

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 816 OF 2000**

1 Baburao Pandurang Madane,

2 Vithal Pandurang Madane,
both residing at Kusmod,
Taluka Malshiras, Dist. Solapur.

.....Petitioners.

Vs.

Jagannath Sopan Zinje,
R/o. Kusmod, Taluka Malshiras,
District Solapur.

.....Respondent.

Mr. P.B. Shah a/w Mr. A.B. Avhad for the Petitioners.
None for the Respondent.

**CORAM : A. S. GADKARI, J.
DATE : 29th JULY, 2019.**

ORAL JUDGMENT:-

By the present Petition under Article 227 of the Constitution of India, the Petitioners-tenants have impugned Judgment and Order dated 12th October, 1999 passed by the learned Member of the Maharashtra Revenue Tribunal, Pune (for short, the MRT, Pune), in Revision Application No. MRT-SH-VII-3/95 (B-116/95) Pune, allowing the said Application and setting aside the Order dated 3rd July, 1992 passed by the Agricultural Lands Tribunal (for short, "ALT"), Malshiras, District Solapur and Order dated 30th May, 1995 passed by the Sub-Divisional Officer, Pandharpur Division,

Pandharpur in Tenancy Appeal No.47 of 1992 under the Bombay Tenancy and Agricultural Lands Act, (for short, "*the B.T.A.L. Act*").

2 Heard Shri. P.B. Shah, a/w Mr. Avhad, the learned counsel for the Petitioners. The Respondent is absent though duly served. Perused the record.

3 The record indicates that, the Petitioners were declared tenants under the provisions of the B.T.A.L. Act with respect to the Suit land i.e. survey No. 39/1 (part) admeasuring 13 acres and 2 ares, lying and situate at village Kusmod, Taluka Malshiras, District Solapur. That, an enquiry under Section 32-G of the B.T.A.L. Act was conducted by the ALT, Malshiras, in the year 1968 and the Petitioners were directed to pay the price of the suit land in six installments between the year 1968 to 1974. The record further indicates that, on 7th August, 1969, the Respondent executed a lease-deed in favour of the Petitioners for cultivation of sugar-cane on the suit land. The said lease deed was to remain in force upto the end of year 1999.

 The Petitioners paid the amount as contemplated under Section 32-G of the B.T.A.L. Act, as was directed by the ALT Malshiras on or before 30th September, 1988 along with interest and penalty thereon. Thus, it is an admitted fact on record that, though belatedly,

the Petitioners paid the purchase price fixed by the ALT Malshiras, pertaining to the suit land.

4 In the backdrop of these admitted facts on record, the Respondent filed an Application on 1st August, 1990 for declaration that, the sale of suit land to tenant i.e. the Petitioners herein be declared ineffective, as the Petitioners have failed to pay the sale price within stipulated period and has paid it much belatedly. The ALT, by its Order dated 3rd July, 1992 rejected the said Application. It was observed by the ALT, that, the Petitioners on '*tillers day*' were in actual possession of the suit land and were declared as protected tenants and deemed purchasers of the suit land. That, there is no order from the Competent Authority, directing the ALT to take possession of the suit land.

5 The Tenancy Appeal No. 47 of 1992 preferred by the Respondent under Section 74 of the B.T.A.L. Act, has been dismissed by the Sub-Divisional Officer, Pandharpur Division, Pandharpur by its Judgment and Order dated 30th May, 1995. The Sub-Divisional Officer, Pandharpur, has held that, in view of the lease-deed/ partnership deed dated 7th August, 1969, the Petitioners have held the suit land on restricted tenure as contemplated under Section 43-A of

the B.T.A.L. Act. The Sub-Divisional Officer has recorded concurrent finding with ALT, Malshiras that, the Petitioners were and are in actual possession of the suit land.

6 Feeling aggrieved by the decision dated 30th May, 1995 of the Sub-Divisional Officer, Pandharpur in Tenancy Appeal No. 47 of 1992, the Respondent preferred Revision No. MRT-SH-VII-3/95 (B-116/95) Pune, under Section 76 of the B.T.A.L. Act before the MRT, Pune. The MRT, Pune by its impugned Judgment and Order dated 12th October, 1999 was pleased to allow the same.

The MRT, Pune by relying on a decision in the case of *Shaikh Noor s/o Shaikh Kathu & Ors. Vs. Shaikh Rasool s/o Shaikh Hasan & Ors., reported in 1988 (3) BCR 311*, has held that, it was obligatory on the part of the Tenants/Petitioners to pay the price fixed by the ALT within stipulated period and in view of the fact that, the Petitioners did not deposit the said amount within stipulated period and deposited it much belatedly, the sale in favour of Petitioners has become ineffective and the tenancy right is liable to be forfeited. As noted herein above, the said Judgment and Order dated 12th October, 1999, is impugned herein.

7 Mr. Shah, the learned counsel for the Petitioners submitted

that, the MRT, Pune has erroneously referred to and relied upon the decision in the case of *Shaikh Noor s/o Shaikh Kathu & Ors. (Supra)*. It is submitted that, in the said decision, the provisions of Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (*“the H.T.A.L. Act”*) was under consideration, which deals with compulsory purchase of land by a protected tenant and non-payment of purchase price fixed by the Tahasildar within stipulated period by the tenant. He submitted that, though the provisions of Section 38-E of the H.T.A.L. Act, are similar to the provisions of Section 32-K (3) and 32-M (2) of the B.T.A.L. Act, it cannot be said that, the provisions of Section 38-E of the H.T.A.L. Act are *pari-materia* with the said provisions of the B.T.A.L. Act. He further submitted that, this Court on earlier occasions has dealt with the said provisions of B.T.A.L. Act and has held that, even if there is a delay in making payment of the fixed price under Section 32-G of the B.T.A.L. Act, the remedy with the concerned Authority is to recover the sale price towards land revenue, however, certainly not to seek forfeiture of land or declare the sale ineffective. In support of his contention, he relied on two decisions of this Court in the case of (i) *Rangnath Pandharinath Gosavi since deceased by his heirs & legal representatives & Ors. Vs. Sakharam*

Shiva Bhosale, since deceased by his heirs & legal representatives & Ors. Reported in 2004 SCC OnLine Bom. 439= (2004) 5 BCR 34 and; (ii) Nathu Lotu Buwa (Deceased through LR.) Vs. Smt. Sakhubai w/o Ganpat Mahar, reported in 2005 BCI 291 = 2005 (4) All MR 329.

He submitted that, the MRT, Pune has clearly erred in placing its reliance on the case of *Shaikh Noor s/o Shaikh Kathu & Ors. (Supra)*. He therefore, prayed that, the impugned Judgment and Order passed by the MRT, Pune, may be quashed and set aside by allowing the present Petition.

8 As noted earlier, the admitted facts on record are that, the Petitioners were in possession of the suit land on the tillers day i.e. on 1st April, 1957. In the year 1968, the ALT, Malshiras fixed the price of suit land as contemplated under Section 32-G of the B.T.A.L. Act and the Petitioners were directed to make payment of the suit land in six installments from 1968 to 1974. The Petitioners paid the last installment towards the purchase price along with interest and penalty accrued thereon on or before 30th September, 1988. The record further indicates that, on 7th August, 1969, a lease deed was executed by the Respondent in favour of the Petitioners pertaining to the suit land, permitting them to cultivate sugar-cane in it. The Petitioners

thus, undoubtedly were in possession and as per the submission of the Petitioners even as of today, they are in possession of the suit land.

9 This Court in the case of *Rangnath Pandharinath Gosavi (Supra)*, while analysing the provisions of Section 32-K (3) and 32-M (2) of the B.T.A.L. Act has held that, the scheme of the said relevant provisions seems to be that, the tenant should be called upon to pay the arrears of purchase price as arrears of land revenue under Sub-Section (3) of Section 32-K of the B.T.A.L. Act. That, by virtue of Section 32-M (2) of the B.T.A.L. Act, the purchase would become ineffective on failure of payment of purchase price in time, in lump sum or in installments. The said provision however, further stipulates that, the tenants/ purchasers if nevertheless, continued to be in possession at the commencement of the B.T.A.L. (Amendment) Act, 1964, then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under Sub-Section (3) of Section 32-K of the Act.

 In the case of *Nathu Lotu Buwa (Supra)*, this Court while considering the question as to, whether for non-payment of purchase price, the purchase of land would become ineffective?, in para 13, has held that, unpaid purchase price has to be recovered as arrears of land

revenue and mere inaction on the part of the tenant in payment of price, does not automatically render the purchase price ineffective. It is further held in para 14 that, the provisions of Tenancy Act are made for the benefit of the tillers of the soil and merely because the tenant fails to pay the amount that, by itself, automatically does not attract invalidation of the right which is created in favour of the tenant under Section 32 of the B.T.A.L. Act. That, the statutes also cast upon an obligation on the authorities who are empowered to see that the agrarian reforms are implemented in proper perspective. While analysing the provision of Section 32-M (2), it is held that, Section 32-M (2) was brought on the statute book by Act No. XXXI of 1965, which says that, where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in installments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the B.T.A.L. (Amendment) Act 1964; then the purchase of the land shall not be deemed to be effective until the Tribunal fails to recover the amount of the purchase price mentioned in Sub-Section (3) of Section 32-K. That, Sub-Section (2) of Section 32-M has to be considered on the backdrop of Section 32-K (3) of the B.T.A.L. Act. It is further held that, Section

32-K (3) provides that, if a tenant purchaser fails to pay the entire amount of the purchase price within the period fixed under the provisions of this Section or in arrears for installments where the number of installments fixed is four or more and all the installments in any other case if the amount of purchase price remaining unpaid and the amount of interest thereon at the rate of four and a half per cent per annum, if any shall be recovered by the Tribunal as an arrears of land revenue.

10 In the present case, admittedly on 1st April, 1957 so also on the date when the Amendment of 1965 was brought on the statute book, the Petitioners were in actual possession of the suit land. I find substance in the contention of the learned counsel for the Petitioners that, the decision relied upon by the Revenue Tribunal in the case of *Shaikh Noor s/o Shaikh Kathu & Ors. (Supra)* has no application to the present case, as it deals with the provisions of the H.T.A.L. Act.

11 The finding recorded by the MRT, Pune that, the Petitioners have not given proper reason for non-payment of fixed price within stipulated period, appears to be without substance, because as noted earlier, though belatedly the Petitioners have paid the purchase price to the Respondent and therefore, the ratio laid

down by this Court in the case of *Nathu Lotu Buwa (Supra)* will have application to the present case. It therefore, can safely be inferred that, the purchase of land by the Petitioners cannot be held to be and declared as ineffective for belated payment of the purchase price. As noted earlier, the revenue authorities had not initiated any proceedings for recovery of the said arrears purchase price towards land revenue as mandated under Section 32-M (2) of the B.T.A.L. Act.

12 A deliberation of the foregoing discussion would lead to draw an irresistible conclusion that, the Judgment and Order passed by the MRT, Pune dated 12th October, 1999 is erroneous and needs interference by this Court. The impugned Judgment and Order dated 12th October, 1999 is accordingly quashed and set aside by restoring and upholding the Order dated 3rd July, 1992 passed by the ALT, Malshiras in Tenancy Case No.101 of 1990 and the Order dated 30th May, 1995 passed by the Sub-Divisional Officer, Pandharpur in Tenancy Appeal No. 47 of 1992.

Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)