

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

**WRIT PETITION NO.2193 OF 2021
WITH
INTERIM APPLICATION NO.427 OF 2021**

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Tukaram S/o Gangaram Waghchaure & Anr. ..Petitioners

Versus

Ragunath Jagannath Jondhale & Ors. ..Respondents

Mr. Shrirang Katneshwarkar i/by Prashant Katneshwarkar
and Abhijit Avhad, for the Petitioners.

Mr. Anilkumar Patil i/by Rohan D. Kaiche, for the
Respondent Nos.1 to 9.

Mr. C. D. Mali, AGP for the Respondent No.10.

CORAM : NITIN W. SAMBRE, J.

**RESERVED ON : 18th JULY, 2022.
PRONOUNCED ON : 16th SEPTEMBER, 2022.**

PC.

1. The present petition is by alleged tenant under the provisions of Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter shall be referred to as “the Act” for the sake of brevity). The petitioners/tenants have questioned the legality and validity of the order and judgment dated 14th February, 2020 passed by the Maharashtra Revenue Tribunal, Mumbai in Revision No.TNC/REV/NSK/07/2018 and declaration that the property which is subject matter of aforesaid revision (hereinafter shall be referred to as “the suit land”

consisting of Gat No.394 admeasuring 1.91 hector is the property of petitioners as per provisions of Section 32G of the Act).

2. The facts necessary for deciding present petition are as under :-

The aforesaid suit property was earlier having Survey No.237 which was owned by Smt. Bhagubai Shivram Jondhale, a widow who expired on 9th March, 1964. The petitioners are claiming to be tenant over the suit property alleging that in view of social status of the landlady being a widow as the tillers day was postponed, a proceeding under Section 32G of the Act was taken out for determination of purchase price before the Agricultural Lands Tribunal/Tahsildar on 29th January, 1987. The said application was allowed by Tahsildar on 28th October, 1988. Respondents feeling aggrieved preferred Tenancy Appeal No.16 of 1988 before the Sub Divisional Officer who vide order dated 26th June 1989 set aside the order. The said order was challenged before the Maharashtra Revenue Tribunal.

3. The Maharashtra Revenue Tribunal in Tenancy Appeal No.250 of 1989 preferred by the present petitioners rejected the challenge raised by the petitioners and the order of Sub Divisional Officer was affirmed.

4. It appears that the aforesaid order passed by the Maharashtra Revenue Tribunal rejecting prayer of the petitioners moved under Section 32G was subject matter of challenge in Writ Petition 1167 of 1993. The said writ petition was dismissed in default on 10th October, 2006, so also Restoration Civil Application No.379 of 2018 on 5th July, 2019.

It appears that the respondents i.e. legal heirs of deceased Smt. Bhagubai Shivram Jondhale took out proceedings under Section 32P of the Tenancy Act on 20th April, 1987.

5. The said proceeding i.e. tenancy proceedings under Section 32G of the Act were answered against the present petitioners.

6. As such, the claim of the petitioners moved under Section 32G of the Act has attained finality.

7. In the 32P proceedings referred above, vide Tenancy Case No.1 of 2014, the petitioners were directed by the Agricultural Lands Tribunal to hand over possession of the suit land to the respondents. The said order dated 16th April, 2016 was confirmed by Sub Divisional Officer in Tenancy Appeal No.81 of 2016 preferred by the present petitioners vide order dated 22nd November, 2017. The

revision before the Maharashtra Revenue Tribunal, Mumbai also came to be dismissed vide impugned order dated 14th February, 2020. As such, this petition.

8. While assailing aforesaid order, Mr. Katneshwarkar, learned counsel for the petitioners would urge that the order rejecting prayer of the petitioners moved under Section 32G goes contrary to the law laid down by the Apex Court in the matter of *Vasant Ganpat Padave (D) by LRS & Ors. Vs. Anant Mahadev Sawant (D) Through LRS & Ors. delivered in Civil Appeal No.11774 of 2018 with Civil Appeal Nos.11775-11798 of 2018 on 18th September, 2019*. He would invite attention of this Court to the question of law answered by the said Court particularly as regards clause (ii) of paragraph 50, which reads thus:-

“(ii) The successor-in-interest of a widow is obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase.”

As such, according to him, the proceedings under Section 32P has to be held not maintainable and declaration is required that the petitioners are in lawful possession of the suit property under the Act.

9. While countering aforesaid submissions, counsel

for the respondents Mr. Patil would urge that once the prayer of the petitioners for fixation of purchase price under Section 32G of the Act is rejected upto High Court and such order having attained finality, the necessary consequences under Section 32P must follow. As such, according to him, the petition against concurrent findings is liable to be dismissed.

10. I have appreciated aforesaid submissions.

11. In paragraph 4 of the pleadings in the petition, the petitioners in categorical terms admitted that the proceedings under Section 32G of the Act were answered against them upto Tribunal were confirmed before this Court, as the writ petition questioning the same was dismissed in default, so also the restoration application. The said fact is apparent from the order passed in Writ Petition No.1167 of 1993 dated 10th October, 2006 and order dated 5th July, 2017 passed in Civil Application No.379 of 2018.

12. The fact remains that the Tahsildar, Igatpuri in Tenancy Case No.1 of 1988 passed an order on 28th October, 1988 in an inquiry under Section 32G of the Act and granted declaration of deemed purchaser of the land and ordered that the petitioners are entitled to purchase the property under Section 32G of the Act and fixed the

purchase price accordingly.

13. The Sub Divisional Officer in Appeal under Section 74 of the Act has noted that since the landlady was widow on the tillers day i.e. 1st April, 1957, the proceedings ought to have been taken by the petitioners for determination of purchase price within period of one year from the death of widow landlady i.e. Bhagubai. The Sub Divisional Officer has further observed that the course under Section 32P has to be followed in view of failure of the petitioners to take appropriate steps under Section 32G within the time provided. Accordingly, directions were issued to start proceedings under Section 32P of the Act. The said order of the Sub Divisional was also confirmed by the Tribunal. Once the aforesaid findings of taking proceedings under Section 32P of the Act and rejection of prayer of the petitioners for determination of purchase price under Section 32G of the Act, the necessary consequences were followed and that being so, the Tahsildar vide order dated 16th April, 2016 passed in Tenancy Case No.1 of 2014 directed the petitioners to hand over possession of the suit property to the respondents i.e. legal heirs of the original landlady. Appropriate directions were given to the revenue officers to execute the order under Section 32P of the Act. The said order was duly confirmed upto Maharashtra Revenue Tribunal, which is

impugned herein.

14. In the aforesaid background, if we appreciate the contentions of Mr. Katneshwarkar, what can be noticed is the right of the petitioners to continue in possession of the suit property was by virtue of their claim as that of tenant and the privileges granted in favour of such tenant under Section 32G of the Act. Once the claim of the petitioners under Section 32G of the Act has failed, the necessary consequences were duly ordered by the Sub Divisional Officer in his order dated 26th June, 1989 passed in Tenancy Appeal No.16 of 1988. As such, it cannot be said that the proceedings taken out under Section 32P of the Act were not maintainable in view of the judgment of the Apex Court in the matter of *Vasant Ganpat Padave (cited supra)*. In any case, claim of the petitioners under Section 32G of the Act is answered against them and the petitioners have failed to demonstrate that such findings recorded under Section 32G of the Act against them are under challenge before any of the authority.

15. That being so, by virtue of legal fiction, the necessary consequences of taking recourse to Section 32P of the Act are rightly exhausted by the respondents.

16. As such, it cannot be said that the order impugned is contrary to the scheme of Section 32G or

Section 32P of the Act. That being so, there is no substance in the petition.

17. The petition as such fails, dismissed.

18. As a sequel of above, pending interim application also stands disposed of.

[NITIN W. SAMBRE, J.]