

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2003 OF 1997

Shri Barku Appa Murkute
Since deceased by his legal heirs ... Petitioners

V/s.
Vishwasrao Kashinath Deshmukh ... Respondent

Mr.Sachin Khandagle with Mr.V.R.Kasle i/by M/s Ram &
Co., Advocate for Petitioner Nos.1 and 2.

Mr.P.N.Joshi, Advocate for the Respondent.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 14, 2019.

P.C.:-

1. Heard Mr.Sachin Khandagle, learned counsel for the petitioners; and Mr.P.N.Joshi, learned counsel for the respondent.

2. By filing this petition under Article 227 of the Constitution of India, petitioners seek quashing of the following orders:-

1. Order dated 26th August, 1996 passed by the Maharashtra Revenue Tribunal;

2. Order dated 24th March, 1995 passed by the Maharashtra Revenue Tribunal;
3. Order dated 27th April, 1981 passed by the Sub-Divisional Officer Nasik; and
4. Order dated 31st January, 1981 passed by the Tahsildar, Dindori.

3. Respondent is the landlord in respect of two plots of land covered by Survey No.39/4-A and 4-B of village Dindori in the district of Nasik.

4. Father of the petitioners, namely, Barku Appa Murkute (Barku Appa) was the tenant of the two plots of land, ad-measuring 1 Acre 16 Gunthas and 1 Acre 6 Gunthas respectively. Respondent was a minor on the relevant date, that is, the tillers day on 1st April, 1957, his date of birth being 10th February, 1949. Barku Appa initiated proceedings under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (earlier known as "The Bombay Tenancy and Agricultural Lands Act, 1948")

5. Considering the fact that respondent was a minor on the tillers day, proceedings under Section 32-G of The Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the Act" hereinafter) was postponed .

6. Though there were some intervening developments, those may not be relevant for the purpose of adjudication of this case. The sequence of events relevant for the present case started with an application dated 6th February, 1971 filed by Barku Appa for determining the purchase price of the land in question. However, proceedings under Section 32-G of the Act was dropped vide order dated 11th October, 1971 on the ground that holding of the tenant was in excess of the ceiling limit and therefore, he was not entitled to purchase the same.

7. Barku Appa preferred appeal against the said order being Tenancy Appeal No.63 of 1972. The said appeal was allowed by the Deputy Collector, Nasik vide order dated 3rd October, 1972, remanding the matter

back to the primary authority for considering the question as regards right of the tenant to purchase the land in question.

8. Thereafter, the matter was carried in revision to the Maharashtra Revenue Tribunal. However, the revision application was dismissed vide order dated 23rd August, 1973. Writ petition filed in the High Court was also dismissed.

9. Proceedings under Section 32-G were thereafter taken up for consideration. By order dated 31st January, 1981, Tahsildar, Dindori passed an order holding that the tenant would not be entitled to purchase the land in question since his holding was more than the ceiling area.

10. Against the aforesaid order, the tenant Barku Appa preferred Tenancy Appeal before the Sub-Divisional Officer, Nasik, which was however, dismissed on 27th April, 1981.

11. This time the tenant approached the Maharashtra Revenue Tribunal by preferring revision petition. The revision petition was allowed on 25th March, 1982 by remanding the matter back to the Tahsildar, Dindori for a fresh inquiry and consequential decision.

12. This order of the Maharashtra Revenue Tribunal came to be challenged before this court in two writ petitions, one by the landlord and the other by the tenant. Both the writ petitions were allowed by a common order dated 13th July, 1990 by remanding the matter to the Maharashtra Revenue Tribunal. While remanding the matter, High Court observed that if a particular finding was not recorded by the authorities below Maharashtra Revenue Tribunal (Tribunal) would be justified to record a finding on the basis of materials available on record, exercising powers under Section 76 of the Act. Liberty was given to the Tribunal to appreciate the evidence on record to record findings if that had not been done by the authorities below.

13. It is contended by the petitioners that during the pendency of the writ petitions, Special Civil Suit No.369 of 1990 was instituted by other family members of Barku Appa.

14. It is further stated that on remand, during pendency of the revision petition, Barku Appa expired.

15. In aforesaid Special Civil Suit, a preliminary decree was passed by the Civil Court i.e. Civil Judge, Senior Division, Nasik on 11th August, 1994, allowing partition of the land in question amongst family members of Barku Appa.

16. It is contended by the petitioners that upon such partition and thereafter, on devolution upon the legal heirs share of Barku Appa become less than the ceiling limit.

17. Be that as it may, upon remand Tribunal dismissed the revision petition on 24th March, 1995.

18. Initially petitioners had filed a writ petition being Writ Petition No.3266 of 1996 before this court assailing the order dated 24th March, 1995. However, the writ petition was withdrawn on 5th July, 1996 with liberty to move the Tribunal seeking review of the order dated 24th March, 1995.

19. Thereafter, petitioners filed review petition before the Tribunal bringing to the notice of the Tribunal the preliminary decree of the Civil Court dated 11th August, 1994.

20. However, by order dated 26th August, 1996, Tribunal dismissed the review petition.

21. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

22. While learned counsel for the petitioners contended that after the partition decree of the Civil Court it was

evident that the original tenant was in occupation of the less than the ceiling limit and therefore, was entitled to the benefit of Sections 32-G and 32-M of the Act. This aspect was overlooked by the authorities below, particularly in review which has vitiated the impugned order.

23. On the other hand, learned counsel for the respondent submits that the crucial date to be taken into consideration for determining as to whether the tenant was in occupation of the land in excess of the ceiling limit was 1st April, 1957. Subsequent developments in the form of preliminary decree partitioning the land amongst the family members would not have any significant bearing on the entitlement of the petitioners. In this connection he has referred to various provisions of this Act and certain citations.

24. Submissions made by learned counsel for the parties have been duly considered.

25. In his order dated 31st January, 1981, Tahsildar, Dindori recorded a finding of fact that the tenant was holding land more than the ceiling limit and therefore, he was not entitled to purchase the land in question. This finding of fact was affirmed by the appellate authority i.e. Sub-Divisional Officer, Nasik in his order dated 27th April, 1981. The appellate authority after considering the order passed by the Tahsildar and the materials on record held that calculation made by the Tahsildar was correct and that the Tahsildar had elaborately discussed and examined the issue. In other words, the finding of the fact that the tenant was holding more land than the ceiling limit was affirmed in appeal. In revision also, Tribunal affirmed the said finding of fact of both the authorities below and rejected the revision petition, which order was again upheld in review by dismissing the review petition.

26. In so far the preliminary decree of the Civil Court is concerned, the same is dated 11th August, 1994

partitioning the land in question amongst the plaintiffs by offering 1/4th share each.

27. Having taken note of the facts as above, relevant provisions of the Act may now be adverted to.

28. Section 5 of the Act defines the ceiling area for different categories of land, details of which may not be necessary to be gone into. Section 32 deals with purchase of land by tenants. As per sub-section (1), on the first day of April, 1957, referred to as the tillers day, every tenant shall be deemed to have purchased from his landlord free from all encumbrances subsisting thereon on the said date, land held by him as tenant subject to fulfillment of the conditions stipulated therein.

29. Section 32A says that a tenant shall be deemed to have purchased land under Section 32:-

- (1) In the case of a tenant who does not hold any land as owner but holds land as tenant in excess of ceiling area upto ceiling area; and
- (2) In the case of a tenant who holds land as owner below the ceiling area, such part of

the land only as will raise the holding to the extent of the ceiling area.

30. Pausing here for a moment, what Section 32A stipulates is that a tenant shall be deemed to have purchased land under Section 32, if he holds land as tenant in excess of ceiling area, only upto the ceiling area or if he holds land as owner below the ceiling area, such part of the land only as will raise the holding to the extent of the ceiling area. Therefore, a careful reading of Section 32A would indicate that even if a tenant holds land as a tenant in excess of the ceiling area, his right to purchase land would be limited only to the ceiling area; and if he holds land as owner below the ceiling area, such part of the land only upto the ceiling area. Therefore, if a tenant holds land as owner which is in excess of the ceiling area, he would stand disentitled under Section 32A.

31. Section 32G lays down the procedure for determining the price of land to be paid by the tenant

while Section 32P provides the power of the Tribunal to resume and dispose of land not purchased by the tenant.

32. In **State of Maharashtra Vs. Vyasendra**, reported in **AIR 1983 SC 632**, Supreme Court clarified that no family unit shall after the commencement date hold land in excess of the ceiling area. The land held by a family unit in excess of the ceiling area would be regarded as surplus land liable to be dealt with in a manner prescribed by the Act. Clarifying the matter further, it was held that all land held by each member of the family whether jointly or separately would be deemed to be held by the family unit for the purpose of determining the ceiling area, which the family unit may retain. The land held by all the family members would have to be pulled together for the purpose of determining the ceiling area, which is permissible to the family unit.

33. Explaining the mandate of Section 32A of the Act, a Single Bench of this court in **Dattatraya Anant Wakade**

Vs. Rangrao Sultanji Ghorpade, reported in **2003(2) Mh.L.J. 462** held that the tenant would be entitled to purchase the land only upto the ceiling area and for which purpose the authorities would be obliged to take into account his holding of all the other lands. The authority has to examine the fact as to whether after taking into consideration all the other lands held by the tenant as owner to the relevant date, he was still falling short of the permissible ceiling area. If the authority was to hold that the tenant was already holding land as owner in excess of ceiling area, then the statutory purchase by the tenant in respect of the land would become ineffective.

34. Adverting to the facts of the present case, the finding of fact arrived at by all the authorities below is that on the appointed day Barku Appa was holding land as owner in excess of the ceiling land; therefore, neither he nor his legal heirs would be entitled to the benefit of Section 32 of the Act. The fact that the family members had partitioned the land in question amongst themselves

would have no bearing as the land in its entirety would have to be taken into consideration for the purpose of ceiling area and not the partitioned portion(s) of the land. That apart, there is hardly any scope for the writ court to interfere with such finding of fact arrived at by three authorities below.

35. Considering the above, court finds no merit in the writ petition.

36. Writ Petition is accordingly dismissed.

(UJJAL BHUYAN, J.)

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