It has to be inferred that both Tribunals were right in recording finding that names of respondent be added to the revenue record as tenants with that of

petitioner.

24 Apart from above, whether certificate issued under Section 32M in favour of father of the petitioner was conclusive proof of ownership is an issue which was considered by this Court in the matter of **Vithu C. Agaskar (since decd through legal heirs) Vs. Shri. Rama Gajanan Agaskar**⁵ this Court in para 20 while dealing with said issue has made following observations:

“The records reveal that the original claimant Vithu had subsequently got his name entered in the survey records, by bracketing the name of Gajanan. He had also purchased the property under Section 32G and a certificate of purchase was issued in his name. It is to be noted that no notice was given to the respondents before deleting/bracketing the name of Gajanan from the survey records. Furthermore, notice under section 32G of the BT&AL Act was not served on the respondents but was served only on Vithu, whose name was recorded in the revenue records. Vithu had expressed willingness to purchase the land and upon making the payment, the certificate of purchase was issued in his name. As stated earlier, Vithu had no independent tenancy right but held the property as a tenant in common on

⁵ [2018 SCC OnLine Bom 1323]

behalf of the joint family Under such circumstances, the certificate of purchase issued in the name of Vithu, would be for and on behalf of the joint family The said certificate would at the most be conclusive proof of purchase against the owner of the land. The tenancy rights of the joint tenants cannot be negated solely on the ground that the certificate of purchase was issued in favour of Karta of a joint family or any elderly person of a joint family. Hence, the certificate of purchase cannot be the conclusive proof of title, vis-a-vis the joint tenants.”

25 In the aforesaid backdrop of observations, what can be noticed is, order under Section 32G of the Act only recognizes the right of tenant to fix purchase price and deposit the same. However, order under Section 32G of the Act by itself cannot be stretched to the extent of claiming that the price is fixed *qua* claim made by individual tenant and as such, order passed under Section 32G in favour of one of the member of joint family confers absolute title in favour of such tenant. Apart from above, Section 32M provides for consequences of compliance of the order under Section 32G about issuance of Sale Certificate. Said Sale Certificate issued in favour of person who has deposited cost, particularly in the backdrop of pleadings of the petitioner that his father alongwith two of his uncles was in cultivating position cannot be accepted to infer that both these Rules

confer absolute right and title in favour of petitioner.

26 That being so, order impugned passed by the learned Tribunal does not warrant for any interference. Petition lacks merit, stands dismissed.

[NITIN W. SAMBRE, J.]