

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9795 OF 2013
WITH
CIVIL APPLICATION NO.1012 OF 2024

Kundlik s/o Mahadu Dighe (Died)
Through his legal heirs

1. Vasant Rao Kundalik Dighe through GPA holder
Age: 70 years, occ. Agril,
2. Vishnupant S/O Kundlik Dighe,
Age: 65 years, Occu:Agril.
3. Shamrao S/o Kundlik Dighe,
Age: 60 years, Occu:Agril.
4. Smt. Lilabai Balasaheb Dighe,
Age: 64 years, Occu: Household,
Petitioner Nos.2 to 4 R/o Kolhar (Bk),
Tq. Rahata, District: Ahmednagar.
5. Pushpa Nivrutti Gunjal,
Age: 58 yrs, Occu: Household,
R/o. Rahuri Factory, Tq. Rahata,
District: Ahmednagar.

...Petitioners

VERSUS

1. Tulshiram s/o . Dhondiba Shinde
Age 75 yrs. Occu. Agri.
2. Dada s/o Dhondiba Shinde
Age 80 yrs, Occ. Agri.,

Both R/o. Kadit, Tq. Shrirampur
Dist. Ahmednagar.
3. The Tahsildar Shrirampur
Tahsil Office, Tq. Shrirampur
Dist. Ahmednagar

...Respondents

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Mr. Sarang P. Joshi, Advocate for Petitioner.
Mr. S.B. Kadu, Advocate for Respondent No.1.
Mrs. R.R. Tandale, AGP for Respondent No.3/State.

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CORAM : S.G. MEHARE, J.**DATED : 09.02.2024****ORAL JUDGMENT :-**

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioners are the legal heirs of the original tenant, and the respondents are the legal heirs of the original landlord. The lease was created after the tillers' day. The respondent did not deny that the suit land was leased for 99 years. It is also not disputed that the original landlord never applied for restoration of the land. The original tenant continued tenancy as per the lease agreement. The respondents had applied before the Tahsildar by an application under Sections 32-O and 32-P of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'the Act').

3. The contention of the respondent before the Tahsildar was that the tenant ought to have purchased the land within a year from the commencement of the tenancy. No purchase notice was given to the landlord. Hence, his right to purchase had ceased. Therefore, the petitioner is liable to be evicted, and the land be restored to them. The petitioner was holding the land more than the ceiling limits. Therefore also, he is not entitled to purchase the suit land.

4. The petitioners have opposed the application, contending that the lease should have been terminated by following the due procedure of law. Respondent No.2 was the attesting witness to the said lease deed. He never took any action. Since the original tenant did not terminate the tenancy, legal heirs have no right to seek relief under Section 32-P of the Act. Claim after 32 years is time-barred. The respondents ought to have filed the petition within a reasonable period. Therefore, the right to claim the restoration of the land became inexecutable. The respondents ought to have exercised the powers under Section 29 of the said Act within two years. They never applied for restoration of possession. Hence, they have no right to claim the possession. He has argued that the lease deed was not in their possession at the time of the trial before the Court. Hence, they may be allowed to produce additional evidence of the said lease deed. To bolster his arguments, he relied on the case of Arvind Deochand Mehta and others Vs. Genu Tukaram Bhoir, 2009 (3) Bom.C.R. 858 and Sambhaji Shripati Bankar (Deceased through L.Rs.) Vs. Keshav Rangnath Ekbote (Deceased through L.Rs.), 2010 (3) ALL MR 854. He prayed to allow the petition and quash the impugned orders.

5. Learned counsel for the respondents submit that since the tenant did not exercise the power to purchase the tenanted land within a year as provided under Section 32-O of the Act, they have no right to continue with the possession. Their right to continue as a

tenant ceases soon after a year of the commencement of the lease. He also argued that the petitioner has more land than the required holding. The landlords/respondents have lesser land. The petitioners have brought a new case before this Court. He relied on the case of Ramchandrahashadalvi (Deceased) Through Lrs. Vs. D. Patwardhan, 1999 AIR (SC) 2039, Sangnbasappa Channappa Manikhshetti Vs. Vishwanath Shivlingappa Birajdar and others, 2003(2) Mh.L.J. 587, Motiram Jagannath Bhoir Vs. Rajaram Gopal Mhaskar and Others, 2005 (1) Mh.L.J. 169 and lastly he relied on the case of Babu Vithu Gaikwad (Dead) by L.Rs. Vs. Chintaman Sadashiv and Ors, 2007 (9) SCC 632. He prayed to dismiss the petition.

6. In reply, learned counsel for the petitioners argued that under Section 40 of the Act, the tenancy is heritable. Therefore, the petitioners have every right to protect their rights. He has tried to argue that the rule of succession would not apply to the landlord. He is emphasizing that since the father of the respondents did not initiate the proceeding for eviction, the respondents have lost their rights to restore the possession. He also argued that the case laws relied upon by the respondents' counsel are on the different facts and provisions of law, particularly on the tillers' day. Hence, do not apply to the case at hand.

7. Having regard to the argument of the respective counsels, the following points arise for consideration:

- (i) Does the application for restoration of possession of the tenanted land under Section 32-P of the Tenancy Act is barred by limitation being not filed within a reasonable period?
- (ii) Does Section 32-O not apply to this case?
- (iii) Do the respondents not entitled to file an application for restoration of the possession being legal heirs of original landlord, who had not taken any steps during his lifetime?
- (iv) Was it essential to terminate the tenancy under the Transfer of Property Act?

8. There is no quarrel that the landlord-tenant relationship was created after the tillers' day. After the Act, every agreement of lease of the agricultural lands is brought under the said Act. The protection was granted to the tenants who were cultivating the lands on the tillers' day. The Act has also taken care of the tenancy created after the tillers' day. There is also a concept of contract tenancy. Section 3 of the Act provides that the provisions of Chapter V of the Transfer of Property Act, 1882, shall, in so far as they are, not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies. Section 4 of the Act provides for the deemed tenancy. It has been provided therein that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the

owner, subject to certain exceptions as provided under the Act. Tenant includes a person who is deemed to be a tenant under Section 4.

9. Section 32-O is relevant to the facts in issue. Hence, it is reproduced thus:

"32O. (1) In respect of any tenancy created after the tillers' day 4 [by a landlord (not being a serving member of the armed forces)] notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall 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.

[(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].

(2) The provision of section 32 to 32N (both inclusive) and of sections 32P, 32Q, and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1)."

10. The Section says that notwithstanding any agreement or usage to the contrary, where the tenancy is created after tillers' day, the tenant has a right to purchase the land. However, such a right should be exercised within a year from commencement of such tenancy. It has further been provided therein that such person is entitled to purchase the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area. In other words, this

section confers a right on the tenant after the tillers' day, to purchase the land not more than the ceiling limit. Further, where such tenant is desirous to purchase the land, he has to give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within a period of a year.

11. Admittedly, the father of the petitioners did not exercise his right under Section 32-O of the Act. Failure to exercise the power has a consequence as provided under Section 32-P of the said Act. It provides that where the right to purchase the land as provided under Section 32-O has not been exercised within a period prescribed therein, the Tribunal may suo motu or on an application made on this behalf hold the inquiry and direct that land shall be disposed of by directing to evict the tenant summarily or to surrender such land under Section 15. If such land cannot be surrendered as provided under Section 15, the certain provisions have been made how such lands should be disposed of.

12. The Hon'ble Supreme Court in the case of Ramchandrahashadalvi (supra) held that where the tenant was not willing to purchase the land and the statutory sale, the landlord would be entitled to take possession of such land under Section 32-P of the Act. This Court, in the case of Sanganbasappa (supra), dealt with the provisions of Section 32-O and 32-P of the Act, and held that where tenant is inducted after the tillers' day, then by virtue of section

32-O of the Act, he is obliged to give intimation regarding his intention to purchase the suit lands within the statutory period. The consequence of such failure is also provided in section 32-O that a right to purchase becomes ineffective. In such case, it will be open to the landlords to recover possession of the suit lands by taking recourse to the provisions of section 32-P of the Act. It is the consistent view on the failure of the tenant to purchase the land as provided under Section 32-O of the Act.

13. Learned counsel for the petitioners tried to put a case that since there was a lease of 99 years, the landlord had a right to recover possession under Section 29 of the Act. Reading that section, the Court is of the view that the provisions of that section are altogether different and not relevant to the facts in issue. The law laid down by the Hon'ble Supreme Court and by this Court on the question of right of tenant under Section 32-O and effect of his failure to exercise the power have been crystallized in clear terms that once there is an agreement of lease after the tillers' day, the tenant should exercise his power to purchase the land within a year and if not the landlord gets the right to seek the restoration of the land.

14. This Court, in the case of Arvind (supra), has dealt with Section 32-P of the Act, which pertains to the consequences on the failure of the tenant to exercise the right to purchase the land. Similarly, the same subject was dealt with in the case of Sambhaji

(supra). In that case, this Court has considered the case of Uttam Mahadeo Mahale Vs. Vithal Deo and others, 1997 (4) All MR 447 (SC) and observed in paragraph No.14 which reads thus :

"14. Mr. Gaware further invited my attention to certain observations in "**Uttam Mahadeo Mahale Vs. Vithal Deo and others**" AIR 1997 S.C. 2695 : [1997(4) ALL MR 447 (S.C.)]. The Apex Court held that there is no specific limitation provided under section 21 of the Bombay Mamlatdar's Court Act, 1906. It is held that the eviction order could have been executed at any time. This authority is hardly of any relevance in the context of present case. The rejection of the previous application under section 32-G could not be treated as an executable order for the purpose of section 32-P and as such, it could not be assumed that at any time, the Tribunal may take the action required under section 32-P because there was no limitation provided for such kind of execution. Reliance is also placed on certain observations in "**Madhukar Damodar Pawar, deceased through his heirs and legal representatives & others v. Madan Purshottam Pandkar and (24) another**" 2003 (3) Bom. C.R. 291 : [2003(1) ALL MR 695]. A learned Single Judge of this Court held that the limitation was not provided for execution of eviction order under section 21 of the Mamlatdar's Courts Act, 1906 in relation to orders under sections 31, 73 and 73-A of the BT & AL Act. The argument of Mr. Gaware is that the proceedings under section 32-P are in the form of the execution of the order because, previously, such direction was given while dropping proceedings under section 32-G of the BT & AL Act. It is unfortunate that the copy of the order rendered by the Mamlatdar is not on record and moreover only because of disposal of the proceedings under section 32-G, the power under section 32-P could not have been invoked on assumption that it was to be exercised by way of execution of the order rendered under section 32-G of the BT &

AL Act. Both the sections operate in different fields. If such interpretation is not adopted, it is probable that in a given case, the proceedings under section 32-G may be dropped on the premise that the tenant was unwilling to purchase the land. Yet, the right to purchase the land may not become ineffective if he lateron shows willingness to deposit the determined price under section 32-M. The basic requirement of Section 32-P is to clearly determine the issue whether the right of the tenant has become ineffective and frustrated due to his apathy to go ahead with the proposal to purchase the tenanted land or due to his default in making payment of the determined price. The rights of tenants, who were found in possession on the Tillers' Day, cannot be lightly taken away. "

15. This Court in para no.17 has observed thus :

"17. By analogy, the same view can be taken in the context of the action provided under section 32-P of the BT&AL Act. This Court in **"Gulabrao Bhaurao Kakade since deceased by L.Rs. and others v. Nivrutti Krishna Bhilare and others"** 2001(4) Mh.L.J. 31 : [2001(2) ALL MR 518], held that the powers under section 32(1) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 are required to be exercised within reasonable period though no specific limitation is provided for. The absence of specific period of limitation will not give a licence to the competent authority to initiate action at any point of time though it has become too stale. The law does not expect keeping democles' sword hanging on head of any litigant for perennial period. For all these reasons, I have no hesitation in holding that institution of such proceedings under section 32-P after about 28 years was improper and barred by limitation. "

16. This Court in the above case held that, the proceeding under Section 32-P of the Act should be initiated within a reasonable

period and if not, the proceeding filed after a reasonable period is time-barred.

17. Section 32-P of the Act is silent about the period to take action to restore the land. Where the provision of law is silent on the limitation for initiating any action or proceeding, can such provision be interpreted that an action or proceeding should be initiated within a reasonable period is a question?

18. Recently, the issue about the applicability of the principle of taking action in a reasonable period under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 was dealt with by the Hon'ble Division Bench of this Court in the case of Ganesh s/o Kachru Sonawane (Sonne) and Another Vs. Khushalrao s/o Sukhdeo Sable and Others in Writ Petition No.9745 of 2011 with connected Writ Petitions dated 05.12.2023.

19. In the above case, the Hon'ble Division Bench had framed the issue as referred to it as follows :

"whether any period of limitation is applicable for preferring any application under Section 98 of Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as 'Act').?"

20. The Hon'ble Court answered the question referred to in the words that "no period of limitation is applicable for preferring any application under Section 98 of the Act, and it is not permissible to read a reasonable time of limitation into the section."

21. The answer is clear that the rule of reasonableness does not apply where a statutory provision does not prescribe a period of limitation to exercise the rights conferred under such statutory provisions. Section 98 of the Hyderabad Tenancy Act is *pari materia* to Section 32-P of the Act of 1948.

22. In view of the ratio laid down by the Hon'ble Division Bench in the case of Ganesh s/o Kachru Sonawane (Sonne) (supra), the Court is of the view that the issue answered by the Division Bench would prevail over the judgment of the learned Single Judge in the case of Sambhaji (supra). Since the rule of taking action in a reasonable period does not apply to Section 32-P of the Act the application of respondents could be entertained.

23. It is an argument of the learned counsel for the petitioners that only the father of the petitioners could take action for restoration. The respondents, being his legal heirs, have no right to initiate the action under Section 32-P of the Act. He himself has agreed that the tenancy rights are heritable. When the tenant dies, his heir may continue with the tenancy. So, this rule applies *mutatis mutandis* to the legal heirs of the landlord. The law never discriminate. What one party has the rights, the another party has also the same rights. Hence, the arguments of the learned counsel for the petitioners that the legal heirs/successor of the landlord have no

right to exercise the powers to seek the restoration of land are unfounded.

24. The law on Section 32-O and 32-P has been crystallized by the Hon'ble Supreme Court. The issue of limitation to claim the right under Section 32-P with Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 which is *pari materia* is no *res integra*. The impugned judgments and orders of all the authorities below are legal, proper and correct and do not warrant interference. Hence, the writ petition stands dismissed.

25. Rule stands discharged.

26. Learned counsel for the petitioners states that he wants to impugn this order before the Apex Court. Hence to protect the interest, the effect and operation of this order is stayed for six weeks from today.

27. In view of the above observations, Civil Application No.1012 of 2024 stands disposed of.

(S.G. MEHARE, J.)