

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1800 OF 2001

~~Dattu Raghu Patil~~

(since deceased) by heirs

Dwarkabai Dattu Patil & Ors.

.. Petitioners

Versus

~~Anant Narsinh @ Balambhatt Joshi~~

(since deceased) by heirs

Padmaja Anant Joshi & Ors.

.. Respondents

.....

- Mr. N.J. Patil for Petitioners
- Mr. Vilas B. Tapkir for Respondent No. 1

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 09, 2023

JUDGMENT:

- 1.** By the Present Writ Petition, the Petitioners have prayed for the following relief:-

“(b) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India thereby quash and set aside the impugned judgment and order dated 24.11.2000 passed in Revision Application No. MRT-KP-118/93 passed by the learned Designated Member, Maharashtra Revenue Tribunal, Pune, Camp Kolhapur which arose out of the judgment and order dated 02.08.1993 passed by the learned Sub Divisional Officer, Karveer Division, Kolhapur in Tenancy Appeal No. 54 of 1991 which arose out of the judgment & order dated 31.01.1991 passed by the learned Additional Tehsildar and ALT, Kagal in TNC.Case No. ALT/Sidhnerli and further be pleased to direct the concerned authorities to hold proper enquiry under Section 43-A of the Bombay Tenancy Act (for short “said Act”).”

- 2.** Admittedly all three orders, passed by the Agricultural Lands Tribunal (for short “ALT”), Sub Divisional Officer (for short “SDO”) and Maharashtra Revenue Tribunal (for short “MRT”) are concurrent

orders passed against Petitioners. Petitioners are tenants / successors of the tenants in respect suit property namely agricultural land bearing Gat No. 1163 admeasuring 1 Hectar 82 Ares and situated at Village Sidhnerli, Taluka Kagal, District Kolhapur (hereinafter refereed as “said land”). Respondent No. 1 is the landlord whereas Respondent No. 2 is the **original tenant**.

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

3.1. Respondent No. 1 is landlord claiming ownership of the said property by virtue of Will and adoption deed of Smt. Ramabai Narsinh @ Balabhat Joshi. On 01.04.1957 i.e tillers day, Smt. Ramabai was the owner of the said land. Admittedly she was a widow. In the present case Ramabai executed a registered Will dated 17.11.1956 in favour of Respondent No. 1 and bequeathed the said property to him and subsequently by a registered adoption deed dated 02.09.1960, she adopted Respondent No .1 as her son.

3.2. Record indicates that because Ramabai was a widow, 32-G proceedings adopted by the predecessor-in-title of Petitioners (Tenant) were dropped. Ramabai expired on 17.12.1974. On her demise Respondent No.1 stepped into her shoes, became landlord of the said property and his name was mutated in the kabjedar / column of Revenue Record vide Mutation Entry No. 5369 dated 01.08.1978.

3.3. In the above background application was filed by Respondent No. 1 landlord against the Petitioners' predecessors-in-title namely against Balu Raghu Patil and Dattu Raghu Patil under Section 32-G and 32-F of the said Act for seeking possession of the said land, the said case was numbered as TNC Case No. ALT/Sidhnerli. It was contented by Respondent No. 1 that on tillers day Ramabai being a widow, 32-G proceedings in respect of the said land were dropped, that after her demise tenants did not give intimation to Respondent No. 1 about their readiness and willingness to purchase the suit land under 32-F of the said Act within 2 years and hence it was prayed that tenants did not have any right to retain possession of the said land and as such possession of the said land was sought to be resumed.

3.4. The learned ALT framed the following issues for determination :-

- (i) Whether on tillers day, the property belonged to widow Ramabai?
- (ii) Whether the opponents were required to give intimation under Section 32-F in time?
- (iii) Whether the opponents were required to give intimation under 32-F in time?
- (iv) Whether the opponent tenants were entitled to purchase the land under Section 32-G?
- (v) Whether the Applicants prove their bonafide requirement?

3.5. Both parties submitted their statements on oath which was recorded by the ALT. The learned ALT allowed the Application filed

by Respondent No. 1 and declared tenant's purchase of the said land under Section 32-G as ineffective under 32-P(1) read with Section 32-F of the said Act. The learned ALT held that Petitioners i.e tenants be summarily evicted under Section 32-P(2-A) and possession of the said land be handed over to landlord after the Appeal period is over.

3.6. Petitioners / tenants filed statutory tenancy Appeal No 54 of 1991 under Section 74 of the said Act before the SDO. By order dated 02.08.1993, Appeal was dismissed with costs and the order dated 31.01.1991 passed by ALT was sustained.

3.7. Being further aggrieved, Petitioners filed Revision Application before MRT, Pune bearing No. MRT-KP-118/93. By Order dated 24.11.2000, Revision Application was dismissed and orders of both the subordinate Courts namely SDO and ALT were confirmed.

3.8. Hence the present Petition.

4. Mr. Patil, learned Advocate for Petitioners would submit that while passing concurrent orders, all statutory authorities have misdirected themselves in application of the relevant provisions of Sections 32-G, 32-F and 32-P of the said Act. He would submit that it has been wrongfully held that Petitioners have failed to exercise their right under Section 32-F(1) within 2 years from the date of death of the widow Smt. Ramabai who was the landlady of the said property. He has vehemently contended that Smt. Ramabai had leased the said

property to Petitioners' predecessors-in-title for sugarcane cultivation and in that view of the matter the extant provisions of Section 32-G and 32-F would not apply to the said property in view of the exemption carved out under Section 43A and therefore Petitioners' right as tenants to purchase the said property would not be extinguished. He would further argue that Respondent No. 1 could not be treated as landlord of the said property within the meaning of the relevant provisions of the said Act since he was claiming as a legatee under the Will of Smt. Ramabai. He has drawn my attention to the provisions of Section 43A of the said Act and contended that in the teeth of the said enactment, application of the provisions of Section 32-G and 32-M has been incorrectly done by all statutory authorities.

4.1. He has relied upon a compilation of 14 pages in support of his case and contended that on tillers day, Smt. Ramabai was not the sole owner of the said land and diary extract No 349 confirmed this position. He would submit that in the present case the said land was leased for sugarcane cultivation and therefore the proceedings stood vitiated since it was established that the said land was leased for growing sugarcane. In the compilation of documents, Mr. Patil has relied upon the written arguments placed before the SDO on behalf of Petitioners, the Revision Application filed by Petitioners under Section 76 before the MRT and the notice issued by Smt. Ramabai to Dattu

Raghu Patil dated 31.07.1968.

4.2. He has referred to and relied upon the following two decisions in support of his case:-

- (i) **Ganpat Keraba Khot Vs. Dattatraya Narayan Joshi¹;**
- (ii) **Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim²**

4.3. He has contended that in the case of Ganpat Keraba Khot (*first Supra*), it has been held by the learned single Judge of this Court that the person inheriting land under a Will executed by his maternal grandmother who was a widow on 01.04.1957 will not fall within the definition of 'landlord' as given under Section 32-F(1) and Section 31 of the said Act. He would contend that the said judgment refers to the decision of the Supreme Court which holds that a person who may have obtained right to agricultural land by assignment, transfer, auction sale or in any similar mode is not included within the expression of the landlord entitling him to evict the tenant. In effect he would submit that the expression "or otherwise" occurring in clause (d) of Section 31-A indicates that a person claiming title by a Will from his ancestor will not be a landlord for the purposes of the said section. While referring to the Supreme Court Judgment in the case of Mohamad Kavi Mohamad Amin (*second Supra*), he has contended

1 1998(1) Mh.L.J. 807

2 (1997) 6 SCC 71

that the statute of limitation applies for any act to be executed within a reasonable time where no time limit is prescribed by the statute. He would submit that Smt. Ramabai expired on 17.11.1974, Respondent No. 1's name was mutated on the revenue record on 01.08.1978 whereas Application on his behalf was made for the first time on 16.08.1990 i.e after almost 17 years. He would therefore submit that such an unreasonable delay on the part of Respondent No. 1 landlord in approaching the ALT was fatal to the case of the landlord and therefore all concurrent findings are required to be set aside. He has therefore urged that the concurrent findings returned by the ALT, SDO and MRT be quashed and set aside.

5. Mr. Tapkir, learned Advocate appearing for the contesting Respondent No. 1 would submit that the judgment & order passed by the learned ALT has determined the case of Respondent No. 1 on the basis of substantive issues, *inter alia*, pertaining to the right, title as also entitlement to the said land in accordance with the provisions of the said Act. He would submit that the most pertinent point required to be considered in the present case is the applicability of the provisions of Section 32-F of the said Act. He would submit that there is a clear embargo on the applicability of the provisions of Section 32-G to 32-M of the said Act in the case of land held by a widow on tillers day. That apart, according to him it is pertinent to note that if

Petitioner claims to be protected tenants, then they did not send the statutory intimation of purchase under Section 32-F(1-A) to the landlord within the prescribed period after the death of Ramabai. In that view of the matter, he has argued that admittedly Smt. Ramabai was a widow on 01.04.1957 i.e. on tillers day and necessary evidentiary material placed on record before the ALT has been taken cognizance of by the ALT and SDO. He has therefore urged that the Writ Petition is devoid of merits and all three impugned orders deserve to be sustained.

6. I have heard Mr. Patil, learned Advocate for Petitioners and Mr. Tapkir, learned Advocate appearing for Respondent No. 1 and with their able assistance perused the record and pleadings of the case.

7. At the outset, it needs to be stated that it has come on evidence before the ALT and the SDO that on 01.04.1957, the landlady Smt. Ramabai was a widow. This is evident from the revenue record extract of 1956-57 produced at Exh. P-7 and as noted by the Courts below. That apart there is a clear reference of the widowhood of Smt. Ramabai in the other rights column of the revenue record. This has been taken cognizance of by the ALT and the SDO and which clearly implies that such record can only be maintained and created after an inquiry under Section 32-G. It is further seen that in

so far as the objection to the entitlement of Respondent No. 1 is concerned, a registered adoption deed No. 780/2-9-60 was produced at Exh. P-41 along with the registered copy of the Will No. 1028/17-11-67 at Exh. P-47. The learned statutory authorities have returned a finding that both these deeds were given effect to in the record of rights by Mutation Entry No. 5639/1978. Record further indicates an important issue which militates against the Petitioners' claim. It has come on record that Petitioners were aware of the landlady's death as the M.O.S. sent by them for the years 1972-73 and 73-74 was returned back to them by the postal authorities with an endorsement that the owner was dead. The learned statutory authorities in the course of inquiry have returned a finding that Petitioners remained quiet without paying rent for several years and did not take any steps to dislodge / challenge Mutation Entry No. 5639 dated 01.08.1978. It is seen that if Petitioners or their predecessor-in-title were to exercise their right under Section 32-F(1-A) within two years from Smt. Ramabai's date of death, then they ought to have given the statutory notice and intimation to Respondent No.1. Record clearly shows that they remained silent for more than 15 years and also did not pay rent under the alleged lease deed. It is an admitted position in law that issuance of intimation under Section 32-F(1-A) is a mandatory requirement on the part of tenant which has not been complied with in the present case. It is seen that until the commencement of the

present proceedings in TNC Case No. ALT/Sidhnerli by Respondent No. 1, Petitioners i.e. tenants did not send the statutory intimation of purchase. In that view of the matter, their purchase under Section 32-G is ineffective and it is correctly held that Petitioners are not entitled to purchase. It is pertinent to note that the said property was a widow's estate and therefore, Petitioners' predecessors cannot be deemed purchasers of the same, because Section 32-G is restricted in its operation by virtue of the provisions of Section 32-F. The bar of Section 32-F postulates that the tenant of a widow cannot purchase the tenanted land automatically and it is provided that the tenant of the widow has to send an intimation of his readiness and willingness to purchase the said land under Section 32-F(1-A) within the prescribed period of two years. The learned ALT has recorded a finding that the Petitioners i.e. tenants have deposed in their evidence that they had not taken any steps to send the intimation of purchase to the successors of the landlady (widow) after her death. That apart, reliance on Section 43A can only be placed if there is effective compliance of the said provision. Record clearly indicates that after the demise of Smt. Ramabai, the tenants did not pay the lease rent for several years. Further it is seen that the substantive provisions of the statute, namely 32-F(1-A) would govern the present case.

8. In so far as the reliance of Petitioners on the decision of the Ganpat Keraba Khot (*first supra*) is concerned, the same is clearly distinguishable. It refers to the provisions of Section 31-A(d) to be read along with Section 32-F(1) where it is held that in order for a person to be treated as landlord, the land lease has to stand in the record of rights on the first day of January, 1952 and thereafter during the period between the said date and the appointed date in the name of the landlord himself or of any of his ancestors. Such is not the case here and there is no evidence to that effect, save and except bare pleadings. The application of clause (d) of Section 31-A would not apply *ipso facto* to the present case. Further in the present case, it has been examined that there is a registered adoption deed in addition to the Will and the statutory authorities have taken cognizance of the same on the basis of evidence led by the landlord and the said Adoption deed is placed as evidence. Hence, it is not merely on the basis of the Will but also in accordance with the registered adoption deed in favour of the landlord. (Respondent No.1) that substantive rights in the said property are transferred from Smt. Ramabai.

9. In view of the above observations and findings, the orders passed by the Agricultural Lands Tribunal dated 31.01.1991, Sub Divisional Officer dated 02.08.1993 and Maharashtra Revenue Tribunal dated 24.11.2000 do not call for any interference. They are

reasoned orders which determine the issues on the basis of evidence led by both parties before the ALT and hence sustained.

10. Writ Petition is dismissed.

11. Rule is discharged.

[MILIND N. JADHAV, J.]

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