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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5914 OF 2019

Sakharam Waman Shinde & Ors. ..Petitioners.

V/s.

Gautamchand Punamchand Lohade & Ors. ..Respondents.

Mr.Vishwajeet S. Kapase for the petitioners.

Mr.Girish R.Agrawal for respondent No.1.

Mr.S.S.Panchpor, AGP for respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 21, 2019

P.C.:-

Heard respective counsel.

2. The subject matter of the petition is the land admeasuring 3.96 Hect. out of Gut No.119 of Bhaori village, Taluka Nandgoan, District Nashik.

3. According to the father of the petitioners, since he was a tenant in the aforesaid property, he sought fixation of the purchase price under section 32G of the Maharashtra Tenancy and Agricultural Land's Act ('the Act' for short), which application came to be allowed on December 17, 1990 by Tahsildar,

Nandgaon. The respondent-landlord preferred revision under section 76 of the Act which came to be allowed on April 28, 1995 whereby the order of fixing of purchase price passed by the Tahsildar, confirmed by the Sub-Divisional Officer were set aside. Father of the petitioner, feeling aggrieved preferred Writ Petition No.344 of 1995. The said petition came to be dismissed on June 19, 1996. As a consequence, the prayer of the petitioners or his father for fixation of the price under section 32G of the Act came to be negated.

4. The respondent-landlord, pursuant to the provisions of section 32P of the Act, which provides for power of the Tribunal to dispose of the land which was not purchased by the tenant, sought allotment of the same. The said application came to be allowed on May 23, 2014 and the Sub-Divisional Officer in Tenancy Appeal No.12/2014 vide his order September 30, 2015 confirmed the order under section 32P passed in favour of the respondent-landlord. Both these orders were subject matter of the challenge before the Maharashtra Revenue Tribunal in Tenancy Revision No.218/2015 which came to be dismissed by the impugned order. Hence this petition.

4. The submission of Mr.Kapase, learned counsel for the petitioner-tenant is, even if 32G proceedings for deciding the purchase price are negated by the Tribunal upto this Court, the fact remains that the petitioners continue to be a tenant. According to him, there is corresponding liability / responsibility under section 32G of the Act on the landlord. Once the landlord has failed to comply with the said responsibility under section 32G of the Act, the respondent-landlord is not entitled for the benefit of 32P of the Act for disposing of the land by the Tribunal in favour of the landlord. Mr.Kapase would invite attention of the Court to the very language of section 32G of the Act to substantiate his contention. Learned counsel would then urge that in view of the fact that the tenancy of the petitioners is not extinguished, the order passed under section 32P of the Act, which is impugned in the petition is not sustainable. As such, he has prayed for allowing the writ petition.

5. *Per contra*, learned counsel for the respondents Mr.Agrawal and learned AGP supports the order impugned. According to Mr.Agrawal, section 32P of the Act contemplates power of the Tribunal to withdraw the land from the tenant if he

has fails to purchase the same and in turn hand over the same to the landlord, provided the holdings of the landlord is within the permissible limit.

6. According to him, the petition is liable to be dismissed as the order under section 32G of the Act for fixing of purchase price was confirmed up to this Court.

7. Learned AGP submits on the same line.

8. Having considered the submissions, what is required to be noted is, the Maharashtra Revenue Tribunal while negating the claim of the petitioners under section 32G of the Act has made an observation that father of the petitioners has failed to intimate or issue notice under section 32F(1)(A) of the Act to the landlord, who has attained majority within one year from the date and has also failed to exercise his right and that being so, father of the petitioners has lost his right to purchase the property under section 32F(1)(A) of the Act. The petitioners has stepped into the shoes of his father claiming tenancy and as such, has resisted the claim of the landlord moved under 32P of the Act for allotment of land in question in his favour. The order under section 32G of the Act passed against father of the petitioners was confirmed upto

this Court.

9. In the 32P proceedings, the Tribunal considered the order passed under section 32 of the Act and observed that the petitioners have no right to claim the property in question, either to purchase or otherwise as order 32G was confirmed upto this Court. The Tribunal then proceeded to analyse the evidence brought on record by the respondent-landlord in support of his claim under section 32P and upon inquiry noticed that income from the land in question is the only source for survival of the respondent-landlord. The Tribunal also noticed that in case if the land is to be restored and handed over the respondent-landlord, it has to be seen that the holdings of the landlord does not exceed the ceiling limit. As such, proceeded to pass the impugned order. In the aforesaid backdrop, if the submissions of learned counsel Mr.Kapase is appreciated, once the proceedings for fixing the purchase price at the behest of the petitioners-tenant has attained finality upto this Court, it is really difficult to appreciate his contention that the landlord has failed to discharge his burden / responsibility under section 32G of the Act. Once the order under section 32G of has attained finality upto this Court, it is not open

for the petitioners to canvass the said contention as this Court cannot reopen inquiry under section 32G of the Act

10. Learned Tribunal, in the aforesaid backdrop, upon perusal of the inquiry report of the Tahsildar has appreciated that there is no error of law or otherwise in the order passed by the sub-ordinate authorities.

11. In the aforesaid backdrop, in my opinion, no case for interference is made out, particularly when all the three authorities below have held against the petitioners. That being so, the petition fails and is dismissed.

12. At this stage, Mr.Kapase, learned counsel for the petitioner, on instructions, submits that the petitioners' possession be protected for a period of four weeks from today and after a period of four weeks, the petitioners shall surrender the possession to the respondents-landlords. Since the statement is made on instructions, same is accepted as an undertaking. The possession of the petitioners is protected for a period of four weeks from today.

(NITIN W.SAMBRE, J.)