

BOMBAY HIGH COURT

Harshavardhan

Vs.

Mahadu

Special Civil Appln. No. 2746 of 1974

(Chandurkar and Deshpande, JJ.)

16.07.1979

JUDGEMENT

Chandurkar, J.

1. This petition has been referred to the Division Bench because the view taken by a learned Single Judge of this Court in *Tangabhadrabai v. Nanasaheb*¹, was doubted by the learned Single judge who had heard the petition in so far as the decision in Tungabhadrabai's case, holds on a construction of Section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act") that if one person of exempted category is succeeded by another person of the exempted category, the Tillers' day is postponed till the disability of the successor ceases.

2. It is necessary to briefly state the facts on which the questions raised in the petition have to be decided. Fields Survey Nos. 44 and 45 of village Kotamgaon, Tahsil Niphad, District Nasik, belonged to one Girijabai who was admittedly a widow and had not exercised her right of resumption under Section 31 till her death. Girijabai died on 4/6/1965. By a will executed by her, she bequeathed the two fields in question in favour of the Petitioner who was then minor having been born on 13/6/1958. He attained majority on 13/6/1978.

3. Proceedings under Section 32-G of the Tenancy Act were commenced by the Tahsildar of Niphad While determining whether the Respondent-tenant was entitled to purchase the fields, the Tahsildar took the view that the tenant having failed to give an intimation as contemplated by Section 32-F(1)(a) within the prescribed period, the purchase had become ineffective and directed that the lands should be disposed of under Section 32-P of the Tenancy Act In appeal, the Additional Collector, Nasik, held that since the petitioner was a minor, the Tillers' day was postponed for the second time till the petitioner attained majority. This order was confirmed by the Maharashtra Revenue Tribunal while dismissing the Revision Application filed by the

petitioner.

4. It is contended by Mr. Limaye on behalf of the petitioner that Girijabai was a widow and had not exercised her right under Section 31(1) of the Tenancy Act and the provisions of Section 32-F would come into operation as the Petitioner was a minor at the time of

¹(1976) 78 Bom LR 395

her death. According to the Petitioner, he was a successor-in-interest of the widow he could have exercised right of resumption under Section 31 within one year from the death of the widow, the Respondent-tenant was bound to exercise his right of purchase as provided by Section 32-F(1) by giving an intimation to the Landlord and the Tribunal in the prescribed manner within one year from the death of the widow. On the other hand, Mr. Sali, appearing for the tenant, contended vehemently that the successor-in-interest of widow Girijabai was a minor under Section 31(3) of the Act, the minor could for possession under Section 29 within one year from the date on which he attained majority and, therefore, the period during which the tenant was entitled to exercise his right of purchase must be taken to be the period of one year from the date on which the minor attained majority.

5. On a plain reading of provisions of Sections 31, 32 and 32-F, the contentions raised on behalf of Mr. Sali cannot be accepted.

6. The scheme of the provisions of Tenancy Act dealing with the right to apply for personal cultivation and statutory vesting of ownership is very clear. Section 31 provides for a right of the landlord who is not the landlord within the meaning of chapter 3(AA), to give a notice and make an application for possession and terminate the tenancy of any land if he *bona fide* requires any land for personal cultivation or for any non-agricultural purposes. The notice terminating the tenancy had to be served on the tenant on or before 31st December 1956. The application for possession under Section 29 has to be made on or before 31st day of March 1957. A special provision has been made under Section 31(3) with regard to the right to terminate the tenancy and to apply for possession in respect of three lands of landlords who are generally described as disabled landlords. Under Sub-Section (3) of Section 31, it is provided that where a landlord is a minor, a notice may be given and an application for possession may be made by the minor within one year from the date on which he attains majority. In the case of a widow, it is provided that a notice may be given and an application for possession may be made by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist. In the case of a person subject to mental or physical disability, it is provided that a notice may be given and an application for possession may be made within one year from the date on which such mental or physical disability ceases to exist. We are not, in this case, concerned with the proviso. We are also not concerned with the other incidental provisions in Sections 31A to 31D. Section 31(3) is clearly intended to extend the period during which proceedings for possession of land cultivated by the tenant, could be taken in cases where the landlord is a minor or a widow or is subjected to mental or physical disability. Section 31(3) is also on the face of it, an enabling provision

because the words used are "such notice may be given" and "an application for possession.....may be made". There is nothing in Section 31(3) which disables the landlord described in that provision from taking steps for obtaining possession within the period prescribed in Section 31(2). In other words, it is only in cases where either a minor or a widow or a person subject to mental or physical disability has not exercised his right of resumption under Section 31(1) that the provisions of Section 31(3) become operative. If in a given case, a widow has already taken steps to resume cultivation under Section 31(1), her successor-in-interest will not be entitled to exercise any right of resumption. Similarly, if a minor has applied for possession in the sense that the guardian of the minor has taken steps for obtaining possession under Section 31, then he cannot exercise the right for the second time after attaining majority. Same will be the case in the case of a landlord who is subjected to mental or physical disability. The statute contemplates that in respect of the land held by a tenant of a landlord who falls in the category referred to in Section 31(3) a right of resumption can be exercised only once Section 32 then deals with what is known as 'the Tillers' day' or which is statutorily described as the day on which rights of ownership will vest in the tenant, and the conditions and limitations of such vesting are specified therein. The proviso to Section 32(1) provides that if an application for possession under Section 29 has been made by the landlord then the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed and this date is referred to as the postponed date". The effect of the Proviso to Section 32(1), therefore, in substance is that where proceedings have already been taken by a landlord for restoration of possession in the exercise of right under Section 31, then the Tillers' day is determined with reference to the day on which the final order of rejecting the application for possession is made. Then we come to Section 32-F(1)(a) which provisions are required to be construed. The relevant part of this provision reads as follows :

"Notwithstanding anything contained in the preceding Sections (a) ? where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

Provided that where a person of such category is a member of a joint family, the provisions of this Sub-Section shall not apply if at least one member of the joint family is outside the categories mentioned in this Sub-Section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

Now, the plain reading of Section 32-F(1)(a) shows that it deals with the right of a tenant to purchase the lands under Section 32 in respect of those lands where the landlord is a minor or a widow or a person subject to any mental or physical disability. This right is to be exercised as required by the provisions in Section 32-F by the tenant giving an intimation in that behalf to the landlord and the Tribunal in the prescribed manner. An obligation is also cast on the landlord to send an intimation to the tenant of the fact that he has attained majority. The intimation to be sent by the tenant has to be sent before the expiry of the period during which the landlord is entitled to terminate the tenancy under Section 31. Now, what is contended by Mr. Sali is that the landlord who had succeeded to the interest of the widow was a minor. The minor under Section 31(3) had a right to apply for possession within one year from the date on which he attains majority and, therefore, he could have given an intimation that he wanted to purchase the lands only after the landlord had attained majority. What is sought to be argued is that the minor-successor-in-interest must be treated as a minor for the purposes of Sections 32-F and 31(3) and, therefore, the period during which the intimation of purchase could be sent has to be decided with reference to the time prescribed in Section 31. In our view such a contention is wholly contrary to the scheme and spirit of the provisions of Sections 31 and 32 and 32-F.

7. There can be no doubt that the general provisions with regard to the statutory transfer of ownership made in Section 32(1) deal with cases where the landlords were entitled to exercise their right of resumption under Section 31(1) excluding the landlords referred to in Section 31(3), who have not exercised their right of resumption. The provisions of Section 32 will not come into operation where the landlords, referred to in Sub-Section (3) of Section 31, have not exercised their right of resumption. Provision had, therefore, to be made in order to provide for statutory right of ownership in respect of tenants of the class of landlords referred to in Sub-Section (3) of Section 31. This provision has been made in Section 32-F(1)(a). Section 32-F clearly refers to a landlord who is a minor or a widow or a person subject to any mental or physical disability. It is then provided that the tenant of such a landlord shall have the right to purchase such land under Section 32 and the conditions which are required to be satisfied by such a tenant are specified in Section 32-F(1). The period during which such a right to be exercised is also prescribed in Section 32-F(1). The Legislature has clearly laid down that the right to purchase by such a tenant has to be exercised within one year from the expiry of the period during which landlord referred in Section 32-F(1) is entitled to terminate the tenancy under Section 31. The word "Such landlord" relate to the landlord mentioned in the opening part of the sub Section viz. a minor, a widow or a person subject to any mental or physical disability. Therefore, Sections 32 and 32F have to be read together. As already pointed out, right to purchase is a right created by Section 32. Section 32 did not and could not operate in certain case where no steps were taken by either a minor, or a widow or a person subject to any mental or physical disability in exercise of right of resumption under Section 31(1) and that is why a special provision had to be made under Section 32-F to deal with such cases. Therefore, for

ascertaining the period during which right to purchase has to be exercised we must back to Section 31(3), because it is there that the period during which minor or a widow or a person subject to any mental or physical disability, is entitled to terminate the tenancy is provided. When we go back to Section 31(3), so far as the widow is concerned, a provision is made in sub-clause (2), the effect of which is that where the landlord is a widow, an application for possession may be made by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist. Therefore, where in a case like the instant one, a widow had died bequeathing certain property to the minor, the minor becomes successor-in-title of the widow. This successor-in-title is entitled within one year from the date of the death of the widow to make an application for possession. Thus within one year from the expiry of this period of one year that tenant must exercise his right of purchase. The fact that he is a minor at the time of the death of the widow is, in our view, wholly irrelevant and such a minor will not be entitled to contend that he can take advantage of the extended Section 31(3) so as to enable him to terminate the tenancy of the tenant of the land bequeathed to him by making an application for possession after he attains majority. Section 31(3) deals only with the landlords who were disabled landlords at the time when the notice was required to be served and an application for could have been made under Section 31(2). If a landlord wants to take advantage of the extended period in Sub-Section (3) of Section 31, two conditions must be satisfied. One is that he must fall under one of the categories mentioned in Sub-Section (3) of Section 31 and second is that he must be the landlord on 31st December 1956 when a notice to terminate the tenancy has to be given. If any one of these two conditions are not satisfied, then benefit of Section 31 (3) cannot be availed of by a landlord. The minor who succeeds to the interest of a widow after 31st December 1956 is not person who was a landlord either on 31st December 1956 and he cannot take advantage of the extension of the period provided for a minor who was a landlord on 31/12/1956. The period during which the minor after having succeeded to the widow could have terminated the tenancy of the tenant under Section 31(3) is one year from the time of her death. The intimation required to be given under Section 32F(1A) by the tenant in order to exercise his right of purchase should have been given within one year from the expiry of the period of one year referred to Section 31(3). Thus the period in the instant case, during which the tenant should have served an intimation, was within two years from the death of the widow.

8. It is no doubt true that a contrary, view has been taken in *Tungabhadrabai's case*, (1976-78 Bom LR 395). In that case, widow Laxmibai adopted a son on 26th December 1957 and she died on 10th November 1958. The question which was required to be decided was whether on the death of Laxmibai, the tenants were bound to exercise their right of purchase given to them under Section 32-F(1)(a), by giving intimation of the willingness to purchase the land. On behalf of the landlord, it was contended that the postponement of the right of purchase conferred on the tenant by the provisions of the Act can take place only once and the right of the tenant to purchase the land was a postponed on 1/4/1957 because the landlord was a widow. According to the landlord's counsel, as soon as the widow died, there could be no further postponement merely because she was succeeded by her minor son. Negating this argument, the learned Judge who decided

Tungabhadrabai's case observed as follows :

"There is nothing in the provisions of Section 31 and Sections 32 to 32-F, which would indicate that the benefit is to be given to only one person of the exempted category, who was a landlord on April 1, 1957 and the provisions of Section 32-F become operative on the death of such a person, in spite of the fact that another person of the exempted category becomes the landlord on her death."

With respect to the learned single Judge, it appears to us that the importance of the fact that the person claiming benefit of Section 31(3) should be the disabled landlord on 31/12/1956 and 31/3/1957 has been lost sight of in that decision. We are, therefore, unable to accept the construction placed in Tungabhadrabai's case on the provisions of Section 31-F(1). In view of the legal position set out earlier, we are of the view that Tungabhadrabai's case does not lay down correct position of law and it will, therefore, have to be overruled.

9. In the instant case, the orders of the Additional Collector and the Revenue Tribunal have proceeded on a misapprehension of the provisions of Section 32-F and they are, therefore, liable to be quashed.

10. The learned referring Judge has pointed out in his order, and in our opinion correctly, that the point referred to us being the only point to be answered, the Petition will stand decided on that point being decided. There is no other point involved in this case. Consequently, the orders passed by the Additional Collector and the Maharashtra Revenue Tribunal are quashed. Rule is made absolute with costs.

Rule made absolute.