

Shabnoor

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

WRIT PETITION NO.524 OF 2024

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Hirabai Sarjerao Kadam (Deceased),
Through Legal Heirs ... Petitioners
V/s.
Balbhim Krushna Sakhre & Ors ... Respondents

Mr. P. B. Shah a/w Ms. Gunjan Shah, for Petitioners.

Mr. Rahul S. Kate, for Respondents.

Mrs. M. S. Srivastava, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 22, 2024

P.C.:

1. The petitioners are challenging an order dated 9 November 2023 passed by the Maharashtra Revenue Tribunal, Pune ("MRT" for short) upholding tenants' right to purchase the agricultural lands in question under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948.

2. The facts necessary for the purpose of adjudicating the issue involved as under:

The property bearing Gat Nos.429/1 and 429/2 situated at Village Khrochi, Taluka Indapur, District Pune ad-measuring about 03 H, 61 R is the property in dispute. The property was initially owned and possessed by Eknath Borade who died on 11 March

1944 leaving behind his widow Shevantabai Eknath Borade and two daughters 'Hirabai' and 'Parubai'. On 1 April 1957, the property was owned by Shewantabai (widow). On 8 September 1960, the proceedings under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 was postponed as the landlady was widow on Tillers' Day. Thereafter, again on 23 February 1977 and on 17 May 1977, the proceedings under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 were postponed. On 22 April 2004, Shewantabai (widow) died leaving behind her two daughters. Shewantabai sold the property in dispute on 19 August 1993 to the petitioners for consideration of Rs.90,000/-.

3. On 7 January 2005, the tenants' /respondents' issued notice to the daughters of Shewantabai for purchase of land under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948. The Tehsildar and the Agricultural Lands Tribunal by order dated 24 May 2012 allowed tenants' / respondents' Application under Section 32-G r/w Section 32-F of the Maharashtra Tenancy and Agricultural Lands Act, 1948 by holding existing tenants' grandfather to be tenant of the agricultural lands in the year 1955.

4. The daughters of Shewantabai and predecessor filed an Appeal before the Sub-Divisional Officer. The Sub-Divisional Officer allowed the Appeal on the ground that the names of tenants' / respondents' were deleted from the mutation entry and, therefore, an inquiry to that regard was necessary.

5. The Tehsildar and the Agricultural Lands Tribunal after remand rejected tenants' application by holding that the predecessor of existing tenant was not tenant on Tillers' Day and existing name was deleted by the mutation entry. The Sub-Divisional Officer allowed tenants' Appeal by holding that the mutation entry of 1942 was on 13 May 1955 indicates that the predecessor of existing tenants' to be tenant in the property in dispute and since Tillers' Day the landlady was widow, there were postponement of purchase of land.

6. The tenants, therefore, filed the Revision Application before the MRT. The MRT by the impugned order confirmed the order of the Sub-Divisional Officer. Therefore, the petitioners have filed the present writ petition.

7. Learned Advocate for the petitioners submitted that the Authorities below failed to follow the procedure as required under the Mamlatdars Courts Act, 1906. No point for consideration were framed nor the petitioners were allowed to cross-examine the witnesses. The existing tenants were not in possession on the date of filing of Application under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and, therefore, they were not entitled for purchase the property in dispute. In support of his submission, he relied on following two judgments; **Akkabai Bappurao Power (Since deceased through Lrs. & Ors Vs. Lahu Vithu Kurne (Since deceased through Lrs & Ors.** reported in 2007 (6) Mh.L.J. 827 and **Veekaylal Investment Co. Pvt. Ltd. Ltd. Vs. Bhalchandra D. Patil & Ors.**, reported in [2019] 4 Mh.L.J. 459.

8. Per contra learned Advocate for the respondents submitted that the predecessor of present petitioner Shevantabai had admitted in her statement that the predecessor of existing tenant was tenant in the property in dispute. Based on such statement, the proceedings under Section 32-G were postponed three times. Mere sale of property by the landlady, shall not extinguish tenants' right to purchase the property under Section 32-G. In support of his submission, he relied on the following judgments; **Laxmanrao Anantrao Satardekar Vs. Bapu S. Powar**, reported in 1992 (1) Mh.L.J. 333, **Amrit Bhikaji Kale & Ors Vs. Kashinath Janardhan Trade & Ors**, reported in AIR 1983 SC 643, **Anna Babu Sul & Anr. Vs. Laxman Pandurang Tiwatne (since deceased through Lrs) & Ors**, reported in 1998 (5) Bom. C.R. 301, **Dagadu Rama Mali & Anr. Vs. Pandurang Govind Mali & Anr.**, reported in 1998 (2) Bom. C.R. 563, **Vishnu Krishna Kshirsagar Vs. Shrikant Rajaram Kale**, reported in 2000(1) Bom.C.R. 188 and **Vasant Ganpat Padave (dead) by Legal Representatives & Anr. Vs. Anant Mahadev Sawant (Dead) Through Legal Representatives & Ors.**, reported in (2019) 19 SCC 577.

9. I have considered the submissions on behalf of both sides. On perusal of the record following factual scenario emerges:

- (i) The predecessor of the present landlady Shewantabai stated on oath in the proceedings under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 in the year 1960 that the existing tenants' predecessor Ramchandra Devji Sakhre was tenant on Tillers' Day i.e. on 1 April 1957;
- (ii) There is no failure on the part of tenants' to appear before

the Authorities after the notice to purchase was issued to the tenants;

(iii) The tenants never declined to purchase the property in dispute. There is no failure from the tenants to pay the purchase price;

(iv) On Tillers' Day, 1 April 1957 Shewantabai was widow.

10. The aforesaid factual scenario indicates that there is no serious dispute about the fact that the existing tenants' predecessor Ramchandra Sakhre was tenant on 1 April 1957. Therefore, statutorily on Tillers' Day the landlady is divested of title and the tenant is vested with title to agricultural land which he cultivates. It is not in dispute that the landlady never issued notice under Section 32-F(1-A) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 to the tenant for purchase of land. The Apex Court in the case of **Vasant Ganpat Padave** (Supra) in paragraph 17 observed as under:

“17. ... It is only in three cases that such purchase becomes ineffective — if the tenant fails to appear within the time prescribed after notice is given to him, or appears and declines purchase, or if the tenant fails to pay the entire purchase price. The widow, the minor and the person subject to a disability are placed on the same pedestal, and throughout their widowhood, minority or period of disability are deemed to cultivate the land personally through their tenants — Explanation I to Section 2(6) makes this clear.”

11. The Apex Court has held that the successor-in-interest of a widow is obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right

of purchase. In the facts of the case, undisputedly such intimation was not sent by the successor-in-interest of the widow to the tenant. Therefore, the MRT has rightly dismissed the Revision Application of the petitioners.

12. In so far as, the petitioners contention that the procedure under the Mamlatdars Courts Act, 1906 has not been followed is concerned, it appears that the Tehsildar allowed both the parties to lead evidence and after framing points for consideration has decided the proceedings. The petitioners are not able to show prejudice cause to them assuming there is non-compliance of the procedure under the Mamlatdars Courts Act, 1906. Therefore, in the absence of legal prejudice, the impugned order cannot be set aside.

13. No material is placed on record by petitioners that there is non-compliance of procedure under the Mamlatdars Courts Act, 1906. The petitioners failed to point out that an Application was filed before the First Authority seeking cross-examination. In the absence of request for cross-examination, the exercise of power by the Authorities below need not be interfered. Moreover, there is no dispute about the status of tenants' predecessor as a tenant on Tillers' Day. Therefore, there is no question of causing prejudice to the petitioners.

14. Learned Advocate for the petitioners next submitted that on the day of filing of Application under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, the existing tenants were not in possession and, therefore, the

Application could not have been allowed by the Authorities below. As held by the Apex Court, in the case of **Vasant Ganpat Padave** (Supra) in paragraph 17 quoted above, the tenants' right to purchase becomes ineffective only when the tenant fails to appear within the time prescribed after notice is given to him, or appears and declines purchase, or if the tenant fails to pay the entire purchase price. Undisputedly, none of contingencies have occurred and, therefore, the existing tenants' right to purchase has not been extinguished. Moreover, the predecessor of the present petitioners had admitted in her statement in a proceedings under Section 32-G in the year 1960 that the predecessor of existing tenants' was tenant on Tillers' Day. Therefore, the orders passed by the Authorities below do not suffer from legal infirmity.

15. The writ petition stands dismissed. No costs.

16. *At this stage, the Advocate for the petitioner seeks extension of the interim protection granted by MRT vide order dated 1 December 2024. The said interim protection is extended for a period of 4 weeks.*

(AMIT BORKAR, J.)

(Note:- This order is modified as per order dated 28 March 2024. Corrections in paragraph 16 are shown italicize.)