

Mitulal Balaprasad tiwari (Dead) by Lrs.

Vs

Shankar Bhimaji Shinde -

Civil Appeal No. 6618 of 1983

(G.T. Nanavati, N. Santosh Hegde JJ)

11.02.1999

JUDGMENT

G.T. Nanavati, J.

1. The appellants have filed this appeal against the judgment of the High Court of Judicature at Bombay, in Special Civil Application No. 4517/76.

2. The land belonging to the respondent was assumed by the State for management under Section 65 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the Act). The order to that effect was passed by the Assistant Collector, Nasik, on 10.3.1953. The Assistant Collector then gave it on lease to the appellants for ten years i.e. from March 10, 1953 to March 31, 1963. On January 31, 1963 the Government decided to terminate the management on expiry of 10 years. Pursuant to that decision the Collector of Nasik passed an order on 31st April, 1963 for termination of the management and the respondent was put in possession of his land on 31.7.1963. Thereafter in 1965, the appellants, claiming to have become entitled to purchase it, applied to the authorities for starting proceedings under Section 32G of the Act for determination of purchase price. The Mamlatdar dropped those proceedings by an order dated November 13, 1968 as he was of the view that the appellants were no longer tenants of the land and, therefore, did not become entitled to purchase it. The appellants preferred an appeal to the Special Deputy Collector who allowed the same. Aggrieved thereby, the respondent preferred an appeal to the Maharashtra Revenue Tribunal. It was allowed and the case was remanded to the Mamlatdar. This time the Mamlatdar recorded a contrary finding and fixed the purchase price. The respondent preferred an appeal to the Collector but it was dismissed. He, then filed a revision application before the Maharashtra Revenue Tribunal. It was allowed as the Tribunal held that after termination of the management the appellants did not have any subsisting right and, therefore, the appellants did not become entitled to purchase it and no proceeding could have been initiated under Section 32G of the Act. As the decision of the Tribunal went against them the appellants approached the High Court under Article 227 of the Constitution. The High Court after considering the relevant provisions of the Act and the facts of this case agreed with the findings recorded by the Tribunal and dismissed the writ petition.

3. It was contended by the learned counsel for the appellants that the management came to an end on 31.3.1963 and on that day the lease granted by the Assistant Collector in favour of the appellants was subsisting. He further submitted that as the respondent did not terminate the tenancy of the appellants within the time prescribed by the proviso to Section 88(1)(d) the appellants became entitled to purchase the land. Learned counsel also submitted that the decision of this Court in *Dhondu Undru Choudhary v. Ganpatlal Shankarlal Agarwal, 1991 Supp.(1) SCC 513* has no application to the facts of this case as the lease in favour of the appellants was subsisting on the date

on which management came to an end and, therefore, possession of the appellants was not that of a trespasser. The Tribunal after considering the relevant material on record found as a matter of fact that the management had continued till possession of the land was handed over to the respondent on 31.7.1963. That finding has been confirmed by the High Court. It being a finding of fact, we will have to proceed on the basis that the management had really continued till 31.7.1963. We find no material on record which would establish that management had come to an end earlier. It is an admitted position that the tenancy created in favour of the appellants had come to an end on 31.3.1963. Therefore, possession of the appellants thereafter has to be regarded as that of a trespasser, following the decision of this Court in *Dhondu Undru Choudhary v. Ganpatlal Shankarlal Agarwal*, 1991 Supp.(1) SCC 513 (supra). For that reason the appellants did not become entitled to claim benefit of the proviso to Section 88(1) of the Act. This appeal is, therefore, dismissed. No order as to costs.