

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

WRIT PETITION NO.7908 OF 2014

Eknath Bhiku Yadav since deceased
through L.Rs.

- 1A Anandrao Eknath Yadav
- 1B.Ramdas Eknath Yadav
- 1C. Prakash Eknath Yadav
- 1D Tukaram Eknath Yadav
- 1E Haribhau Eknath Yadav
- 1F Dyandev Eknath Yadav
- 1G Sau. Lilawati Eknath Yadav

- 2. Mahadev Appaji Madane
- 3. Uttam Appaji Madane

...Petitioners

Versus

Maruti Deo Trust through its
Trustees

- 1. Ganpatrao Shankar Dhavan
- 2. Janardan Dagadu Khomane
- 3.Vinayak Ganesh Deshpande
- 4. Shankar Nana Deokate
- 5. Mahadeo Shankar Dhavan
- 6. Bapurao Appaji Mergal

...Respondents

.....

Mr. S.G. Karandikar with Mr. Abhijit P. Kulkarni for the Petitioners.
Mr. Rahul S. Kadam for the Respondent Nos.1 and 3.
Mr. Avinash B. Avhad for the Respondent Nos.2, 5, 6,8 to 15.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

JUDGMENT DATE : 16th JANUARY, 2019.

ORAL JUDGMENT:-

Rule. With consent rule is made returnable forthwith.

2. At the outset Mr. Rahul Kadam, the learned counsel seeks leave to withdraw his appearance on behalf of the Respondent No.6 since he is already represented by learned counsel Mr. Avinash Avhad. Leave granted.

3. The Petitioners herein have challenged the legality of the order dated 30th May, 2014 whereby the learned Member of the Maharashtra Revenue Tribunal, Pune, allowed revision application No.TNC/REV/194/2007/P and dropped the proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the 'BT & AL Act').

4. The dispute is in respect of the property under Gut No.264 and 265 of village Pimpali, Baramati. The property was owned by the Maruti Deo Trust, Pimpali (hereinafter referred to as 'the Trust'). The Respondent Nos.4 to 7 are the Trustees of the said Trust. They had made an application to the Collector for issuance of a certificate of eligibility for exemption under Section 88B of the BT & AL Act. The Collector issued a certificate of exemption under Section 88B of BT & AL Act. Being aggrieved by the said order the Petitioners herein filed a Writ Petition No.1442 of 1987.

5. By judgment and order dated 6th February, 2006, this Court quashed and set aside the certificate of exemption under Section 88B of the BT & AL Act and directed to concerned authority to hold proceedings under Section 32G of the BT & AL Act to fix the purchase price at an early date.

6. Pursuant to the said order the learned ALT started proceedings under Section 32G bearing T.C. No.32G/5/06 and fixed the purchase price of the subject land and later granted certificate under Section 32M of the Act. The Respondents challenged the orders by filing Tenancy Appeal No.9 of 2006, which was dismissed by order dated 28th August, 2007.

7. Being aggrieved by the said order the Respondents preferred revision application No.TNC/REV/194/2007/P before the Maharashtra Revenue Tribunal, Pune Bench, at Pune. By the impugned order dated 30th May, 2014 the learned Member, Maharashtra Revenue Tribunal, Pune allowed the revision application and quashed and set aside the order dated 16th November, 2006 passed by the learned ALT and the order dated 28th August, 2007 passed by the learned Sub-Divisional Officer, Baramati and dropped the

proceedings under Section 32G of the BT & AL Act. Being aggrieved by this order the Petitioners have filed the present writ petition.

8. The learned counsel for the Petitioners submits that the learned Member of the MRT has totally ignored the observations of this Court in judgment dated 6th February, 2006 in Writ Petition No.1442 of 1987 wherein it has been held that the Trust was not registered or deemed to have been registered under the provisions of the Bombay Public Trusts Act, 1950 (for short 'the BPT Act'). The learned counsel for the Petitioners submits that in the light of the aforesaid observations, it was not open to the learned Member of the MRT to hold that there was deemed Trust in existence since beginning and that Sections 32 and 32R of the BT & AL Act are not applicable and that the Petitioners herein are neither the Deemed Purchasers nor entitled to purchase the said land.

9. The learned counsel for the Petitioners contends that the Trust had not disputed that the Petitioners were in possession of the land as tenants as on the Tillers Day and as such the findings that the Petitioners are not tenants and are not entitled to purchase the land are totally illegal and perverse. He further contends that the proceedings under Section 32G were initiated as per the order of the

Division Bench in Writ Petition No.1442 of 1987 and that the learned Member of MRT has exceeded his jurisdiction in dropping the proceedings under Section 32G of BT & AL Act.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. As stated earlier, the Trust had made an application for issuance of certificate of eligibility for exemption under Section 88B of the BT & AL Act. Whilst considering the issue of the eligibility of the Respondent-Trust in seeking exemption under Section 88B of the BT & AL Act, the Division Bench of this Court in Writ Petition No.1442 of 1987 held that the Trustees have admitted that the Petitioners were in possession of the subject land as tenants as on Tillers Day i.e. 1.4.1957. It was further observed that the Trust was registered for the first time on 8th August, 1984. The Trust was not registered or deemed to have been registered before 1st April, 1957. Hence, the tenants, who were in possession of the said land as on the Tillers Day had become deemed purchasers and the ownership of the land vested in them as on 1st April, 1957 could not be divested by subsequent registration of the Trust. Under the circumstances, the Division Bench of this Court

quashed the certificate of exemption under Section 88B and directed the concerned authorities to proceed under Section 32G of the BT & AL Act to fix the purchase price. Though the Respondent-Trust has challenged the judgment of the Division Bench before the Hon'ble Apex Court, the said judgment and order has not been stayed. Under these circumstances that the ALT had complied with the directions contained in the judgment dated 6th February, 2006 and initiated proceedings under Section 32G of the BT & AL Act and determined the purchase price.

12. The learned Member of MRT has dropped the proceedings under Section 32G of the BT & AL Act holding that the Trust is deemed to have been registered and that the provisions of Sections 32 to 32R are not applicable. The learned Member has further held that the Petitioners are not tenants or deemed purchasers and are not entitled to purchase the subject land and hence dropped the proceedings under Section 32G, which was initiated as per the directions of the Division Bench of this Court.

13. The learned Member of the Tribunal has ignored the judgment dated 6th February, 2006, wherein it was categorically held

that there was an admission on the part of the Trustees that the Petitioners were in possession of the subject land as on the Tillers Day and were therefore deemed purchasers and further that since the Trust was neither registered nor deemed to have been registered as on 1st April, 1957 the ownership of the Petitioners could not have been divested by subsequent registration. In the light of the aforesaid observations it was not open to the Member of the MRT to hold that the Trust was a deemed Trust and that the Petitioners were not tenants /deemed purchasers and that they were not entitled to purchase the land. Needless to say that the learned Member of the MRT has exceeded his jurisdiction in recording such contradictory findings and dropping the proceedings under Sections 32G of the BT & AL Act, which were initiated as per the directions of the Division Bench in Writ Petition No.1442 of 1987.

14. Mr. Kadam and Mr. Avhad, the learned counsel for the Respondents submits that despite the order of the Division Bench to initiate proceedings under Section 32G and to fix the purchase price, the ALT was required to conduct an enquiry to ascertain whether the Petitioners were in possession of the land as on the Tillers Day. The learned counsel for the Respondents urge that the matter be remanded

for holding enquiry under Sections 32G and 32H of the BT & AL Act.

15. The records indicate that whilst fixing the purchase price under Section 32G, the ALT had issued notices to the concerned parties including the Respondents herein. The Respondents appeared before the ALT and the only objection raised by the Respondents was that they had challenged the order of the Division Bench of this Court before the Apex Court. They had not disputed the fact that the Petitioners were in possession of the land as on Tillers Day. Furthermore, the judgment dated 6th February, 2006 in Writ Petition 1442 of 1987 also records that the Trustees had admitted that the Petitioners were in possession of the subject land as on the Tillers Day. In the light of these admitted facts the ALT was not required to conduct any further enquiry as regards the status of the Petitioners as tenants of the subject property.

16. The Petitioners having appeared before the ALT, had expressed their willingness to purchase the land. The learned ALT thereafter proceeded to fix the purchase price in accordance with the provisions of Section 32H (1) (ii) (a) of the BT & AL Act i.e. 200 times the assessment. He has also considered clause (d) of Section 32H (1) as well as Section 1B (a) of Section 32(H), which relates to award of

statutory interest. The ALT has fixed the purchase price in accordance with the provisions of the Act, hence there is no justification for prayer of remand.

17. Under the circumstances and in view of discussion supra, the impugned order being illegal and perverse, the same is liable to be quashed and set aside. Hence, the petition is allowed. The impugned judgment and order dated 30th May, 2014 passed by the learned Member of the MRT in Revision Application No. TNC/REV/194/2007/P is quashed and set aside. No orders as to cost.

18. Rule is made absolute in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)