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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13242 OF 2017**

Bharat Ramnath Adasare
and Others

..... Petitioners

V/s

Chandrakala Gajanan Shiring
and Others

..... Respondents.

Mr. H.M. Hardas I/b Mr. Kishor Patil for the Petitioners.

Mr. S.G. Karandikar I/b Ankita Pandit for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE : AUGUST 7, 2019

P.C.:

1] Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2] Petitioners-tenants under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to for the sake of brevity as “the Act”) have questioned the order of the Maharashtra Revenue Tribunal passed in its revisional jurisdiction on 01/08/2017, thereby confirming the order of the Sub-Divisional

Officer passed in exercise of appellate powers under Section 17 of the Act on 30/04/2015, whereby the order of Tahasildar passed in exercise of powers under Section 32-G and 32-M of the Act, came to be set aside.

3] The facts necessary for deciding the Petition are as under:-

4] Petitioners claim to be deemed tenants and as such became owners under the Act of the following lands:

Sr.No.	Gat No.	Area (in H-R-P)	Assessment (In Rupees)
1	329 (Old Sr. No.121/2/3)	0-81-0	1.75
2	184/A (Old Sr. No.70/1A)	0-44-0	1.75
3	184/B/1 (Old Sr. No.70/1B)	1-52-0	6.35
4	184/B/2 (Old Sr. No.70/1B)	1-51-0	6.30
5	184/B/3 (Old Sr. No.70/1B)	1-94-0	8.10

(Net area of Sr. No.70/1B is 4.97 R i.e. 1-52+1-51+1-94 = 4.97)

5] It is the case of the Petitioners that Dagdu Laxman Adasare

was the tenant of the land in question and the revenue record speaks of his tenancy rights. Proceedings under Sections 29 and 31 of the Act, being Tenancy Suit No.1456, came to be initiated on 2/4/1957, which was rejected on 07/07/1958 by Tahasildar, Niphad. Appeal against the aforesaid order before Sub-Divisional Officer came to be dismissed vide order dated 23/08/1958.

6] The aforesaid orders passed against Respondents were not questioned by them and as such, same have attained finality. Vide order dated 06/09/1963, predecessor of Petitioners viz. Dagdu was declared as purchaser of the property under Section 32-G and accordingly Mutation Entry No.937 was created. After death of original tenant Dagdu on 28/06/1970, without obtaining sale permission, land baring old Survey No.70 Hissa Nos. A1 to A6 of Gat No.184/B/3 admeasuring 4 Acres 31 Gunthas, came to be transferred. As a consequence, vider order dated 06/11/1975, said portion of land came to be forfeited. A prayer was made by son of Ramnath viz. Kailash for purchase of land to the extent of 4 Acres 31 Gunthas, referred above. Accordingly on 06/10/1986, possession of the land in question was handed over to Kailash. Being aggrieved by aforesaid

order dated 06/10/1986, Appeal No.17 of 1993 was filed before Sub-Divisional Officer, Niphad, which was allowed on 10/01/1996. Kailash, feeling aggrieved thereby, preferred Revision before MRT and the said Revision came to be allowed on 05/11/1996. As a consequence, the order of Sub-Divisional Officer passed on 10/01/1996 was quashed and set aside whereas the order of Tahasildar passed on 06/10/1986 was restored.

7] An application for restoration of land came to be moved by the Respondents/land owners being Application No. 2 of 2011 wherein Tahasildar by an order dated 06/05/2013 rejected prayer for restoration, and directed the Petitioners to deposit amount of consideration of Rs 16,500/- towards purchase price, which was to be followed with Section 32-M Certificate.

8] According to the learned Counsel for the Respondents, said amount was deposited before Tahasildar. However, Respondents, feeling aggrieved, preferred Tenancy Appeal No.5 of 2013 against the order dated 06/05/2013 passed by Tahasildar. The appellate authority i.e. Sub-Divisional Officer allowed the said appeal vide order

dated 30/04/2015. The order in appeal was subject matter of challenge before MRT and the MRT vide impugned order dated 01/08/2017 confirmed the findings recorded by the Sub-Divisional Officer i.e. appellate authority vide its order dated 30/04/2015. As such, this Petition.

9] The submissions are, once 32-G order passed in favour of the Petitioners has attained finality, since was not questioned by the Respondents, Petitioners have every right under the provisions of Section 32-K(3) to recover purchase price. Merely because purchase price was not deposited, that by itself, according to the learned Counsel for the Petitioners, will not give any leverage to Respondents/land owners to seek possession of the property in question. The learned Counsel for the Petitioners as such, invited attention of this court to the language of Section 32-K and particularly sub-section (3) so as to substantiate his contention. He would draw support from the judgment of the Apex Court in the matter of *Sriram Narayan Medhi vs. The State of Maharashtra*¹, particularly paragraphs 11 and 12 which read thus:-

1 AIR 1971 SC 1992

“11] This decision concludes the most important question whether the petitioner's fundamental rights are infringed under Arts. 14, 19 and 31, as the parent Act as well as the amending Act is now protected by Art. 31-A of the Constitution. Neither the question of discrimination nor of compensation or its adequacy can be gone into nor can the unreasonableness of the provisions under which the landlord's title has been extinguished nor the manner which the price is to be paid can be challenged. Once it has been held that Article 31-A applies the petitioner cannot complain that his rights under Articles 14, 19 and 31 of the Constitution have been infringed. This protection is available not only to Acts which come within its terms but also to Acts amending such Acts to include new items of property or which change some detail of the scheme of the Act provided firstly that the change is not such as would take it out of Article 31-A or by itself is not such as would not be protected by it and secondly that the assent of the President has been given to the amending statute. To put it differently as long as the amendment also relates to a scheme of agrarian reforms providing for the acquisition of any estate or of any right thereunder or for extinguishment or modification of such right the mere

transfer of the tenure from one person to another or the payment of the price in instalment or even the postponement of payment by a further period cannot be challenged under Arts. 14, 19 and 31. In this case we have noticed that the impugned legislation has merely amended that provision which related to the recovery of the amounts from the tenant who has become purchaser and the postponement of the time of ineffectiveness of sale till the tribunal has tried and failed to recover the amount from the tenant purchaser. The only way under which the petitioner could have recovered the amounts under the Amendment Act was by an application to the Collector under the Revenue Recovery Act for collecting it as arrears of land revenue but that provision under Section 32-L has now been deleted. While the vesting of the title of the tenure in the erstwhile tenant is still defeasible only on certain specified contingencies as was before the impugned Act it only modified the previous provisions to the extent that the erstwhile tenant has been given the benefit of having the payment postponed or instalments increased by requiring the tribunal to make an enquiry as to whether there were sufficient reasons for the tenant purchaser making a default and if it is satisfied to condone the delay and extend

the period of payment. It also vested in the tribunal instead of the Collector the power to make the recovery on behalf of the landholder. It may also be noticed that under the impugned Act the sale still becomes ineffective as was under the amendment Act when the amount is not recovered with this difference that under the former it has to be shown that the tenant purchaser was not in a position to pay. No doubt before the impugned Act, if the tenant-purchaser did not pay, the Collector could take action under the Revenue Recovery Act to recover the amount and, if he did not recover it the sale became ineffective and the landlord could be put in possession by evicting the tenant purchaser provided he was entitled to get possession of it under the Act, as when his holdings do not come within the ceiling. The basic position still remains the same after the impugned Act and there is nothing in the Amendment Act which is destructive of the scheme of agrarian reform which the legislation seeks to implement and which is protected under Article 31-A of the Constitution.”

“12. This view of ours is amply born out also by the Statement of Objects and Reasons which impelled the legislature to state the difficulty that was being felt in

the implementation of the agrarian land reforms and indicate how it sought to find a remedy and get over it. This is what was stated.

“According to provisions of Sections 32-K, 32-L and 32-M of the Bombay Tenancy Agricultural Lands Act 1948; it is left to the tenant to deposit with the tribunal the purchase of the land which is deemed to have been purchased by him under Section 32 of that Act. If he fails to deposit the price in lumpsum or instalments the purchase becomes ineffective under Section 32-P the tenant can be summarily evicted from the land. It has been brought to the notice of the Government that in the case of an Act a large number of tenants specially belonging to the Scheduled Caste and Scheduled Tribe, the purchase is in danger or being ineffective for failure to deposit the sale price on due dates. It is noticed that these tenants being illiterate and socially backward have failed to deposit the amount more of ignorance than willful default. Unless therefore immediate steps are taken to provide for recovery of purchase price through Government agency a large number of tenants are likely to be evicted from their lands due to purchase becoming ineffective. This will result in defeating the object of the tenancy legislation. To

avoid this result, it is therefore considered that the agricultural lands tribunal should be empowered to recover the purchase price from tenants as arrears of land revenue and until the tribunal has failed to recover the purchase price, the purchase should not become ineffective. It is also considered that the benefit of these provisions should be given to tenants whose purchase has already become ineffective but who have not yet been evicted from their lands under Section 32-P. This bill is intended to achieve these objects.”

Based on the aforesaid submissions and the provisions of sub-section (3) of Section 32-K, learned Counsel would urge that once payment of purchase price was postponed or even if installments are not honoured, same results in Petitioners-tenant making default. If a case is made out to the satisfaction of the court to condone the delay and extend the period of payment, same is permissible. He would then urge that the proceedings under Section 32-P for eviction of the Petitioners cannot be taken recourse to by the Respondents/landlords, as steps were not taken by the Tribunal for recovery of the purchase price through Government Agency. The learned Counsel would rely

upon the object with which Section 32-K was amended vide Amendment Act No.31 of 1965. In the aforesaid background, submissions are, the order impugned passed by Sub-Divisional Officer and confirmed by MRT is not sustainable.

10] While countering the aforesaid submissions, the learned Counsel for Respondents/land owners would urge that by Amending Act No.31 of 1965, two more sub-sections are inserted alongwith sub-section (3) i.e. sub-sections (1A) and (1B). According to him, both these sub-sections viz (1A) and (1B) would operate in different arena at the face of Sections 32 and 32-K. According to him, once the Petitioners were granted latitude of depositing of purchase price in 11 annual installments pursuant to the request made under sub-sections (1A) and (1B), provisions of sub-section (3) will not come into play and it is always open to the Respondents/landlords, as a consequence of non-deposit of purchase price, to take recourse to the proceedings under section 32-P of the Act. The learned Counsel, as such, sought dismissal.

11] Considered the rival submissions.

12] Perused the provisions of Section 32-K, which read thus:-

“S. 32K. Mode of payment of price by [tenant-purchaser] [and the power of Tribunal to recover purchase price]:

(1) On the determination of the purchase price [payable under Section 32H], the [tenant-purchaser],

(i) if he is a permanent tenant, shall deposit with the Tribunal the entire amount of the purchase price within one year from such date as may be fixed by the Tribunal:

Provided that if the Tribunal is satisfied that such [tenant-purchaser] has failed to make the payment within the time specified for any reason beyond his control the Tribunal may extend the period by a period not exceeding one year;

(ii) if he is not a permanent tenant, shall deposit with the Tribunal the entire amount of the price,

(a) either in lump sum within one year from such date, or

(b) in such annual instalments not exceeding twelve with simple interest at the rate $4\frac{1}{2}$ per cent per annum on or before such dates as may be fixed by the Tribunal; and

the Tribunal shall direct that the amount deposited in lump sum or the amount of instalments deposited shall be paid to the [former landlord].

[(1A) If a tenant purchaser is unable to deposit with the Tribunal the entire amount of the purchase price in lump sum before the expiry of the period fixed under clause (ii) of sub-section (1), he may deposit with the Tribunal within three months after the expiry of such period or six months from the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964, whichever is later an amount equal to one-twelfth of the purchase price, and also an amount equal to one year's interest at the rate of 4 1/2 per cent per annum on the balance; and apply to the Tribunal to pay the balance in instalments. On such deposit being made, the Tribunal shall grant the tenant-purchaser such reasonable facility (not exceeding eleven annual instalments) for payment of the balance as it deems fit.

(1B) Where a tenant-purchaser,
(a) fails to pay the price in lump sum within the period referred to in clause (ii) of sub-section (1), or
(b) is in arrears of four instalments, where the number of instalments fixed is four or more, and all the instalments in any other case, he may during the period of six months from the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964 or from the date of default of the payment of price in lump sum, or of the last instalment,

whichever is later, apply to the Tribunal to condone the default on the ground that he, for sufficient reasons, was incapable of paying the price in lump sum or the instalments within time; and if the Tribunal after holding such inquiry as it thinks fit, is satisfied with the reasons given, it may allow further time,

- (i) of one year to the tenant-purchaser to pay the price in lump sum, or
- (ii) for payment of the arrears, and may, for that purpose increase the total number of instalments to sixteen].

(2) During any period for which payment of rent is suspended or remitted under section 13, the [tenant-purchaser] shall not be bound to pay the purchase price in lump sum or the amount of any instalments fixed under this section or any interest thereon, if any.

(3) 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 is in arrears of four instalments where the number of instalments fixed is four or more, and all the instalments in any other case, the amount of the purchase price remaining unpaid and the amount of interest thereon at the rate of $4\frac{1}{2}$ per cent. per annum if any, shall be recoverable by the Tribunal as an arrear of land revenue.]”

13] This Court is required to be sensitive to the object with which amendment was brought in, by the Legislature by Amending Act No.31 of 1965. The said amendment was brought, keeping in mind the object that the tenant, if fails to deposit purchase price in lump sum or installments, purchase becomes ineffective and under Section 32-P lever is given to the landlords to summarily evict the tenant.

14] Plain reading of section 32-K primarily demonstrates that even if the tenant is extended benefit under Section 32-K (1A) and (1B), and still the tenant failed to honour the payment of purchase price in installments, the remedy is available to the landlord before the authority to invoke power under section 32-P for resumption of possession, provided procedure for recovery of the purchase price under Maharashtra Land Revenue Code pursuant to recovery proceedings initiated thereunder is taken recourse to. Section 32-P, as such, can be taken recourse to by the landlord for summary eviction of the tenant in case, if, after fixation of purchase price was ordered, the tenant failed to deposit the amount and the Government Agency/ Tribunal has failed to effect recovery of the same in accordance with

recovery proceedings to be undertaken under the Maharashtra Land Revenue Code against the tenant. Reliance can be placed on the observations of the Apex Court in the matter of *Sriram Narayan Medhi* cited supra, particularly paras 11 and 12 and also in the matter of *Nathu Lotu Buwa (Deceased through Lrs) vs. Smt. Sakhubai w/o Ganpat Mahar*¹, particularly para 18 to substantiate the aforesaid observations, which reads thus :-

“18. Shri Korhalkar, ld. Adv. lastly made a feeble attempt by submitting that the action for recovery of price should have been taken within reasonable time by the Tribunal. Shri Korhalkar fairly submitted that there is no specific time by which the Tribunal can exercise its jurisdiction for recovery of the amount as contemplated u/s. 32-M(2). He brought to my notice the judgment of the learned Single Judge of this Court reported in 2001(1) Mh.L.J. 629 : (2000(4) ALL MR 120], Radhabai Deshpande vs. Babu Shewale. He placed strong reliance on the observation of the learned single Judge in para no.15 of the judgment. Having gone through the observations made by the learned single Judge in para no.15 of the said judgment, in my judgment, the

1 2005(4) ALL MR 329

observations made by this Court in Radhabai's case cannot be made applicable in the present case as on the facts which are borne by the record disclosed that the landlady in 1987 filed an application complaining that after 1984 the installment of purchase price was not paid, as I have concluded that it was a duty of the Tribunal to initiate proceedings of recovery of price in the present case the complaint was made by landlady that purchase price is not paid after 1984. As such, at least, at this stage, the Tribunal came to know that the tenant has not paid the purchase price. Therefore, at that stage, the Tribunal should have invoked its jurisdiction and started proceedings of recovery of the amount which the Tribunal has failed to do it. As the Tribunal failed to initiate the proceedings to recover the purchase price by adopting the proceeding as provided by the Act, therefore, it cannot be said that the Tribunal has failed to recover the purchase price. When a statute requires certain things to be done in a particular manner, it has to be done in that manner alone, unless the provision of statute indicates contrary intention. In the present case, undisputedly, unpaid purchase after 1984 was not paid, the tenant has not made an application u/s. 32-K, the tribunal also did not take any steps to recover the purchase price. The application that is filed by the landlady in

1986-87 in my judgment, the contention of Shri Korhalkar that the proceeding should have been taken within reasonable time cannot be accepted. As by now, the tenant has paid the entire purchase price after the judgment of the SDO Amalner. In view of this fact also, in my judgment, the judgment of the MRT is required to be set aside and, accordingly, it is set aside. The order passed by the SDO Amalner is No. TNC A-3/87 stands restored. The Tahsildar Chopada is now directed to issue the certificate as required u/s. 32-M of the Act. Rule made absolute in terms of Prayer Clause "C". However, there will be no order as to costs."

15] The aforesaid legal position is lost sight of in the impugned order by the learned Tribunal and Sub-Divisional Officer, who has reversed the finding of fixation of purchase price and recovery ordered by Tahasildar.

16] As such, in my opinion, Writ Petition is liable to be allowed in terms of prayer clause (a). Rule is made absolute accordingly in terms of prayer clause (a).

(NITEEN W. SAMBRE, J.)