

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7315 OF 1999

~~Pandurang Sakharam Gavali~~
(since deceased) through Legal Heirs
Sunita Vilas Gavali & Ors.

.. Petitioners

Versus

Balwant Shankar Gadave
(since deceased) through Legal Heirs
Rekha Sagar Gaikwad & Ors.

.. Respondents

.....

- Mr. S.G. Karandikar i/by Mr. V.B. Rajure for Petitioners
- Mr. T.S. Ingale i/by Mr. Wasim Samlewale for Respondent No. 1A

.....

CORAM : MILIND N. JADHAV, J.

Reserved on : FEBRUARY 09, 2023

Pronounced on : FEBRUARY 14, 2023

JUDGMENT:

1. By the present Writ Petition, the Petitioners have prayed for the following reliefs:-

“(b) that the impugned order passed on 31.07.1999 in Revision Application No. MRT-SS-44/95 by the Designated Member, Maharashtra Revenue Tribunal, Kolhapur annexed at Exhibit “C” hereto and that passed by the Sub-Divisional Officer, Miraj Division, Miraj in Tenancy Appeal No. 9 of 1988 on 30.12.1994 annexed at Exhibit “B” hereto be kindly quashed and set aside and that passed by the learned Tehsildar, Tasgaon on 30.05.1988 in Case No. Tenancy/32-P/Sheri Kavathe may kindly be restored to file.”

2. Petitioners have challenged the impugned order passed by the Maharashtra Revenue Tribunal, Kolhapur (for short “MRT”) in Revision Proceedings upholding the Sub-Divisional Officer’s (for short “SDO”) order in Tenancy Appeal and seek restoration of the Teshildar

and Agricultural Lands Tribunal's (for short "**ALT**") order dated 30.05.1988. According to the Petitioners, this case is squarely covered by the amended provisions of Section 32-K(3), Section 32-M read with Section 32-P of the Bombay Tenancy and Agricultural Lands Act, 1958 (for short "**the said Act**") and in that view of the matter, considering the facts and circumstances, the impugned orders are bad in law.

3. Such of the relevant facts necessary for determining the controversy raised in the present Petition are as under:-

(i) The suit land is Survey No. 36, Gat No. 217 admeasuring 11 Acres and 16 Gunthas situated at Village Sheri Kavathe, Taluka Miraj, District Sangli (for short "**suit land**").

(ii) On 28.11.1962, the ALT fixed the purchase price of the suit land by determining the price at Rs. 16970.70 in favour of Baburao Gavali, son of the original tenant namely Sakharam Gavali and it was to be paid in 12 equal installments by the tenant.

(iii) On 16.07.1963 the other two sons of Sakharam Gavali namely Pandurang and Bhimrao filed an Appeal before the SDO against the order passed by ALT. In that Appeal, order came to be passed and ALT's order was set aside and case was remanded back for deciding the tenant of

the suit land.

(iv) On 24.05.1966 ALT passed a fresh Section 32-G order determining that each son of Sakharam namely Pandurang, Bhimrao and Baburao was entitled to 1/3rd share in the suit land and therefore entitled to purchase the suit land to that extent.

(v) Being aggrieved Pandurang and Bhimrao challenged the ALT's order dated 24.05.1966 before the SDO and sought exclusion of Baburao's share. Simultaneously, the landlord namely Balwant Shankar Gadave also challenged the ALT's order before the SDO.

(vi) On 15.10.1969, the SDO passed twin orders, firstly rejecting the landlord's Appeal No. 152 of 1969 and secondly, partly allowing the Appeal filed by Pandurang and Bhimrao and holding that the third son namely Baburao was not entitled for any share and remanded the case back to the ALT for determining the apportionment of the purchase price accordingly between Pandurang and Bhimrao i.e. to the extent of 50% each.

(vii) On 23.11.1971 the third son Baburao filed Revision Application before the MRT against the order of SDO. This Revision Application came to be dismissed, hence he

filed Writ Petition No. 1737 of 1972. By order dated 04.08.1976, Baburao's Writ Petition came to be dismissed and it was held that Pandurang and Bhimrao and their legal heirs were entitled to purchase the suit land under Section 32-G. Thus the order passed by the MRT was upheld by this Court, it was not challenged any further and therefore, became final.

(viii) On 19.02.1980, Petitioners herein i.e. Pandurang and Bhimrao and their legal heirs filed Application before the Teshildar seeking to deposit the purchase price.

(ix) On 06.03.1980, Tehsildar issued notice demanding deposit of 1/3rd amount by the three sons namely Pandurang, Bhimrao and Baburao which was in fact, contrary to the order dated 04.08.1976 passed in Writ Petition No. 1737 of 1972 by this Court.

(x) On 24.05.1983, three years thereafter daughter of the landlord - Balwant Shankar Gadave namely Rajamati filed an Application below Section 32-P of the said Act seeking to restore possession of the suit land to her on the ground that the tenants had failed to deposit the purchase price in 12 installments commencing from 01.09.1969. It was contended that the last installment

was due and payable on 01.05.1978 and since the tenants failed to deposit the purchase price, provisions of Section 32-P were invoked for resumption and restoration of the land back to the landlord.

(xi) On 31.12.1985 the Collector, Sangli transferred the 32-P proceedings for restoration and possession filed in 1983 to Teshildar, Tasgaon for determination.

(xii) On 30.05.1988 the Teshildar dismissed the Application of Rajamati, i.e. daughter of the landlord Balwant Shankar Gadave on the ground that the Application under Section 32-P could not be invoked and entertained unless an order was passed under Section 32-N of the said Act. By the said order, it was further held that Petitioners were declared as tenants and were not at any fault for not making the payment of purchase price.

(xiii) Rajamati filed tenancy Appeal No. 9 of 1988 before the SDO. On 30.12.1994 the Tenancy Appeal came to be allowed and the Tehsildar's order was set aside on the ground that Petitioners failed to pay the purchase price for the last 25 years and hence did not intend to purchase the suit land. The SDO directed the Teshildar to therefore take appropriate proceedings under Section 32-P.

(xiv) Being aggrieved Petitioners approached the MRT in Revision Proceedings. On 31.07.1999 the Revision Application was dismissed by holding that there was default in payment of the purchase price resulting in making the purchase ineffective and the order of the SDO was upheld.

(xv) Hence the present Petition.

4. Mr. Karandikar, learned Advocate appearing for the Petitioners at the outset submitted that when the Petition was heard for admission on 28.06.2000, this Court passed the following order:-

“ Heard Shri. Jahagirdar for the Petitioners and Shri. More for the Respondents. Shri. More waives service for the Respondents.

Rule, expedited. Interim relief in terms of prayer clause (c) subject to the Petitioners depositing in this Court an amount of Rs. 25,000/- (towards the purchase price and interest at the rate of 4 ½ % per annum). The aforesaid amount will be deposited within a period of six weeks from today. The amount upon deposit shall be invested in a Nationalized Bank initially for a period of two years to be renewed thereafter.”

4.1. He would contend that the above order has been complied with by the Petitioners as directed and in view thereof, unless and until statutory proceedings are adopted under the provisions of Section 32-M and an appropriate order is passed therein, the statutory authorities have no jurisdiction to entertain the Application under Section 32-P. He would submit that the statutory authority in the present case has already determined the right of the Petitioners as

tenants of the suit land under Section 32-G of the said Act. He would submit that merely because the payment of purchase price has not been effected or made by the Petitioners, the right of the Petitioners cannot be ousted merely by filing an Application under Section 32-P. He would submit that compliance with the provisions of Section 32-M is a condition precedent for invoking the provisions of Section 32-P of the said Act. He would further submit that in the present case, the timeline of the various proceedings would show that though the 32-G order was passed by the statutory authority, for no fault of the Petitioners, the Petitioners were prevented and precluded from depositing the purchase price in view of the various proceedings. He would therefore submit that, this cannot be held against the Petitioners by the Appellate and the Revisional Authorities as a default in making payment of the purchase price. He would further submit that there is no limitation whatsoever prescribed under the said Act for payment of the purchase price and therefore contended that unless and until the steps contemplated under Section 32-M are complied with, provisions of Section 32-P cannot be invoked. He has therefore urged that the impugned orders dated 30.12.1994 and 31.07.1999 passed by the SDO and MRT deserve to be set aside as they are contrary to the provisions of the said Act and the order dated 30.05.1988 passed by the Teshildar be upheld.

4.2. Mr. Karandikar has referred to and relied upon the decision of this Court in the case of **Nathu Lotu Buwa Vs. Sakhubai¹** and contended that in the said decision, the issue involved was whether in the case of non-payment of purchase price, can the purchase be termed to be ineffective. He would submit that the same issue is agitated in the present case on behalf of the parties. He has drawn my attention to paragraph No. 12, 13, 14, 15 and 16 of the said decision which read thus:-

“12. As noted above, the only point which is involved in this petition is, whether for non-payment of purchase price, the purchase has become ineffective? In order to answer the above contentions, some of the statutory provisions are required to be considered. There is no dispute about the fact that deceased Nathu was a permanent tenant on the land on the tiller’s day i.e. 1st April, 1957 as the tenant was in possession of the land. The tenant deemed to have purchased the land from his landlord. It is not disputed that after the tenant became deemed purchaser, no proceedings were taken by the landlord as contemplated under the Act. By reading Section 32 sub-sec. (1) of the Act, it is clear that on 01-04-1957 every tenant subject to the provision of the Act, is deemed to have been purchased the land cultivated by him from his landlord, free of all encumbrances subsisting thereon. It is also not disputed that the proceedings u/s.32-G were taken by the Tribunal and price was fixed. It is not disputed that at any point of time, the landlord raised any dispute about tenant becoming deemed purchaser. Section 32-G of the Act requires the Tribunal to issue notice to all the tenant/s who u/s.32 are deemed to have purchased the land and determine the price of the land to be paid by the tenant, by resorting to the provisions of Section 32-H. Accordingly, the price of the land was fixed in the year 1963 only. Section 32 -K is required to be considered in detail to understand the controversy raised in the Petition and submissions advanced before me. Section 32-K of the Act reads thus:

"32-K: 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 32-H 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

¹ 2005 4 All MR 329

purchaser has failed to make the payment within the time specified for any reason beyond his control the Tribunal may extend the period not exceeding one year;

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

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

(b) in such annual installments not exceeding twelve with simple interest at the rate of 4 ½ 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 installment 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 expiry of such period of six months from the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964. (Mah. XXXI of 1965) whichever is later an amount equal to one-twelfth of the purchase price and also an amount equal to one years interest at the rate of 4-½ per cent per annum on the balance and apply to the Tribunal to pay the balance in installments. On such deposit being made, the Tribunal shall grant the tenant-purchaser such reasonable facility (not exceeding eleven annual installments) for payment of the balance as it deems fit.

(1B) Where the 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 installments, where the number of installments fixed is four or more and all the installments 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 (Mah. XXXI of 1965) or from the date of default of the payment of price in lump sum, or of the last installment, 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 installments within time; and if the Tribunal after holding such enquiry 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 installments 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 installment fixed under his 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 installments where the number of installments fixed is four or more, and all the installments in any other case, the amount of the purchase price remaining unpaid and the amount of interest thereon at the rate of 4-1/2 per cent per annum, if any, shall be recoverable by the Tribunal as an area of land revenue."

13. From reading the above provision, the following aspects emerge: (i) mode of payment of the purchase price; (ii) if the tenant is a permanent tenant he shall deposit with the Tribunal the amount of purchase price within one year from the date fixed by the, Tribunal; (iii) in genuine case of incapacity to pay, the/Tribunal has been empowered to extend the period; (iv) in case of payment of price by installment, if the installment not paid then that unpaid price has to be recovered with 4 ½ % interest and that amount has to be recovered as arrears of land revenue. Therefore one aspect is clear that unpaid purchase price has to be recovered as arrears of land revenue. As such, mere inaction on the part of the tenant in payment of price, does not automatically render the purchase price ineffective.

Dated: 27th April, 2005

14. To recapitulate some facts: the landlady admittedly submitted an application on 7th April, 1987 complaining that the tenant-purchaser has not paid or deposited the amount of installments. It is accepted by all the three authorities below that the purchase price in part was paid upto 1984 and thereafter there was default or failure on the part of the tenant to remit the price. It is to be noted that the provisions of the Tenancy Act are made for the benefit of the tillers of the soil and merely because the tenant fails to pay the amount that, by itself, automatically does not attract invalidation of the right which is created in favour of the tenant u/s.32 of the Act. It is to be noted that the statutes also cast upon an obligation on the authorities who are empowered to see that the agrarian reforms are implemented in proper perspective. Section 32-M(2) was brought on the statute book by Act No.XXXI/1965 which says that where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in installments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964; then the purchase of the land shall not be deemed to be effective until the Tribunal fails to recover the amount of the purchase price in sub-section (3) of Section 32-K. It is an admitted

position that the tenant is in possession of the land uptill now. Sub-section (2) of Section 32-M has to be considered on the backdrop of Section 32K(3) and the fact that the tenant is in possession of the land when the Act 1964 came into force. Section 32-K(3) provides that 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 in arrears for installments where the number of installments fixed is four or more and all the installments in any other case if the amount of purchase price remaining unpaid and the amount of interest thereon at the rate of four and a half per cent per annum, if any shall be recovered by the Tribunal as an arrears of land revenue. (underlined by me)

15. *Reading these provisions conjointly, it is clear that it is not only the tenant who has to make an application but the statute has made a provision by authorizing the Tribunal to recover the unpaid price as arrears of land revenue. In the present case, admittedly after 1984 the tenant has not deposited the amount; within three years the landlady submitted an application to the Tahsildar, Chopada making a grievance that the tenant has not paid the amount. In my judgment, if such application was filed and if the Tahsildar on noticing that the amount was not paid, then in that eventuality, it was the duty of the Tribunal i.e. Tahsildar to initiate the proceeding to recover the unpaid price by resorting to the provision of the Code for recovery of that sum as arrears of land revenue. Section 176 of the Code deals with the process of recovery of arrears. As such, the Tribunal has to take recourse to the process of recovery of balance price as envisaged u/s.176 of the Code, by serving written notice on the tenant and calling him to pay the amount and if the tenant fails to deposit the amount then further steps as envisaged u/ s. 176 of the Code was required to be followed. Admittedly, this procedure is not followed. Shri Korhalkar taking clue from the latter part of sub-section (2) of Section 32-M contended that the Tribunal has failed to recover the amount from the tenant, and as such, the purchase has become ineffective. It is not possible for me to accept the contention of Shri Korhalkar considering the mandate of the statute as Section 32-M(2) uses the phrase "until the Tribunal fails to recover the purchase price" and therefore the indication of the statute is that the Tribunal has to act and take effective steps to act and take effective steps to recover the purchase price by adopting procedure and till then the purchase does not become ineffective. It is only after all attempts are made for recovery then only the purchase became ineffective by virtue of Section 32-K(3) read with Section 32-M(2) otherwise not; Nothing is brought on record by the landlady that the Tribunal has, in fact, taken recourse to recover the unpaid price as arrears of land revenue as contemplated u/s.32-K(1) of the Act. In the absence of any such material on record, one cannot jump to the conclusion that the Tribunal has failed to recover the amount. In my judgment, therefore, though the tenant has failed to make the application as referred to u/s.32-K; but it was the duty of the Tribunal to initiate proceedings to recover the price and unless and until the attempts are made and failed to recover the amount then only by operation of sub-section (2) of Section 32-M the purchase becomes inoperative. Therefore, in my view, the judgment of the MRT is clearly unsustainable in law and cannot be countenanced as the MRT*

proceeded on altogether wrong assumption and by assuming jurisdiction which is not vested in it had allowed the Revision Application of landlady. On conjointly reading Section 32-K(3) and 32M(2), it has to be accepted that there is no failure on the part of the Tribunal to recover the unpaid price. Merely because the tenant has not made any application for extension of time to pay unpaid purchase price, that by itself cannot be considered as failure to recover the purchase price.

16. An useful reference can be made to the observations of the Apex Court in the case of Sriram Mendi Vs. State of Maharashtra reported in AIR 1971 SC 1992 where the Apex Court had an occasion to consider the scope and ambit of Bombay Tenancy and Agricultural Amendment Act XXXI/1965 by which the Section 32-K and 32-M came to be amended. The validity of the amendments were subject-matter of challenge. The Constitution Bench of the Apex Court considered the validity of amendment. The contention which was recorded before the Apex Court was noted in para no.8 of the judgment, the apex Court replied the contention in para 11. The relevant portion for purpose of the controversy in the case at hand, can be noted:

"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 as now protected by Art. 31-A of the Constitution. Neither the question of discrimination nor the compensation or its adequacy can be gone into nor can the unreasonableness of the provisions under which the landlords title has been extinguished nor the manner in 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 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 installment 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 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 installments 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, 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 , Art.21-A of the Constitution ."

"12.This view of ours is amply borne 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 32K, 32-L and 32-M of the Bombay Tenancy and Agricultural Land Act, 1948; it is left to the tenant to deposit with the tribunal the purchases 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 lump sum or installments the purchase becomes price ineffective and 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 an Act a large number of tenants specially belonging to the Scheduled Caste and Scheduled Tribe, the purchase is in danger of 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 wilful 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."

(Emphasis by me)

4.3. On the basis of the above decision, he has contended that if the tenant fails to deposit the purchase price, the purchase will become ineffective only when the Tribunal fails to recover the entire amount of price so fixed under Section 32G of the said Act by following the procedure contemplated under the said Act. He would submit that in the present case, the Tribunal has not taken any steps to recover the unpaid purchase price by following the statutory provisions as contemplated under the Maharashtra Land Revenue Code 1966 i.e. steps to be taken to recover the purchase price as arrears of land revenue. He would contend that unless and until the Tribunal makes an attempt to recover the amount of purchase price so fixed and after taking all steps for recovery of the amount, if the amount is not recovered, then and only then the provisions of Section 32-M(2) become applicable and only then purchase becomes ineffective. He has therefore submitted that in the present case, the application filed below Section 32-P by the Respondents was premature as admittedly no steps were taken by the Tribunal to recover the purchase price from the Petitioners.

5. *PER CONTRA* Mr. Ingale, learned Advocate for Respondent No. 1A would contend that the Petitioners namely Pandurang and heirs of his brother Bhimrao were directed to deposit the purchase price by the SDO in Appeal No. 54 of 1967 as far back as on

15.10.1969 and pursuant thereto the dispute with their brother Baburao culminated in their favour in 1976. He would submit that nothing prevented the Petitioners or their predecessor-in-title from depositing the purchase price after passing of the order dated 15.10.1969. He would submit that Petitioners or their predecessors did not deposit a single installment as directed between 1969 and 1978 and therefore, their intent could be gathered that they were not interested in making payment of the purchase price. Hence, according to him, Petitioners were wilful defaulters despite the 32-G order in their favour and did not deserve the benefit under Section 32-M. He would submit that pursuant to the High Court's order dated 04.08.1976, a notice was issued on 06.02.1982, *inter alia*, calling upon them that possession of the suit land will be restored to the Respondents predecessor-in-title in case they failed to deposit the purchase amount. He would submit that even thereafter the purchase price was not deposited by the Petitioners until the present Writ Petition was filed. He would submit that there is violation of the provisions of Section 32-K of the said Act in as much as there is failure on the part of Petitioners to deposit the purchase price within one year as determined. He would therefore submit that since no further steps were taken by the Petitioners to even condone the delay under Section 32-K(B)(b), the Petitioners did not deserve any relief in the present Writ Petition. He would submit that though since 15.10.1969

Petitioners were aware about the deposit of the purchase price, the Petitioners waited for a period of almost 30 years until the deposit was made in the present Writ Petition and therefore, the order passed by the learned MRT deserved to be upheld.

6. I have heard Mr. Karandikar, learned Advocate for Petitioners and Mr. Ingale, learned Advocate appearing for the contesting Respondent and with their able assistance perused the record and pleadings of the case.

7. At the outset, it is seen that the only issue involved in the present case is whether due to non-payment of the purchase price by the Petitioners / their predecessors, whether the purchase has become ineffective in the present case. Record indicates that admittedly the 32-G proceedings were culminated by order dated 15.10.1969 thereby determining the share of the tenants in respect of the suit land and therefore requiring them to deposit 50% purchase price each as determined. The last installment out of the 12 installments determined was to be admittedly paid on 01.05.1978. None of the said installments were paid. Record clearly reveals the litigation between the parties during the said period. What is pertinent to note in the present case is the applicability of the provisions of Sections 32-G and 32-M read with Section 32-P of the said Act. For the sake convenience, the said provisions are enumerated hereunder:-

“32G. Tribunal to issue notices and determine price of land to be paid by tenants.

(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon,-

- (a) all tenants who under section 32 are deemed to have purchased the lands,*
- (b) all landlords of such lands, and*
- (c) all other persons interested therein,*

to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H of sub-section (3) of section 63A :

[Provided that where the purchase price in accordance with the provisions of section 32-H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.]

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land

under this section, as if the condition that it was not transferable was not the condition of regrant."

"32M. Purchase to be ineffective on tenant-purchaser's failure to pay purchase price

(1) On the deposit of the price in lump sum or of the last installment of such price the Tribunal shall issue a certificate of purchase in the prescribed form, to the [tenant-purchaser] in respect of the land. Such certificate shall be conclusive evidence of purchase [In the event of failure of recovery of purchase price as arrears of land revenue under sub-section (3) of section 32K, the purchase shall] be ineffective and the land shall be at the disposal of the [Tribunal] under section 32P and any amount deposited by such [tenant-purchaser] towards the price of the land shall be refunded to him.

(2) Where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in installments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964, then the purchase of the land shall not be deemed to be ineffective, until the tribunal fails to recover the amount of the purchase price under sub-section (3) of section 32K."

32P. Power of [Tribunal] to resume and dispose of land not purchased by tenant. -

*(1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, [32-O, 33-C or 43-ID], the [Tribunal] may suo motu or on an application made in this behalf [***] [and in cases other than those in which the purchase has become ineffective by reason of section 32G or 32M, after holding a formal inquiry] direct that the land shall be disposed of in the manner provided in sub-section (2).*

(2) Such direction shall provide-

- (a) that [* * *] the [former tenant] be summarily evicted;*
- (b) that the land shall, subject to the provisions of section 15, be surrendered to the [former landlord];*
- (c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list") :-*

- (i) a co-operative farming society the members of which are agricultural labourers, landless persons or small holders*

or a combination of such persons;

(ii) agricultural labourers;

(iii) landless persons;

(iv) small holders;

(v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who are artisans;

(vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who is an artisan;

(vii) any other co-operative farming society;

(viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;

(ix) any person, not being an agriculturist, who intends to take to the profession of agriculture:

[Provided that the State Government may, by notification in the Official Gazette give in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government have been displaced, and require to be re-settled.]

(3) here any land is to be surrendered in favour of the [former landlord], under sub-section (2), the [former landlord] shall not be entitled to the possession thereof until any amount refundable to the [former tenant] is refunded to him or recovered from the [former landlord]; and until such refund or recovery is made, the [former tenant] shall continue to hold the land on the same terms on which it was held by him previously.

(4) Where any land or portion thereof cannot be surrendered in favour of the landlord and where such land or portion is offered for sale under sub-section (2), but no person comes forward to purchase such land or portion, as the case may be, shall vest in the State Government and the [Tribunal] shall determine the price of such land or portion in accordance with the provisions of section 63A and the amount of the price so determined shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(5) Where any land is sold under sub-section (2), the [Tribunal] shall determine the price of the land in accordance with the provisions of section 63A and the price so determined shall be payable by annual installments not exceeding six with simple interest at the rate of 4½ per cent, per annum as the [Tribunal] may determine and the price of the

land recovered from the purchaser shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(6) On the deposit of the last installment of the purchase price, the Tribunal shall issue a certificate of purchase in the prescribed form from the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. If the purchaser is at any time in arrears of two installments, then unless the [Tribunal] after holding such inquiry as it thinks fit is satisfied with the reasons given and allows a further period not exceeding one year to pay the arrears, the purchase shall be ineffective and the amount deposited by such purchaser shall be refunded to him.]

7.1. Bare reading of the said provisions clearly envisage that once the price is fixed by the Tribunal under Section 32-G and if the same is not paid by the tenant, the Tribunal is required to recover / take steps to recover the same from the tenant in accordance with the provisions of the said Act. While doing so, the tenant can also apply for extension of time to pay the purchase price. It is seen that if the tenant is not willing to pay the purchase price and not willing to purchase the said land, then only after complying with the procedural requirement of recovery of the said price from the Petitioner, the purchase can be declared as ineffective.

7.2. In the present case admittedly, there is no material evidence placed on record to show that steps were taken by the Tribunal for recovery of the purchase price which was determined. Mr. Ingale, learned Advocate for Respondent also could not show any material in this respect. All that the Respondents have contended is that there is a hiatus in making payment of the purchase price and that should be held against the Petitioners. The Respondents' case cannot be

accepted in view of the salutatory provisions of Section 32-P of the said act which contemplate that the tenant can be summarily evicted from the land only after complying with the provisions of effecting recovery of the purchase price as contemplated by the said Act. Admittedly in the present case, the Tribunal has not taken any steps for recovery of the purchase price from the Petitioners as arrears of land revenue and in that view of the matter, the purchase cannot be deemed to become ineffective as held by the Maharashtra Revenue Tribunal in the impugned order. It is pertinent to note that a conjoint reading of Sections 32-K, 32-L and 32-M of the said Act would show that unless and until the condition precedent namely effecting recovery of the purchase price is undertaken by the Tribunal, the purchase cannot become ineffective. The ratio in the case of Nathu Lotu Buwa (*supra*) governs the facts and circumstances of the present case and therefore, the declaration made by the MRT regarding the purchase by the tenants i.e. Petitioners herein calls for interference. Considering that there is no material on record to show that any attempt was made by the Tribunal to recover the amount of purchase price from the tenant, the order dated 30.05.1988 passed by the learned Teshildar deserves to be upheld and the subsequent orders dated 30.12.1994 passed by the SDO in Tenancy Appeal No. 9 of 1988 and 31.07.1999 passed by the MRT in Revision Application No. MRT-SS-44/94 are quashed and set aside.

8. Rule is made absolute in terms of payer clause (b). The order passed by the learned Tehsildar dated 30.05.1988 stands restored. As noted, since the entire purchase price has been deposited in this Court at the time of admission, the same is directed to be transferred to the statutory authorities / Government and they are directed to take appropriate steps in accordance with law. As a consequence of this order the 32M certificate be issued by the statutory authorities within 12 weeks from today in accordance with law.

9. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
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