SUPREME COURT OF INDIA

Sevaliram Gotiram Teli (Deceased)By Heirs and Lrs.

Vs.

Madhukar Yeshwant Patankar

(N.P. Singh and S.B. Majmudar JJ.)

19.11.1996

JUDGMENT

S.B. MAJMUDAR, J.

In this appeal the question that falls for our consideration is as to whether heirs of a tenant governed by the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as `the Act') can claim restoration of possession of the land under the provision of Section 32(1B) of the Act when such proceedings were initiated suo motu by the Mamlatdar concerned. The Additional Mamlatdar, the Deputy Collector and the Maharashtra Revenue Tribunal held in favor of the heirs of the tenant and ordered restoration of possession of the lands from the respondent-landlords. The High Court of Bombay by the judgment under appeal took a contrary view and held that such proceedings are maintainable only for the tenant concerned and not for his heirs. It is this view of the Bombay High Court which brought in challenge in the present proceedings by the heirs of the erstwhile tenant. A few relevant facts may be noted at the outset. One Savaliram Gotiram Teli was the tenant of three agricultural lands being Survey Nos. 88, 89 and 90 situated at Village Trimbak in Nasik Taluka in Maharashtra State. Respondents were the landlords of the said lands. On the appointed day, that is, 15th June 1955 the said tenant was in occupation of these lands. He was dispossessed by the landlords prior to 1st April 1957 otherwise than under an appropriate order under Section 29 of the Act. After dispossessing the tenant the respondent-landlords remained in possession of the said lands till 31st July 1969. The Additional Mamlatdar instituted suo motu proceedings under Section 32 (1B) of the Act of the ground that the tenant was in possession of the lands on the appointed day and he was dispossessed prior to the tillers day, that is, 1st April 1957 by the landlords without following due procedure of law and the lands in question were in possession of the landlords of their successors-in-interest on 31st July 1969 and, therefore, the respondents were liable to restore the possession of the lands to the heirs of the tenant even though the tenant in the meantime had died in 1959. As all the requisite condition for applicability of Section 32(1B) of the Act were found to have been satisfied the Special Additional Tahsildar, Nasik by his order dated 20th August 1971 directed the respondent-landlords to restore the lands to the heirs of the tenant under Section 32 (1B) of the Act for personal cultivation. The said order was challenged by the landlords by filing Tenancy Appeal which came to be dismissed by Leave Reserve Deputy Collector, Nasik on 10th January 1972. Respondent-landlords carried the matter in revision before the Maharashtra Revenue Tribunal under Section 70 of the Act. That Revision Application was also dismissed. It is thereafter, that the respondents, aggrieved by the order of the Revenue Tribunal dated 2nd March 1973, carried the matter in appeal under Article 227 of the Constitution of India to

the High Court of Bombay. The only question argued before the High Court by the respondents was as to whether the proceedings under Section 32 (1B) of the Act for the benefit of the heirs of the original tenant could be maintained. The learned Single Judge of the High Court by his order dated 1st March 1978 persuaded himself to hold that such proceedings were not maintainable for the heirs of the erstwhile tenant and only the tenant could have initiated such proceeding and as he had died in 1959 and as during his lifetime he had taken no steps to get restoration of possession of the lands within two years from the date of dispossession as per Section 29 of the Act his tenancy rights had got extinguished and could not be inherited by the appellant-heirs and consequently the proceedings under Section 32 (1B) of the Act were liable to the quashed on that ground. It is the aforesaid order of the learned Single Judge of the High Court which is brought in challenge in the present proceedings as noted earlier. At the time when this appeal was finally heard before us it was brought to out notice by learned counsel for the appellants that the aforesaid decision of the learned Single Judge which was reported in AIR 1979 Bombay 117 has been overruled by a Division Bench of the High Court of Bombay in the case of Pandharinath Sakharam Chavan v. Bhagwan Ramu Kate & Ors. AIR 1 Bombay 203 and it has been held by the Division Bench of the High Court that such proceedings under Section 32 (1B) of the Act were maintainable even at the instance of the heirs of the original deceased tenant if the statutory conditions for applicability of the Section were complied with.

Learned counsel for the respondents on the other hand submitted that though the Division Bench of the High Court has overruled this judgment so far as these proceedings are concerned this Court may uphold the view of the learned Single Judge as the same is well sustained on the scheme of the Act.

Having given our anxious consideration to the rival contentions we find that on the express language of Section 32 (1B) of the Act the view taken by the learned Single Judge of the High Court in the impugned Judgment cannot be sustained. Section 32 (1B) of the Act reads as under: "32 (1B). Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agriculture use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in- interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32-A t 32-R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him:

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area. Explanation.- In this sub-section "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution on death."

A mere look at the said provision shows that for applicability of the said provision the following conditions must be satisfied:

(1) The tenant governed by the Act must be in possession on the appointed day, that is, 15th June 1955.

(2) He should have been dispossessed before the tillers day, that is, 1st April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in Section 29.

(3) The said land must be in possession of the landlord or his successor-in-interest on 31st day of July 1969. (4) The land should not have been put to non-agricultural use by the landlord on or before the 31st day of July 1969.

Once the aforesaid four conditions are satisfied a statutory duty is cast on the Tahsildar notwithstanding anything contained in Section 29 either suo motu or on application of the tenant to hold an inquiry and direct that such land shall be taken from the possession of the landlord or his successor-in-interest and shall be restored to the tenant. Once that happens the provisions of Section 32-A to 32-R of the Act will get attracted and the concerned tenant would be declared deemed purchaser of the land on the day on which the land is restored to him. However the restoration order will be subject to the undertaking of the tenant to cultivate the land personally. There is no dispute in the present case that all the aforesaid conditions are satisfied by the appellants. The High Court also has not taken a contrary view on the applicability of these conditions, namely, that the original tenant Savaliram Gotiram Teli was in possession of the lands of 15th June 1955, the appointed day. That he was dispossessed before 1st April 1957 by the respondent-landlords without following the procedure of Section 29. That thereafter the lands remained in possession of the respondents upto 31st July 1969 and they did not put the lands to non-agricultural use. Once these conditions were satisfied in suo motu proceedings taken out by the Tahsildar it was the statutory obligation of the Tahsildar to restore the lands to the tenant. Unfortunately by the time these proceedings could be initiated and Section 32 (1B) could operate the tenant had died in 1959. It is only on this ground that the High Court took the view that the tenant's heirs cannot get the benefit of Section 32 (1B) of the Act. The learned Single Judge in order to come to this conclusion placed reliance on two circumstances, (i) the tenant in his lifetime after dispossession had not taken steps to get restoration of possession under Section 29 of the Act within two years of dispossession; and (ii) the Section nowhere expressly contemplated that the land could be restored to successor-in-interest of the tenant when the Section itself provided that the land could be in possession of landlord or his successor-in-interest meaning thereby proceedings could be initiated even against the successor- in-interest of the landlord but the Section nowhere provided a similar right in favour of the successor-in-interest of the tenant. In our view with respect both these grounds are unsustainable for non-suiting the appellants. So far as the first ground is concerned it has to be kept in view that Section 32 (1B) of the Act itself operates on its own and includes within it the non obstante clause meaning thereby overriding the provision of Section 29 of the Act. This clearly means that whether the erstwhile tenant had followed the provisions of Section 29 or not for getting restoration of possession of the land from the landlord within two years under Section 29 was irrelevant as a further locus penitential is given to such tenants by the express language of Section 32 (1B) of the Act and the said Section would operate independently of and de hors section 29. Unfortunately the effect in this non obstante clause is missed by the learned Single Judge of the High Court in the impugned judgment. The Division Bench in the case of Pandharinath (supra) has rightly pointed out the said flaw in the judgment of the learned Single Judge. Once Section 32 (1B) operates on its own independently of provisions of Section 29 of the Act the result becomes obvious, Section 40 of the Act then squarely gets attracted. Section 40 reads thus:-

"S.40. (1) Where a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it at the time of his death, to such heir or heirs of the deceased tenant as maya be willing to continue the tenancy.

(2) Where the tenancy is inherited by heirs other than the widow of the deceased tenant, such widow shall have a charge for maintenance on the profits of such land."

The said Section provides for a deemed fiction about transmission of existing tenancy rights in favour of the heirs. Thus, by the time the tenant died in 1959, as his tenancy rights had not got extinguished by an appropriate proceedings under Section 29 at the instance of the landlord, those tenancy rights survived and could be transmitted under the statutory provisions of Section 40 in favour of the heirs of the erstwhile tenant who were obviously willing to continue as tenants. Consequently the appellants themselves got clothed with the rights of statutory tenants by operation of Section 40 of the Act. The result was that when Section 32 (1B) operated they fully satisfied the requirement of being statutory tenants of the land in question having the same terms and conditions of tenancy qua the respondent landlords and hence could claim their right of restoration of possession of the tenanted lands against the respondent-landlords on satisfaction of the required conditions of Section 32 (1B) of the Act. The second ground which appealed to the learned Single Judge is also unsustainable for the simple reason that Section 32 (1B) of the Act was required to include a provision regarding restoration of possession by the successor-in-interest of landlords for the simple reason that the landlord might have died in the meantime and his interest in the land might have been inherited by his successor-in-interest by way of testamentary succession or intestate succession and it could be urged by the successors-in-interest that they were not the landlords who had illegally dispossessed the tenant. In order to avoid such a contingency and to rope in such successors-in- interest who were claiming through the erstwhile landlord and who were in possession of land only because of the illegal dispossession of the tenant by their predecessor-in-interest, the Explanation had to be enacted to make his successor-in-interest answerable to the claim of erstwhile tenant under the said Section. Such is not the requirement so far as the tenant's heirs are concerned as the tenant being the aggrieved party can himself support the proceedings for restoration of possession or if he dies in the meantime and his tenancy rights get transmitted to his heirs under Section 40 of the Act, his heirs in their own right would become statutory tenants and can invoke the provisions of the Section against the landlord or his successor-in-interest. As there was no provision like Section 40 for transmission of landlord's right on his death, Explanation to Section 32 (1B) was required to be enacted for making the said provision fully operative in such contingencies. The learned Single Judge took the view that Section 40 was out of picture as the tenancy rights of the erstwhile tenant had got extinguished on account of non- compliance of Section 29 of the Act. Once that reasoning gets displaced by the express provision of non obstante clause in the Section excluding the operation of Section 29 for the applicability of Section 32 (1B), Section 40 gets attracted. Hence the non-mentioning of successor-in-interest of the tenant in the Section pales into insignificance as seen above. In our view with respect the learned Single Judge was patently In error when he held that application under Section 32 (1B) moved by the heirs of the erstwhile tenant could not be maintained even though all the statutory conditions for applicability of the Section were satisfied. It has to be kept in view that the tillers day legislation is based on the legislative in that all the tillers of the soil, namely, the tenants would become deemed purchasers of the lands on 1st April 19. Only in circumstances where the erstwhile tenants got illegally dispossessed prior to 1st April 1957, a question would arise as to what is to be done about them and that is the reason why Legislature gave a locus penitential to such displaced tenants to apply for

restoration of possession from the landlords on satisfying the conditions laid down in the Section and once those conditions are satisfied the estate of the tenant would get enlarged into full ownership so far as the tenanted lands are concerned. Thus it was a statutory right inhering in the estate of the erstwhile tenant which obviously could be pressed in service not only by the tenant himself but by his heirs and legal representatives who also can claim the statutory right to purchase these lands being a right inherited by them from the erstwhile tenant having a direct nexus with the proprietory rights in the land. For all these reasons, therefore, the judgment under appeal must be held to be erroneous in law and the said judgment was rightly overruled by the Division Bench of the High Court in the case of Pandharinath (supra).

In the result this appeal succeeds and is allowed. The judgment and order of the learned Single Judge of the High Court are quashed and set aside and instead the judgment and order rendered by the Maharashtra Revenue Tribunal as confirming the orders of the Special Additional Tahsildar dated 20th August 1971 and that of Leave Reserve Deputy Collector, Nasik dated 10th January 1972 are restored. In the facts and circumstances of the case will be re order as to costs.