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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1335 OF 1992

Govinda Joti Parit, D/H. Smt. Tanubai W/o.
Govinda Parit, Since Deceased through Legal
Heirs Sonabai Kerba Parti @ Shinde and Ors. .. Petitioners

Versus

Janardhan S. Kulkarni (Since Deceased)
Through Mangla Janardhan Kulkarni and Ors. .. Respondents

WITH

WRIT PETITION NO. 1076 OF 1992

Govinda Joti Parit, D/H. Smt. Tanubai W/o.
Govinda Parit by their heirs Kerba Parti @
Shinde and Ors. .. Petitioners

Versus

Janardhan S. Kulkarni (Since Deceased)
Through Mangla Janardhan Kulkarni and Ors. .. Respondents

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- Mr. N.J. Patil, Advocate for Petitioners.
- Mr. Joel D'souza a/w. Ms. Nikita Kamble, Advocates i/by Mr. Suresh M. Kamble for Respondents.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 07, 2025.

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioners and Mr. D'souza, learned Advocate for Respondents.

2. This is a group of two Writ Petitions. Writ Petition No.1335 of 1992 is filed by Petitioners to challenge the judgment and order dated 18.11.1989 passed by the Maharashtra Revenue Tribunal (for

short '**MRT**') in Revision Application No. MRT KP/76/1986 arising out of Tenancy Appeal No.50 of 1981 confirming the judgment and order dated 17.01.1977 passed by the Additional Tahasildar and Agricultural Land Tribunal, Kagal in Case No. Banage 32-G 3/60 under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short '**the said Act**'). Writ Petition No.1076 of 1992 is filed by the same Petitioners to challenge the judgment and order dated 18.11.1989 passed by the MRT in Revision Application No. MRT KP/86/1986 arising out of Tenancy Appeal No.49 of 1981 confirming the judgment and order dated 17.01.1977 passed by the Additional Tahasildar and Agricultural Land Tribunal (ALT), Kagal in Case No. Bange 32-G 3/77 under the said Act.

3. Brief facts relevant for adjudication of the present Writ Petitions are as under:-

4. Govinda Joti Parit is the tenant whereas Janardhan S. Kulkarni is the original landlord of the subject land bearing Gat No.58 admeasuring 50Ares situated at village – Banage, Taluka Kagal, District – Kolhapur (for short '**the suit land**'). Both the parties have expired and litigation is continued by their successors-in-title who are on record. On tillers day the original landlady namely Satyabhama Narottam Kulkarni was in possession of the said land. She was a widow and she expired on 13.09.1958. She executed a Will dated 27.06.1955

bequeathing the suit land to the original Respondent who was her nephew (son of her elder brother). She had no issues and legal heirs.

5. In 1960, *suo motu* Section 32G proceedings were commenced by the ALT but the same were halted and not continued due to various reasons. However in the year 1997, Tahsildar and ALT *suo motu* commenced Section 32G proceedings and in those proceedings two statements of tenant were recorded, firstly preliminary statement was recorded on 19.11.1976 and secondly final statement was recorded on 17.01.1977. Though in the preliminary statement the tenant expressed his willingness to pay the purchase price before the ALT, but at that time the landlord was not put on notice and hence preliminary statement recorded was unilateral. When the enquiry began, it was culminated after the final statement of the tenant wherein he expressed his unwillingness to purchase the suit land without any coercion of the landlord on him. Where upon Section 32G proceedings were culminated in favour of the landlord. As a result of the Sale Certificate dated 12.01.1981 was issued under Section 32P in favour of the landlord and directions were passed to the tenant to vacate the said suit land.

6. In the above background the tenant filed two Tenancy Appeals namely Tenancy Appeal No.49 of 1981 and Tenancy Appeal No.50 of 1981 before the SDO to challenge the 32G and 32P orders /

Sale Certificates. By common order dated 25.02.1986 both Tenancy Appeals were dismissed. The successors-in-title of tenant therefore filed two Revision Application No.76 of 1986 and Revision Application No.86 of 1986 before the MRT. By common order dated 18.11.1989 the MRT dismissed both Revision Applications and upheld the order of SDO in both Tenancy Appeals thereby upholding the 32G and 32P order / Sale Certificate. Being aggrieved the tenant succeeded by his successors-in-title filed the present two Writ Petitions namely Writ Petition No.1335 of 1992 and Writ Petition No.1076 of 1992 maintaining a challenge to the judgment of MRT. Hence, both Petitions are heard and decided together.

7. Mr. Patil, learned Advocate appearing on behalf of the Petitioners (Successors-in-title to the Tenant) has made the following submissions:-

7.1. He would submit that the learned MRT erred in holding that Petitioners were unwilling to purchase the suit land and wrongly came to the conclusion that purchase of suit land had become ineffective as held by the ALT. He would submit that the MRT ought to have relied upon the preliminary statement of Petitioners recorded in the year 1976 wherein Petitioners expressed their readiness and willingness to purchase the suit land under the said Act. He would submit that in that view of the matter the prescribed procedure was vitiated by the ALT

while conducting the proceedings under Section 32G of the said Act.

7.2. He would submit that the Will executed by Satyabhama was not registered and the original copy of the same was not produced before the Authority on the basis of which Respondents claimed ownership of the suit land and therefore *suo motu* proceedings under Section 32G of the said Act commenced by Additional Tahasildar and ALT were illegal and bad in law. He would submit that before the learned ALT in the Tenancy Case, Respondents failed to produce the death certificate of Satyabhama's husband to prove that she was a widow on tiller's day i.e. 01.04.1957 and therefore the statement made by Respondents ought not to have been relied upon for ascertaining the fact that she was a widow on tiller's day. He would submit that original tenant Govinda on behalf of Petitioners recorded his preliminary statement on 19.11.1976 showing his readiness and willingness to purchase the suit land, but it is also seen that a further statement was recorded on 17.01.1977 in which he has expressed his unwillingness to purchase the suit land. He would submit that the second statement recorded by the original tenant Govinda was on account of a fraud having been committed on him whereby he was induced to make such a statement and this statement has been held against Petitioners' case in the 32G proceedings before the Authorities below. He would submit that once the preliminary statement of tenant was recorded by Competent Authority namely the Additional

Tahasildar and ALT in the 32G proceedings, there was no need and necessity to record his second statement thereafter which is held against Petitioners. He would submit that Respondents have failed to prove heirship of their predecessor to the subject suit land as per provisions of Section 31(A)(D) of the said Act.

7.3. He would submit that it was not necessary for Petitioners to comply with provisions of Section 32F(1)(A) of the said Act on account of which the proceedings initiated under Section 32G against the Petitioners are vitiated. He would submit that learned MRT failed to appreciate the fact that while recording the second statement of original tenant Govinda on 17.01.1977 fraud was practised on him while doing so and therefore no reliance ought to have been placed on the second statement. He would submit that Respondents failed in their endeavour to prove that the original tenant was cultivating the said land since he was a resident of Village Yelgud whereas the suit land was situated at Village Banage.

7.4. In support of his submissions, Mr. Patil has referred to and relied upon the following decisions of the Supreme Court and this Court:-

- (i) *Shrikrishna Subhana Horambale and Ors. Vs. Shripad Jiwaji Apate (deceased by L.R.'s) and Ors.*¹;
- (ii) *Vasant Ganpat Padave (Dead) by Legal Representative*

¹ AIR 1986 Bombay 86

*and Ors. Vs. Anant Mahadev Sawant (Dead), through Legal Representative and Ors.*²;

(iii) *Dayandeo Ganpat Jadhav Vs. Madhav Vitthal Bhaskar and Ors.*³; and

(iv) *Rambhai Lallubhai Patel and Ors. Vs. Bai Kamla and Ors.*⁴.

7.5. He would contend that in the case of *Shrikrishna Subhana Horambale and Ors.* (1st *Supra*), this Court has held that when the tenant is in personal cultivation of the suit land and has repeatedly expresses willingness to purchase the suit land and landlord has expired in the meanwhile, then the Court has held that there is no question of giving intimation to legal heirs of deceased landlord under Section 32F of the said Act on the demise of the landlord and the right of purchase does not become ineffective gets extinguish due to demise of the landlord.

7.6. Next he would draw my attention to the decision of the Supreme Court in the case of *Vasant Ganpat Padave (Dead) by Legal Representative and Ors.* (2nd *Supra*) and contend that in the said case Supreme Court held that it would be wholly anomalous for a tenant to be told that if the landlord is a widow, she must be first intimated of the fact that tenant desires to meaningfully exercise his right of purchase and the Supreme Court has held that no such intimation in

2 (2019) 19 SCC 577

3 (2005) 8 SCC 340

4 1995 Supp (3) SCC 615

such a case is required to be given.

7.7. He would argue that the scheme of 1948 Act namely the said Act and in particular, the 1956 Amendment thereto which introduced “tillers day” is on the premise that an absentee landlord’s rights in the land must give way to a cultivating tenant and on tiller’s day the landlord is divested of title and the tenant is vested with title agricultural land which he cultivates by dint of his own effort. He would submit that it is only in three exceptional cases that such purchase becomes ineffective i.e. if the tenant fails to appear within the time prescribed after notice is given to him or he appears and declines purchase, or if the tenant fails to pay the entire purchase price. He would submit that in the present case, the predecessor of the Petitioners appeared before the Competent Authority and expressed his desire to pay the purchase price, but it so happened that his second statement was recorded in which he declined to pay the purchase price and that statement has been upheld against Petitioners. He would submit that the impugned judgment of the learned MRT suffers from the aforesaid infirmity and deserve to be quashed and set aside and the original predecessor-in-title of Petitioners is required to be declared as tenant of the suit land.

8. *PER CONTRA*, Mr. D’souza, learned Advocate alongwith Mr. Kamble appearing on behalf of the Respondents has made the

following submissions:-

8.1. He would submit that the main point contented and argued by Mr. Patil is clearly answered in the impugned judgments. He would submit that Satyabhama expired on 13.02.1958 and she had no legal heirs. She executed a Will dated 27.06.1955 by which she bequeathed the suit land to the original Respondent – Janardhan Shankar Kulkarni, who was the son of her real brother. He would submit that ALT, Kagal started 32G proceedings under the said Act and on due inquiry concluded that purchase of suit land by the tenant had become ineffective as tenant declined to pay the purchase price. Therefore the order dated 17.01.1977 passed in Tenancy Case No.32G Banage 3/60 after duly recording the statement of the tenant in the presence of the landlord came to be passed. He would submit that in this view of the matter, when clear statement of the tenant was recorded before the Trial Court i.e. ALT, Kagal, the SDO in Appeal has upheld the same and dismissed the Appeal of the tenant since the facts are undisputed even by the Petitioners. He would submit that in paragraph No.10 of the impugned order, the learned MRT has returned a categorical finding from the record that in the year 1976, 32G proceedings were again started and on 19.11.1976 the tenant recorded his statement that he has a right to purchase the suit land. However on that date the landlord did not appear before the ALT and therefore the case was adjourned to a future date. He would submit that thereafter on the

future date, tenant's statement was recorded on 17.01.1977 as stated on page No.29 and in that statement he recorded that he was unwilling to pay the purchase price of the suit land and therefore relying upon such statement in the proceedings the Trial Court declared the sale as ineffective.

8.2. He would next draw my attention to paragraph No.12 of the impugned judgment wherein it is clearly held that the first statement of the tenant which was recorded was in the nature of a preliminary inquiry when the landlord was not even served with the notice and no regular inquiry was made recording the proceedings under Section 32G of the said Act and most importantly even the deceased tenant Govinda was aware that Satyabhama's husband had expired about 6 – 7 years before and therefore the said landlady Satyabhama was a widow on tiller's day.

8.3. The learned MRT has therefore from the record of the case rightly concluded that it could not lie in the mouth of the tenant to contend that the status of the landlady was not that of a widow on tiller's since the date of demise of her husband was not known or proved and his death certificate was not produced on record. That apart, he would submit that it was also argued by tenant that heirship of the original successor-in-title to the landlady was duly proved on the basis of his heirship certificate which was not challenged by the tenant.

He would submit that the heirship certificate was issued to him on the basis of the Will executed by the said Satyabhama in his favour. He would also vehemently argue that in the present case inquiry under Section 32G of the said Act was held as far back as in September 1960 and the said enquiry was postponed since the landlady was a widow on tiller's day and in that view of the matter when the said enquiry resumed in the year 1977, due process of law was followed and statement of the tenant was recorded by the ALT.

8.4. He would persuade me to consider the findings returned in paragraph No.13 of the impugned judgment passed by the MRT to submit that the tenant has categorically admitted the fact that he did not inform the landlord by sending notice as he was not willing to pay the purchase price of the suit land and at the end of his deposition on 17.01.1977 recorded that he had no desire to purchase the suit land and that no coercion was exercised on him. He would submit that in view of such statement having been recorded by the ALT i.e. Competent Authority in the statutory proceedings, the learned MRT has upheld the order dated 17.01.1977 passed under Section 32G of the said Act alongwith the order dated 12.01.1981 passed under Section 32P of the said Act and delivered the judgment dated 18.11.1989. Hence the same deserves to be upheld and the Petition be dismissed.

9. I have heard Mr. Patil, learned Advocate for Petitioners and Mr. D'souza, learned Advocate for Respondents and perused the record of the case with their able assistance. Submissions made by them have received due consideration of the Court.

10. Controversy in the present case is extremely narrow which is seen from the impugned orders challenged before this Court. There are proceedings under Section 32G as initiated as far back in the year 1960 under the provisions of said Act. These proceedings were kept on hold after they were initiated in view of the suit land having been in possession of said Satyabhama being landlady thereof. In 1976, the learned ALT i.e. Agricultural Lands Tribunal commenced with 32G proceedings. It is at this stage when proceedings commenced the preliminary statement of the original tenant Govinda was recorded by the ALT wherein the tenant showed his willingness to purchase the suit land.

11. It needs to be mentioned herein that enquiry under Section 32G envisages recording of statement made by the tenant in the presence of landlord after issuance of due notice to the landlord of the statutory proceedings. This is primarily because by virtue of said proceedings if the tenant cultivating said land on tiller's day agrees to pay purchase price of said land then subject to hearing the landlord for his objections the ALT will have to determine the 32G proceedings

appropriately. In the present case after recording of the preliminary statement it is seen that under the 32G proceedings statement of original tenant Govinda was recorded on 17.01.1977 in the presence of legal heirs of the landlady Satyabhama. Admitted position on record is that original tenant - Govinda made categorical statement that he was not willing to purchase suit land. The Petitioners before me have accepted this position. However, their argument is to the effect that statement was made on 17.01.1977 should be disregarded and previous statement should be considered. This is the first leg of argument advanced by Mr. Patil. It needs to be stated herein that deposition of the original tenant before the ALT took place in the year 1977 in the 32G proceedings and while deposing the original tenant has waived not only his right to purchase suit land by offering purchase price thereto but he has also waived noticed from the landlord in respect of information pertaining to the landlady Satyabhama becoming the successor-in-title to the suit land.

12. Another piece of argument advanced by Petitioners is that the exact date of death of the landlord was not on record by the said Satyabhama in order to prove that she was a widow and successor-in-title to the landlord on tiller's day. What is crucial to be noted is the fact that original tenant Govinda did not give notice for purchasing suit land which *sine qua non* for initiating and culminating 32G proceedings under the said Act and most importantly waived said

notice in view of he being unwilling to purchase said land. Once this was the position then sequitur of this was that an order under Section 32P came to be passed on 12.01.1981. It needs to be noted that order under Section 32P is in consequence of the order passed under Section 32G of the said Act. What is more clinching is the fact that when statement of the original tenant was recorded, he has categorically admitted that he is not under any influence of the landlord and therefore his unwillingness to purchase suit land should be recorded. Once the tenant waives his right to give notice of purchase, deposes in the statutory enquiry before the ALT - Competent Authority that he is not under the influence of landlord to make statement that he is unwilling to purchase suit land naturally sequitur of these events and instances is under Section 32G order passed by the ALT. Said order dated 12.01.1981 passed by the ALT, Kagal in the tenancy case and upheld by the learned SDO directing handing over possession of suit land to the landlord dated 25.02.1986 therefore cannot be faulted with.

13. Second limb of argument which is vehemently argued by Mr. Patil pertains to a issue which was not the subject matter of the proceedings before the Courts below. While relying upon a decision in the case of *Shrikrishna Subhana Horambale and Ors. (1st Supra)* Mr. Patil would contend that once the tenant has expressed his willingness to purchase suit land, then it is not necessary on the part of ALT to

record his statement repeatedly or more than once since there is no such provisions envisaged under the said Act which requires recording of statement of tenant more than once. He would submit that statement of original tenant - Govinda recorded on 19.11.1976 should be considered sacrosanct and the only statement for arriving at a decision in the 32G proceedings. He would also submit that there is no provision in the said Act which legally requires or obliges tenant to give notice or intimation of willingness to purchase to the successor-in-title of the deceased landlord. Mr. Patil would have been right if the position and status in the present case would have been as argued by him. The record clearly shows that the first statement of the original tenant which was recorded on 19.11.1976 was not a statement while deposing in the 32G proceedings. It is seen that 32G proceedings were commenced on 19.11.1976 and when the said statement was recorded landlord was not even issued a notice as contemplated under Section 32G of the said Act. The landlord never appeared at the time of recording of the statement as on 19.11.1976. Case was adjourned from time to time when notice was issued to the landlord and only when he appeared on 17.01.1977 and the proceedings commenced. The deposition of the original tenant was recorded in the 32G proceedings. It is not merely statement of unwillingness to purchase suit land which was recoded. Tenant also unequivocally recorded the fact that there was no coercion or pressure or influence on him by the landlord for

recording his statement of he being unwilling to purchase the suit land. hence in such a situation this cannot be equated with the case of recording the deposition and statement of the original tenant twice for the same caus of action. Therefore I am unable to accept the submission made by Mr. Patil of statement of original tenant being recorded twice over in the present case which is not contemplated under the provisions of said Act.

14. The procedure under 32G is of the more important for consideration in the present case. Under proceedings under 32G, the Tribunal is required to issue notice and determine the purchase price to be paid by the tenant by following due procedure prescribed under under Sections 32G(1) to 32G(5).

14.1. Under Section 32G(1) it is declared that Tribunal which has issued notice individually to each such tenant, landlord and also as far as practicable, to other person calling upon each of them to appear before it on the date specified in the public notice. What this provision envisages is that notice have to be issue to each of the concerned persons for appearing before the Tribunal on a specified date. If these provisions is to be looked at in the facts of the present case then the first statement which is recorded by the ALT of the original tenant is before appearance of the landlord before the Tribunal on the specified date.

14.2. Thereafter under Sections 32G(2) and (3) it is stated that Tribunal shall record in the prescribed manner statement of tenant whether he is or is not willing to purchase the land held by him as a tenant and if any tenant makes a statement that he is not willing to purchase the land, then Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective.

15. In the present case it is seen that provisions of Section 32G(2) and (3) were carried out by the Tribunal on 17.01.1977 when the statement of original tenant was recorded of he not willing to purchase the suit land. Once this position is envisaged under law then provisions of Section 32P kick in. Section 32G empowers Tribunal to issue notices and determine price of land to be paid by the tenant and states that if tenant makes a statement that he is not willing to purchase said land then Tribunal has to held formal enquiry for disposal of the suit land in the manner prescribed in Sub-section (2) thereof. In the present case it is seen that order dated 12.01.1981 passed under Section 32P is passed under the provisions of 32P(2)(b). Once the statutory provisions has stated have been followed to the hilt of the Competent Authority whatsoever can be found in the consequence of statutory Authorities. Hence in view of aforesaid observations and findings I am of the opinion that impugned judgment and order dated 18.11.1989 passed in Revision Application No. MRT

KP/76/1986 arising out of Tenancy Appeal No.50 of 1981 is a reasoned and cogent order. Findings returned in paragraph Nos.9 to 15 of the said judgment do not call for any interference of this Court. Impugned Judgment dated 18.11.1989 is upheld. Resultantly both Writ Petitions fail.

16. Writ Petition Nos.1335 of 1992 and 1076 of 1992 are dismissed.

[MILIND N. JADHAV, J.]

17. After the order is pronounced in open Court, Mr. Patil, learned Advocate for Petitioners has requested the Court to stay the order to enable the Petitioners to test validity of the order in the Superior Court. His request for stay is granted. Present order is stayed for a period of four weeks from the date of uploading of this order.

[MILIND N. JADHAV, J.]

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