AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2905 OF 2019
WITH
INTERIM APPLICATION NO.4574 OF 2023

Anandrao Rajaram Katkar & Ors. … Petitioners
V/s.
Ratnabai Shivaji Katkar & Ors. … Respondents

Mr. Sunil G. Karandikar i/by Mr. Amitkumar Sale for the petitioners/applicants.

Mr. Sudhir Hardikar for respondent No.1

Smt. M.P. Thakur, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MAY 8, 2025

<u>P.C.</u>:

1. The present writ petition under Article 227 of the Constitution of India challenges the order dated 12th February 2018 passed by the Maharashtra Revenue Tribunal (hereinafter referred to as “MRT”) in Revision Application No. SS/X/6 of 2015. By the said order, the MRT set aside the decision dated 28th August 2015 passed by the Sub-Divisional Officer (SDO) in Tenancy Appeal Nos. 3 of 2014 and 2 of 2015. The MRT has also set aside the earlier order dated 17th November 2014 passed by the Tahsildar and Agricultural Lands Tribunal, Khanapur (hereinafter referred to as “ALT”) in Tenancy Case Nos. 32F/5 of 2012 and 32P/6 of 2012. Being aggrieved, the petitioners have approached this Court.

2. The background of the case is as follows: One Rakhmabai was the original landlady of certain agricultural lands situated at Village Bhagyanagar, Taluka Khanapur, District Sangli, bearing Gat Nos. 20, 499, 502, 8, 505, 192, 277, 532 and 521. The petitioners claim that they are cultivating tenants of these lands and that their predecessor-in-title was a *protected tenant*. On the strength of being a protected tenant as on 1st April 1957, the petitioners claim the status of deemed purchasers of the said lands under the Bombay Tenancy and Agricultural Lands Act, 1948.

3. In the year 1979, during a proceeding initiated by one Rajaram, Rakhmabai is stated to have accepted an amount of ₹7,000/- as part payment of the purchase price. However, the proceeding was kept in abeyance due to her status as a widow, in terms of the legal position under the tenancy law. It is the case of the petitioners that Rakhmabai later executed a Will in their favour. However, in a civil suit, the said Will was disbelieved, and the Court recorded a finding that the contesting respondents are the legal owners of the suit lands.

4. The date of death of the widow landlady Rakhmabai is 11th May 1991. As per the petitioners, on 8th May 1992, they informed the legal heirs of Rakhmabai about their willingness to purchase the land. Thereafter, on 7th May 1993, the petitioners issued a formal notice expressing their intention to purchase the land under the provisions of Section 32F of the Tenancy Act. The said notice was also submitted to the Tahsildar on 10th May 1993, and bears Inward No. 5051 in the official register.

5. Subsequently, a civil dispute arose between the parties and ultimately culminated in favour of the contesting respondents, who were declared to be the owners of the suit land. Thereafter, the petitioners initiated tenancy proceedings under Section 32F of the Tenancy Act before the Tahsildar and ALT, Khanapur, asserting their right to purchase the land as deemed purchasers.

6. The Tahsildar and ALT recorded a clear finding that the landlady had died on 11th May 1991. The notice expressing intention to purchase the land was issued by the petitioners on 7th May 1993, which falls within the period of two years from the death of the landlady, as required under the provisions of Section 32F. The Tahsildar also recorded that the intimation given to the legal heirs of the deceased landlady was submitted to the office and duly inward on 10th May 1993. Based on these findings, the Tahsildar allowed the application of the petitioners and permitted them to deposit ₹8,503/- as the purchase price. Direction was also issued to issue a certificate under Section 32M of the Act declaring them as purchasers.

7. The order of the Tahsildar was challenged before the Sub-Divisional Officer in appeal, which came to be dismissed, thereby confirming the findings of the Tahsildar. However, in Revision Application No. 6 of 2015 filed by the contesting respondents, the Maharashtra Revenue Tribunal set aside both the orders of the Tahsildar and the Sub-Divisional Officer. Aggrieved by the said decision of the MRT, the petitioners have approached this Court under Article 227 of the Constitution of India.

8. Learned Advocate Mr. Karandikar, appearing for the petitioners, submitted that the Tahsildar had rightly accepted the petitioners' case that they had informed the legal heirs of the deceased landlady about their intention to purchase the land, as required under Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948. He pointed out that this intimation was sent through a notice dated 7th May 1993, and this fact was supported by contemporaneous official record—specifically Entry No. 5051 in the Inward Register maintained by the office of the Tahsildar, which shows receipt of the notice on 10th May 1993.

9. He argued that the Tahsildar, having recorded a clear finding based on this documentary material, had rightly allowed the petitioners' claim, and the said finding being based on relevant and admissible evidence, ought not to have been interfered with by the Maharashtra Revenue Tribunal (MRT). He contended that the MRT, while exercising revisional jurisdiction, ought not to have re-evaluated the factual findings unless such findings were perverse or unsupported by evidence.

10. Mr. Karandikar further relied upon the judgment of the Hon'ble Supreme Court in *Vasant Ganpat Padave (Dead) by LRs v. Anant Mahadev Sawant (Dead) by LRs*, reported in (2019) 9 SCC 577. He submitted that, as per the legal position settled in the said judgment, the requirement for a tenant to indicate his intention to purchase the land within two years after one year from the death of a widow-landlady is not mandatory in all cases. He submitted that the petitioners had in fact complied with even this requirement, but even otherwise, in light of the law laid down in

Vasant Padave, the delay, if any, cannot defeat the right of the tenant if the intention was communicated reasonably within time. He, therefore, submitted that the MRT's order suffers from an error apparent on the face of record and deserves to be quashed and set aside.

11. On the other hand, Mr. Sudhir Hardikar, learned counsel appearing for the respondents supported the order passed by the MRT. He submitted that the MRT has correctly disbelieved the petitioners' version regarding service of the intimation of intention to purchase. He referred to a communication issued by the Tahsildar dated 22nd September 1994, wherein the Tahsildar stated that the particular document of intimation, which the petitioners claimed was submitted on 10th May 1993 (Inward No. 5051), was not found in the official records at the time of verification. It was submitted that this official communication, confirming that the relevant document was not traceable, was a crucial piece of evidence rightly considered by the MRT to reject the petitioners' claim. Based on this, the MRT recorded a finding that the notice of intention was not duly submitted, and therefore, the petitioners could not be treated as having fulfilled the statutory requirement under Section 32F.

12. The learned counsel for the respondents also submitted that, even as per the ratio of the judgment in *Vasant Padave* (supra), the burden of proving timely intimation lies on the tenant. He contended that the respondents had in fact informed the tenants about the death of the widow landlady, and the tenants thereafter failed to act diligently. Though the respondents had not filed the document relating to such intimation before the lower authorities, it was only because no such occasion arose earlier. Hence, the learned counsel submitted that the order passed by the MRT is legally sustainable and does not require interference under Article 227 of the Constitution.

13. Rival contentions fall for consideration.

14. For a just and proper adjudication of the controversy in hand, it is first necessary to delineate the foundational and undisputed facts which are pivotal to the issue involved. It is not in dispute that—

> **(a)** The original landlady, Rakhmabai, expired on 11th May 1991; and
>
> **(b)** The predecessor of the petitioners was a protected tenant on the Tiller's Day, namely, 1st April 1957, under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act").

15. These two facts, being uncontroverted, form the statutory trigger for the operation of the rights conferred on a tenant under Section 32F of the said Act. The consequence of a widow holding the land postpones the vesting of ownership rights in favour of the tenant until after her death, and hence, the date of her demise becomes the operative date from which limitation under Section 32F begins to run.

16. The statutory scheme embodied in Section 32F, prior to its exposition in *Vasant Ganpat Padave v. Anant Mahadev Sawant*,

(2019) 9 SCC 577, required a tenant—who became entitled to purchase the land after the death of a widow landholder—to intimate, within two years but after one year from the date of death of such landholder, his intention to purchase the said land. In the present case, the petitioners have consistently maintained that such intimation was issued to the legal representatives of the deceased widow through a notice dated 7th May 1993 and that this notice was duly submitted to the Tahsildar on 10th May 1993. The same was entered in the Inward Register maintained by the Revenue Authorities, bearing Entry No. 5051 of the said date.

17. The Maharashtra Revenue Tribunal, while reversing the concurrent findings of the Tahsildar and the Sub-Divisional Officer, appears to have premised its conclusion primarily on a communication dated 22nd September 1994 issued by the Tahsildar, wherein it was stated that the relevant document concerning Inward Entry No. 5051 had been transferred to the "Tenancy Table" and was not available in the existing record.

18. It is pertinent to note that the said communication was issued by the Tahsildar upon application made by the contesting respondents. However, in a matter where rights under Section 32F are being adjudicated, the appropriate course for a revisional authority exercising jurisdiction under the Tenancy Act was to summon the original record and proceedings pertaining to the said Section. The Tribunal failed to adopt this elementary procedural safeguard. Rather than seeking the record to independently ascertain the authenticity of Entry No. 5051, the Tribunal has accepted the communication—by itself inconclusive—as a basis to disregard not only the contemporaneous documentary material in the form of the Inward Register but also the reasoned findings of two statutory authorities below.

19. The finding recorded by the Tahsildar was not in the nature of mere conjecture but was a conclusion drawn on the basis of a government record regularly maintained in the ordinary course of official business. Such evidence carries a presumption of correctness under Section 114(e) of the Indian Evidence Act, 1872. The sufficiency or weight of such material was not for the Tribunal to reassess in its revisional jurisdiction unless it was perverse or wholly unsupported by record—which in the present case, it was not.

20. In my considered view, the notice of intention dated 7th May 1993, corroborated by the contemporaneous Inward Register entry dated 10th May 1993 bearing No. 5051, constituted sufficient compliance with the requirements of Section 32F of the said Act. Once the authorities below had rendered concurrent findings based on such documentary evidence, the Maharashtra Revenue Tribunal could not have displaced those findings by relying upon a subsequent communication expressing inability to trace the said document without itself calling for the original records.

21. The Tribunal's approach is flawed in that it elevates the absence of the document from the immediate record to a conclusive inference that such document never existed, while disregarding the statutory presumption attaching to official entries and ignoring the rule of best evidence. Accordingly, I am of the opinion that the finding of the MRT disbelieving the notice of intimation dated 7th May 1993 is unsustainable in law and on facts.

22. Therefore, since the petitioners have satisfied the substantive statutory conditions for exercising their right to purchase under Section 32F as it stood before the decision in *Vasant Padave* (supra), no further inquiry into the liberalised ratio laid down in the said judgment is warranted. The petition can thus be decided on the basis of pre-existing statutory compliance, and the impugned order of the Maharashtra Revenue Tribunal, which proceeds on an erroneous appreciation of the record and in disregard of established findings by the authorities below, cannot be sustained in law.

23. The decision of the Tahsildar, as affirmed by the Sub-Divisional Officer, was lawful, well-reasoned, and based on admissible and reliable material. In the absence of any jurisdictional error or perversity, the Tribunal's interference was unwarranted. The order passed by the MRT is, therefore, liable to be set aside.

24. Accordingly, rule is made absolute in terms of prayer clause (b). No costs.

25. In view of disposal of the writ petition, nothing remains to be adjudicated in the interim application and the same stand disposed of as such.

(AMIT BORKAR, J.)