

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

**SECOND APPEAL NO. 354 OF 1992
WITH
CIVIL APPLICATION (ST.) NO. 26524 OF 1995
IN
SECOND APPEAL NO. 354 OF 1992**

Pandurang Nana Sawant (since
deceased through legal heirs) :
Smt. Muktabai Pandurang Sawant and ors. Appellants
v/s.

Bhanudas Appasaheb Sawant (since
deceased through legal heirs) :
Malan Bhanudas Sawant and ors. Respondents

**WITH
SECOND APPEAL NO. 544 OF 1992
WITH
CIVIL APPLICATION (ST.) NO. 31395 OF 1995
IN
SECOND APPEAL NO. 544 OF 1992**

Pandurang Nana Sawant (since
deceased through legal heirs) :
Smt. Muktabai Pandurang Sawant and ors. Appellants
v/s.

Chandrabhaga Rajaram Sawant and ors. Respondents

Mr. Rajiv Patil, Sr. Advocate a/w. Mr. Ojas Kocharekar for the
Appellants in both appeals.
Mr. Lahu Sahebrao Gaikwad for Respondent No.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th NOVEMBER, 2023.

P. C. :-

. The challenge in these Appeals is to the judgments, both dated 12/08/1991, in Regular Civil Appeal No.449/1986 and Regular Civil Appeal No.450/1986 passed by the learned Additional District Judge, Satara. By the impugned judgments, the First Appellate Court allowed the Appeals and set-aside the judgments and decree both dated 30/07/1986 in Regular Civil Suit No.162/1977 and Regular Civil Suit No.163/1977 passed by the learned Civil Judge, Junior Division, Wai.

2. The subject matter of Regular Civil Suit No.162/1977 was the property under Survey No.37/1 admeasuring 1H 21R of village Songirwadi, Wai whereas the subject matter of Regular Civil Suit No.163/1977 was the property under Survey No.37/2 admeasuring 2R situated at Songirwadi, Wai. The said properties shall be hereinafter referred to as 'the suit property'.

3. The Appellants were the Plaintiffs and the Respondents were the Defendants in the suit and shall be hereinafter referred to as 'the Plaintiffs' and 'the Defendants' respectively.

4. The suit property was given to the ancestors of the Plaintiffs

under Bombay Watan Act, 1874. Upon abolition of Patel Watans under Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (for short '1962 Act'), the Plaintiffs deposited the occupancy price and the suit property was re-granted to them on 30/09/1965. It is not in dispute that the predecessors of the Defendants were cultivating the suit land prior to abolition of Patel Watan lands and that the Defendants continued to be in possession of the suit property on the Tillers' Day and thereafter.

5. The case of the Plaintiffs is that the suit land being Inam land of Patel Watan, in view of Section 88(1)(a), the Defendants were not entitled to the protection under The Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the BT&AL Act'). It is contended that in view of 1962 Act and in view of re-grant in favour of the Plaintiffs, the rights of the Defendants stood extinguished and they are not entitled to claim protection under any law. The Plaintiffs have further alleged that the proceedings under Section 32-G of the BT&AL Act was without jurisdiction and null and void and does not create any right, title and interest in favour of the Defendants. The Plaintiffs have stated that by notice dated 23/09/1976, they terminated whatsoever right the Defendants had in the suit property and sought recovery of possession.

The Plaintiffs have alleged that the Defendants are in illegal possession of the suit property and hence filed a suit for recovery of possession of the suit property under Survey No.37/1 of village Songirwadi.

6. In Regular Civil Suit No.163/1977, the Plaintiffs had initially sought recovery of possession of the suit property under Survey No.37/2. However, in view of acquisition of the said land for Dhom project, the Plaintiffs amended the plaint and sought a declaration that they have right to receive compensation in respect of the suit property under Survey No.37/2.

7. Both the suits were contested by the Defendants on the ground that they are in possession of the suit property since 1893. The Defendants further claimed that the predecessors of the Plaintiffs had filed Suit No.183/1907 for recovery of possession and that the said suit was dismissed on merits. The predecessors of the Plaintiffs also filed Regular Civil Suit No.31/1926 which was dismissed on the principles of *res-judicata* and being barred by limitation. The Defendants claimed that the Plaintiffs had challenged the decree passed in the previous two suits and that the said decree has attained finality. The Defendants further claimed that their tenancy rights in respect of the suit property

are protected by virtue of Section 8 of 1962 Act. The Defendants claimed that the Competent Authority has declared them to be the tenants and that the land has been sold to them under Section 32-G of the BT&AL Act and that the said order cannot be challenged before the Civil Court.

8. The Trial Court framed several issues and on analyzing the evidence on record, held that the Plaintiffs were the 'occupants' within the meaning of Section 5 of 1962 Act. The learned Judge held that the ownership of the suit property was of the Government and hence the provisions of BT&AL Act are not applicable to such land and that the sale under section 32-G was illegal, null and void. The learned Judge further held that the Defendants have not set up a plea of adverse possession and held that mere long possession would not extinguish the title of the Plaintiffs. On the basis of these findings, the learned Judge decreed both the suits and directed the Defendants to handover vacant and peaceful possession of the suit property to the Plaintiffs and to pay damages and further held that the Plaintiffs are entitled to receive compensation in respect of the suit property under Survey No.37/2.

9. Being aggrieved by the judgment passed in these two suits, the Defendants preferred two separate Appeals before the First Appellate Court. The Appellate Court observed that the suit property which was Watan land, was lawfully leased to the predecessors of the Defendants and the lease was subsisting on commencement of 1962 Act. The First Appellate Court observed that in the year 1925, the previous tenant – Bagu Kom Dagadu Malusare sold the tenancy right to the predecessor of the Defendants and that the Defendants continued to be in possession of the suit property on the appointed day. The learned Judge observed that the property was re-granted to the Plaintiffs in the year 1965 and in view of re-grant order, the Defendants were entitled to purchase the suit land under section 32-G of BT&AL Act. The First Appellate Court discarded the contention that the order under section 32-G is null and void and without jurisdiction. The learned Judge has observed that the Competent Authority under the Act has powers to decide the matter and that the jurisdiction of the Civil Court was barred. The learned Judge held that the possession of the Defendants is not unauthorized or illegal and that the Plaintiffs have no right to seek recovery of possession and seek declaration in respect of the compensation in respect of the acquired land. Being aggrieved by these orders, the Plaintiffs have filed these Appeals.

10. Both these Appeals were admitted on the following substantial questions of law :-

(1) Whether Defendants are in unauthorized possession of the suit land.

11. Mr. Rajiv Patil, learned senior counsel representing the Plaintiffs submits that the suit property being Patil Inam land, the provisions of BT&AL Act are not applicable and consequently, the Defendants cannot claim tenancy in respect of the said land. He further submits that subsequent to 1962 Act, the land has been re-granted to the Plaintiffs and the possession of the Defendants from the date of re-grant can at the most be permissive possession, which does not confer any right, title and interest on the Defendants. He submits that the First Appellate Court has grossly erred in holding that the provisions of BT&AL Act were applicable to the suit land.

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

13. It is not in dispute that initially the suit property was given to the

ancestors of the Plaintiffs under Bombay Watan Act, 1874. Subsequent to 1962 Act, the land was re-granted to the predecessors of the Plaintiffs on 30/09/1965. It is also not in dispute that the predecessors of the Defendants were in possession of the suit land as tenants even before 1962 Act and that the Defendants continued to be in possession of the suit property on the Tillers' Day and throughout. The Plaintiffs or their predecessors have not served any notice to the Defendants on or before 31/12/1956 to handover vacant possession of the suit property in terms of Section 31 of BT&AL Act.

14. In ***Sadashiv Dada Patil v/s. Purushottam Onkar Patil (dead) by Lrs., (2006) 11 SCC 161***, the Apex Court has held that :-

“ 18. First day of April, 1957 was declared to be the 'tillers day'. If a person remained a tenant on the said date, by reason of the legal fiction created under Section 32 of the Tenancy Act, he would be deemed to have purchased the land from his landlord, free from all encumbrances subsisting thereon on the said day. Section 32-G thereof, on the other hand, casts an obligation on the Tribunal. The Tribunal is required to publish or cause to be published a public notice in the prescribed form calling upon the tenants who under Section 32 of the Tenancy Act are deemed to have purchased the land. Section 32-O contains a non obstante clause providing notwithstanding any agreement or usage to the contrary, a tenant cultivating personally would be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

19. *Section 8 of the 1962 Act, as noticed hereinbefore, provides that the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of the said part, be governed by the provisions of that law. The proviso appended hereto whereupon reliance has been placed by Mr. Dube reads as under :*

"Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land under section 5 or 6 or 9, as the case maybe.

Explanation.- For the purposes of this section, the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law."

xxx

21. *Section 32 of the Act confers an absolute right to the tenant.*

22. *As in 1957 the right of the respondent to purchase the land became a vested right, proviso appended to Section 8 of the 1962 Act could not be read to mean that such right stood divested. Proviso appended to Section 8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. The proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. The proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act.*

23. *By construing both the Acts harmoniously, the High Court in our opinion, did not make a new law. It merely interpreted the same in the light of the object of the Act. The proviso appended to Section 8 of the 1962 Act merely postponed the operation of the statute. Fixation of price of the land in question subject to exercise of option by the tenant*

was to that extent beneficial to the landlord; but the same would not mean that legal fiction created under 32 of the Tenancy Act would stand effaced. ”

15. As noted above, the Defendants were in lawful possession of the suit property as tenants however they were unable to avail the benefit under section 32-G of the BT&AL Act till the date of re-grant. Since the date of compulsory purchase and fixation of purchase price was postponed upto the date of re-grant, the Defendants were entitled to invoke the provisions of Section 32-G of the BT&AL Act and move the authorities for fixation of purchase price. Accordingly, an inquiry for fixation of purchase price was held and the land has been purchased by the Defendants under Section 32-G of BT&AL Act.

16. It is pertinent to note that the Plaintiffs had contested the said proceedings before the Competent Authority. The Plaintiffs have not challenged the order under Section 32-G of BT&AL Act by filing an appeal before the Appellate Authority. Though it is contended that the said order is null and void and is passed without jurisdiction, no such declaration was sought before the Civil Court. Under the circumstances, the findings recorded by the Appellate Court that the Civil Court had no jurisdiction to decide the said issue, cannot be said

to be erroneous or perverse.

17. Under the circumstances and in view of discussion supra, both the Appeals have no merits and are accordingly dismissed.

18. Civil/Interim Application(s), if any, stand disposed of in view of dismissal of the Appeals.

(SMT. ANUJA PRABHUDESSAI, J.)