

Prajakta Vartak

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

WRIT PETITION NO. 3413 OF 2014

Shri. Shankar Pandu Bharsat & Ors. ..Petitioners
Vs.
Shri. Anand Subhashchandra Bora & Ors. ...Respondents

Mr. Harshad Inamdar for Petitioners.
Mr. Sunil Karandikar for Respondents.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 06, 2023

ORAL JUDGMENT

1. This petition challenges an order dated 09 December, 2013 passed by the learned Member, Maharashtra Revenue Tribunal, Mumbai (for short, "MRT") whereby a revision application as filed by the petitioners against an order dated 10 December, 2012 passed by the Sub-Divisional Officer, Nashik Division, Nashik, stands rejected. The relevant facts are :-

On 05 July, 1916, one Tulshiram Gangaram Marwadi purchased subject land from one Manaji Jayaji for Rs. 100/-. Tulshiram had three sons i.e. Zumberlal, Jawaharlal and Bansilal. On 30 April, 1949, Zumberlal, who was stated to be managing the family properties,

inducted one Pandu Tulshiram Bharsat as tenant. To that effect a Mutation Entry No. 178 came to be made reflecting Pandu Bharsat as the tenant.

2. It is the case of the petitioners that Zumberlal and the family members of his brothers partitioned the joint family properties. On 20 September, 1963 the land in question subject matter of the present proceedings, came to be transferred in the name of one Subhashchandra Jawaharlal Bora (son of Jawaharlal). This came to be mutated in the revenue records by mutation entry no. 547. In the meantime, proceeding under Section 32 G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, the "BTAL Act") for determination of the price of land to be paid by the tenant for purchase of the land was initiated by the tenant, however, since as Subhashchandra was a minor on the tillers day, as per the provisions of Section 32 F of the BTAL Act, the tillers day was deferred till he attained majority. Subhashchandra is stated to have attained majority on 04 February, 1966.

3. On 16 September, 1976, Subhashchandra expired who was survived by his widow Lalita and sons Anand, Atul and Arun. It is stated that sometime after 1976 Pandu also expired and he was survived by his sons. It appears that Pandu Bharsat had a mutation entry in his favour

as a tenant. It however appears that the petitioner nos.3, 4 and 5 had applied for fixing of purchase price of the land claiming under Murlidhar who appears to be the brother of Pandu. There is nothing on record to show that the name of Murlidhar was entered on any of the revenue record. On 31 March 2005, the petitioners issued a notice for fixing purchase price of the subject land to be transferred in their name. On 26 April, 2005, an application under Sections 32F(1)(1a), 32(2) and 32G of BTAL Act was made by them before Tahsildar, Dindori. The respondents opposed such application by filing their reply. The Tahsildar adjudicated the application filed by the petitioners and by an order dated 10 November, 2010, the Tahsildar allowed the application of the petitioners by fixing purchase price of Rs. 874/-.

4. The respondents/landlords being aggrieved by the order passed by the Tahsildar, preferred an appeal before the Sub-Divisional Officer, Nashik (for short, "SDO") being Tenancy Appeal No. 27 of 2010. The learned SDO heard the parties on the appeal. By an order dated 10 December, 2012, the SDO reversed the findings of the Tahsildar and set aside the order dated 10 November, 2010 passed by the Tahsildar. The SDO observed that the claim as made by the petitioners in their application under Section 32F was barred by limitation in view of the

principles of law as laid down by the Supreme Court in case of **Anna Bhau Magdum v. Babasaheb Anandrao Desai**¹.

5. The petitioners being aggrieved by the order dated 10 December, 2012 passed by the SDO approached the MRT in the revision application in question (Revision Application No.87 of 2013). The MRT by the impugned judgment and order dated 09 December, 2013, has rejected the revision application of the petitioners thereby continuing the order passed by the S.D.O. On such conspectus, the petitioner assailing the orders passed by the MRT, the proceedings are before this Court today.

6. Mr. Inamdar, learned counsel for the petitioners in assailing the impugned order has limited submissions. He would submit that the findings as recorded by the Tahsildar were appropriate as the petitioners had all legal rights to maintain the application filed by them under Section 32 G of the BTAL Act, before the Tahsildar on 26 April, 2005. It is submitted that the application could not have been earlier filed for justified reasons. He submits that thus the finding as recorded by the Tahsildar even on the limitation is a correct finding of law. Thus, the orders which are passed by the SDO and MRT, Mumbai are liable to be set aside.

1 AIR 1995 SUPREME COURT 2164

7. On the other hand, Mr. Karandikar, learned counsel for the respondents submits that there is no infirmity whatsoever in the orders passed by the SDO as also MRT, Mumbai which according to him are passed recognizing the correct position in law. It is his submission that there was certainly an issue of limitation which had come in the way of the petitioners to succeed in their application under Section 34 G of the BTAL Act, considering the clear provision of Section 32F(1A), read with 32 G of the BTAL Act. It is his submission that it is well settled principle of law as held in the case of **Anna Bhau Magdum v. Babasaheb Anandrao Desai** (supra) that such an application could not have been maintained at any point of time as there was an embargo of a limitation of two years to make an application applicable in the present facts, as observed by the MRT, in paragraph 18 of the judgment. He has submitted that “proviso” to sub section (1A) of Section 32F, clearly ordains that the tenant who was in possession of the land on the date of commencement of the BTAL Act and who was desirous of exercising the right conferred upon him under sub-section (1), should be given further opportunity as required under sub section (1A) which was within a period of two years from the commencement of that Act (amendment Act of 1969). It is his submission that in view of such clear provision of law, it was not

permissible for the petitioners to maintain an application as filed in the year 2005.

8. I have heard learned counsel for the parties and with their assistance, I have perused the orders passed by the Tahsildar, the SDO and MRT. As the controversy in the petition revolves around the provisions of Section 32F(1A) of the BTAL Act, it would be appropriate to note the provisions of Section 32F(1A) and the proviso thereof. The said provisions reads thus:-

“32F. Right of tenant to purchase where landlord is minor, etc:- (1) ...

1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section:

Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.”

9. Considering the provisions of Section 32F(1A) of the BTAL Act, there appears to be much substance in the contention as urged by Mr. Karandikar. It clearly appears that the issue involved in this petition is squarely covered by the decision of the Supreme Court in **Anna Bhau**

Magdum v. Babasaheb Anandrao Desai (supra) wherein the Supreme Court in interpreting the proviso below sub-section (1A) of Section 32F as inserted by Maharashtra Act No.49 of 1969 which provides that if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act,1969) has not given intimation as required by sub-section (1A) of Section 32F, however being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of the Act. In **Anna Bhau Magdum v. Babasaheb Anandrao Desai** (supra) the Supreme Court taking into consideration the said provision in paragraph 9 observed as under:-

“9. These amendments were prospective in operation. As a result of the amendment introduced in clause (a) of sub- section (1) of section 32-F, the landlord is required to send an intimation to the tenant of the fact that he had attained majority and the said intimation had to be sent before the expiry of the period during which the said landlord was entitled to terminate the tenancy under section 31. This provision appears to have been inserted with a view to enable the tenant to know the date on which the landlord has attained majority so that he can exercise the right conferred on him and send the necessary notice as required under sub-section (1A) of section 32-F. Since the respondent landlord had attained majority prior to the insertion of this provision, it has no application in the present case. The proviso that has been inserted in sub-section (1A) of section 32-F conferred a further benefit on a tenant who had failed to give intimation as required by sub-section (1A), but was in possession of the land on the date of the commencement of the Amendment Act of 1969 and who was desirous to exercise the right conferred upon him under sub-section 1(a) of section 32-F. Such a

tenant was given further opportunity to give the intimation as required under sub-section (1A) within a period of two years from the date of commencement of the Amendment Act 1969, i.e., upto October 17, 1971.”

10. In the present case it is not in dispute that a notice was issued on 31 March, 2005 for fixing purchase price of the subject land and the application was thereafter made on 26 April, 2005 before Tahsildar, Dindori under Sections 32F(1)(1a), 32(2) and 32G of BTAL Act. Thus clearly such application was made almost after 39 years. Thus considering the above position in law, it was certainly not permissible for the petitioners to maintain such belated application. Such application was clearly hit by the provisions of Section 32(1A) of the BTAL Act. The SDO has taken the correct view of the matter considering the provisions of the Act by setting aside the findings as recorded by the Tahsildar. Such findings have been appropriately confirmed by the impugned order passed by the M.R.T., Mumbai.

11. In the aforesaid circumstances, no interference is called for. The petition is devoid of merits. It is accordingly rejected. No costs.

[G.S. KULKARNI, J.]