

ANNA BHAU MAGDUM, SINCE DECEASED BY HIS LEGAL
REPRESENTATIVES

A

v

BABASAHEB ANANDRA DESAI

JULY 20, 1995

B

[S.C. AGRAWAL AND S. SAGHIR AHMAD, JJ.]

Bombay Tenancy and Agricultural Lands Act. 1948 :

Sections 32-F, 32-G—Landlord a minor—Tenant's right to purchase the land—Procedure to be followed—Case governed by S.32-F—Not following the prescribed procedure—Effect of—Held: S.35-F Mandatory in nature—Tenant having failed to exercise right of purchase conferred on him, liable to summary eviction.

C

'B' was the owner of certain agricultural land, which he leased out to 'A' the predecessor in title to the appellants. By a gift deed dated September 4, 1953, B gifted the said land to the respondent respondent who was a minor at that time. The Bombay Tenancy and Agricultural Lands Act, 1948 was amended in 1956 to confer special rights and privileges on tenants. The amended Section 32 declared that on 1st April, 1957 described as tillers day, every tenant satisfying the requirements of clauses (a) and (b) of sub-section (1) shall be deemed to have purchased from his landlord the land held by him as tenant free from all encumbrances subsisting thereon on the said land held by him as a tenant. Section 32-F contains special provisions in cases where the landlord was a minor, or a person subject to any mental or physical disability on 1st April, 1957. The respondent attained majority on January 17, 1965. Proceedings under Section 35-G were started in respect of the said land in 1960, but were dropped in 1966, on the ground that the landlord was a minor. Fresh proceedings were started in 1975 and the Tribunal held that the tenant had list his right to purchase the suit land and declared that the purchase of the land had become ineffective under s.32- G(3) of the Act. The said order was set aside in appeal and the matter was remanded to the Tribunal for holding a fresh inquiry. The Tribunal held that in view of section 32-F(1A), the tenant could exercise his right of purchase by sending an intimation upto January 17, 1967 and since the tenant had failed to send such an

D

E

F

G

H

A intimation his right of purchase stood forfeited. It was also held that by
 the amendment incorporated in Section 32-F(1A) by the 1969 Amendment
 a further opportunity was given to the tenant to exercise his right to
 purchase by sending the intimation upto October 17, 1971 and that even
 during this period of extension the tenant did not avail of the opportunity
 B and in the circumstances the right of purchase of the tenant became
 automatically ineffective and he had become liable for summary eviction
 under section 32-P(1). The appeal filed by the tenant against the said order
 was dismissed by the Sub-divisional Officer. The revision application filed
 by the tenant against the judgment of the Sub-divisional Officer was
 dismissed by the Maharashtra Revenue Tribunal. The writ petition filed
 C by the tenant has been dismissed by the High Court. Hence this appeal.

Dismissing the appeal, this Court

D HELD 1. In the instant case the landlord was a minor on April 1,
 1957, the tillers' day, and the right of the tenant to purchase the land is
 governed by provisions of section 32-F of the Bombay Tenancy and Agricul-
 tural Lands Act, 1948. In clause (a) of sub-section (1) of Section 32-F it
 was prescribed that where the landlord is a minor or a widow or a person
 subject to any mental or physical disability the right of the tenant to
 purchase such land under section 32 would be available within one year
 E from the expiry of the period during which the landlord was entitled to
 terminate the tenancy under section 31. The said period as prescribed in
 sub-section (3) of section 31 was one year from the date on which the minor
 attains majority or the interest of the widow in the land ceases to exist or
 the mental or physical disability of the person cease to exist. Under Clause
 F (1A) the tenant who was desirous to exercise his right conferred on him
 under sub-section (1) was required to give an intimation in that behalf to
 the landlord as well as to the Agricultural Lands Tribunal in the
 prescribed manner within the period specified in that sub-section, namely,
 within one year after the expiry of the period during which the landlord
 was entitled to terminate the tenancy under section 31. The tenant was,
 G therefore, required to give notice before the expiry of the period of two
 years from the date minor landlord attained majority. [266-H, 267-A-D]

H 2.1. As a result of the amendment introduced in clause (a) of
 sub-section (1) of section 32-F, the landlord is required to send an intima-
 tion to the tenant of the fact that he had attained majority and the said

intimation had to be sent before the expiry of the period during which the said landlord was entitled to terminate the tenancy under section 31. This provision appears to have been inserted with a view to enable the tenant to know the date on which the landlord has attained majority so that he can exercise the right conferred on him and send the necessary notice as required under sub-section (1A) of Section 32-F. Since the respondent landlord had attained majority prior to the insertion of this provision, it has no application in the present case. The proviso that has been inserted in sub-section (1A) of section 32-F conferred further benefit on a tenant who had failed to give intimation as required by sub-section (1A), but was in possession of the land on the date of the commencement of the Amendment Act of 1969 and who was desirous to exercise the right conferred upon him under sub-section 1(a) of Section 32. Such a tenant was given further opportunity to give the intimation as required under sub-section (1A) within a period of two years from the date of commencement of the Amendment Act 1969, i.e., upto October 17, 1971. [268-B-D]

2.2. In the present case it is not disputed that the tenant did not send any intimation as required by sub-section 1(a) either upto January 17, 1967 or even upto October 17, 1971 as provided by the proviso under sub-section (1A) of section 32-F. Moreover, the tenant in his statement given in August 25, 1960 before the Agricultural Lands Tribunal stated that he was aware that the respondent-landlord would be attaining majority on January 17, 1965. Thus there was non-compliance on the part of the tenant with the provisions of sub-section (1A) of section 32-F of the Act and on that basis it has to be held that the tenant could not avail the right of purchase conferred under section 32 read with Section 32-F of the Act.

[268-F-G]

3. The provisions of S.32(1) and 32-F indicate that there is no automatic purchase of the land by the tenant in cases where the landlord happens to be a minor or a widow or a person subject to any mental or physical disability and the said right of purchase can be availed by the tenant if he complies with the requirements of section 32-F. [269-E]

4. Apart from the use of the word "shall" in sub-section (1A) in Section 35-F an indication about the mandatory nature of the said provision is also given by the proviso to sub-section (1A) inserted in 1969 whereby the tenant who had failed to give an intimation as required by sub-section (1A), but was in possession of the land on the date of commen-

A cement of the Amendment Act of 1969 and was desirous of exercising the right conferred under sub-section 1(a), was permitted to give such intimation within a period of two years from the date of commencement of the Amendment of 1969. Further, the consequence for non-compliance with the provisions in sub-section (1A) of Section 32-F are laid down in section 32-P(1) wherein it is provided that where a tenant fails to exercise the right to purchase the land held by him within the specified period under sections 32-F the Tribunal may *sub motu* or on an application made in this behalf after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2). Such a direction could provide for summary eviction of the tenant. Therefore, the requirement regarding intimation by the tenant to the landlord prescribed under sub-section (1A) of Section 32-F is mandatory in nature and the failure on the part of the tenant in the present case to give such an intimation to the landlord within the prescribed period has resulted in the tenant having failed to avail the right to purchase conferred on him and it has been rightly held that the tenant having failed to exercise the right to purchase conferred on him by the Act was liable to summary eviction under section 32- P(1) of the Act.

[270-E-H, 271-A-B]

Amrit Bhikaji Kale & Ors. v. Kashinath Janardhan Trade & Anr., [1983] 3 SCC 437, distinguished.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2590 of 1995.

From the Judgment and Order dated 8.4.94 of the Bombay High Court in W.P. No. 2435 of 1981.

F S.B. Wad, Nikhil Nayyar for Mrs. J.S. Wad for the Appellants.

S.V. Deshpande and Pramit Samena for the Respondent.

The Judgment of the Court was delivered by

G S.C. AGRAWAL, J. This appeal by special leave is directed against the judgment and order dated April 8, 1994 of the High Court of Bombay in Writ Petition No. 2435 of 1981. It raises a question involving interpretation of the provisions contained in sections 32-F and 32-G of the Bombay Tenancy and Agricultural lands Act 1948 (hereinafter referred to as 'the Act').

H

Vijay Mala Jaisingrao Bhosale (for short 'Bhosale') was the owner of agricultural land bearing Survey No. 178/1 measuring 1 acre 34 gunthas situate at village Shirte in District Kolhapur of the State of Maharashtra. The said land was leased out to Anna Bhau Magdum, the predecessor in title to the appellants. By a gift deed dated September 4, 1953 Bhosale gifted the said land to the respondent herein, Babasaheb Anandrao Desai. The respondent was a minor at the time - his date of birth being 17th January, 1947. By Bombay Act 13 of 1956 the Act was amended to confer special rights and privileges on tenants. By virtue of section 32, as amended, it was declared that on 1st April 1957, described as "the tillers" day", every tenant satisfying the requirements of clauses (a) and (b) of sub-section (1) shall be deemed to have purchased from his landlord the land held by him as tenant free from all encumbrances subsisting thereon the said land held by him as a tenant. This was, however, subject to the provisions of part II of Chapter III of the Act, viz., Sections 32A to 32-R. Section 32-G lays down the procedure for determining the price of the land to be paid by the tenant and section 32-F contains special provisions in cases where the landlord was a minor, or a widow, or a person subject to any mental or physical disability on 1st April, 1957. The respondent attained majority on January 17, 1965. Proceedings under section 32-G of the Act were started in respect of the said land in 1960, but in view of the fact that the landlord was a minor the said proceedings were dropped by an order dated 2nd September, 1966 passed by the Agricultural Land Tribunal, Shirole. Thereafter, in 1975, fresh proceedings under section 32-G were started before the Additional Tehsildar and Agricultural Lands Tribunal, Shirole. After making the necessary inquiry the Additional Tehsildar and Agricultural Lands Tribunal passed an order dated August 27, 1975 holding that the tenant has lost his right to purchase the suit land and declared that the purchase of the land by the tenant has become ineffective under section 32-G(3) of the Act. The said order was set aside on appeal by the Special Land Acquisition Officer, Tulsi Project, Kolhapur by order dated February 21, 1977 and the matter was remanded to the Additional Tehsildar and Agricultural lands Tribunal for holding a fresh inquiry. Thereafter, the Additional Tehsildar and Agricultural lands Tribunal, Shirole passed the order dated March 19, 1980, whereby it was declared that tenant's purchase was ineffective and it was directed that the land should be disposed of by holding further inquiries under section 32-G (1). It was held that in view of section 32-F (1A), the tenant could exercise his right of purchase by

A sending an intimation upto January 17, 1967 and since the tenant had failed to sent such an intimation his right of purchase stood forfeited. It was also held that by the amendment incorporated in Section 32-F(1A) by Maharashtra Act 49 of 1969 a further opportunity was given to the tenant to exercise his right of purchase by sending the intimation upto October 17, 1971 and that even during this period of extension the tenant did not avail of the opportunity and in the circumstances the right of purchase of the tenant became automatically ineffective and he had become liable for summary eviction section 32-P(1). The appeal filed by the tenant against the said order of the Additional Tehsildar and Agricultural Lands Tribunal was dismissed by the Sub-divisional Officer, Karvir Division, Kolhapur by judgment dated September 10, 1980. The revision application filed by the tenant against the said judgment of the sub-division Officer was dismissed by the Maharashtra Revenue Tribunal by judgment dated March 17, 1981. The writ petition filed by the tenant has been dismissed by the High Court by the impugned judgment. Hence this appeal.

D The question which falls for consideration is whether the tenant was entitled to avail the right conferred under the Act to purchase the land held by him. It is, therefore, necessary to briefly refer to the relevant provisions of the Act. On January 17, 1965 the said provisions read as follows :

E "32(1) On the first day of April 1957 (hereinafter referred to as "the tillers' day") every tenant shall, subject to the other provisions of the this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting there on the said day, the land by him as a tenant, if -

F (a) such tenant is a permanent tenant thereof and cultivates land personally.

G (b) such tenant is not a permanent tenant but cultivates the land leased personally: and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

H (ii) notice has been given under section 31, but the landlord has

not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the land; or A

(iii) the landlord has not terminated this tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before 31st day of March 1957 under section 29 for obtaining possession of the land: B

Provided that if an application made by the landlord under section 29 for obtaining possession of the land had been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date" : C

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso." D

"32-F(1) 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 : E F

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 enquiry 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. G H

A

xxxx

xxxx

xxxx

(IA) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

B

(2) The provisions of sections 32 to 32-E (Both inclusive) and sections 32-G to 32-R (both inclusive) shall, so far as, may be applicable, apply to such purchase".

C

"32P(1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, 32O, 33C or 43-1D, the Tribunal may *suo motu* or on an application made in this behalf and in cases other than those in which the purchase had become ineffective by reason of section 32G or 32M, After holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2).

D

(2) Such direction shall proved -

E

(e) that the former tenant be summarily evicted;

xxxx

xxxx

xxxx

xxxx

F

In Section 32-G provision is made for issuing of notice by the Agricultural Lands Tribunal and determination of price of land to be paid by tenants. Sub-section (2) prescribes that the Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant and sub-section (3) lays down that where any tenant fails to appear or makes a statement that he is not willing to purchase the land the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. Under section 25-M the purchase becomes ineffective in the event of failure of recovery of purchase price under section 25-K.

G

H

In the instant case the landlord was minor on April 1, 1957, the tillers' day, and the right of the tenant to purchase the land is governed by

provisions of section 32-F.

In clause (a) sub-section (1) of section 32-f it was prescribed that where the landlord is a minor or a widow or a person subject to any mental or physical disability the right of the tenant to purchase such land under section 32 would be available within one year from the expiry of the period during which the landlord was entitled to terminate the tenancy under section 31. The said period as prescribed in sub-section (3) of section 31 was one year from the date on which the minor attains majority or the interest of the widow in the land ceases to exist or the mental or physical disability of the person ceases to exist. Under Clause (1A) the tenant who was desirous to exercise his right conferred on him under sub-section (1) was required to give an intimation in that behalf to the landlord as well as to the Agricultural Lands Tribunal in the prescribed manner within the period specified in that sub-section, namely within one year after the expiry of the period during which the landlord was entitled to terminate the tenancy under section 31. The tenant was, therefore, required to give notice before the expiry of the period of two years from the date the minor landlord attained majority.

By Maharashtra Act 49 of 1969 certain amendments were introduced in section 32-F. In clause (a) of sub-section (1) section 32-F the following words were inserted at the end of clause (a) :

"and for enabling the tenant to exercise the right to 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."

In sub-section (1A) of section 32-F the following proviso was inserted:

"Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the

A commencement of that Act."

B These amendments were prospective in operation. As a result of the amendment introduced in clause (a) of sub-section (1) of section 32-F, the landlord is required to send an intimation to the tenant of the fact that he had attained majority and the said intimation had to be sent before the expiry of the period during which the said landlord was entitled to terminate the tenancy under section 31. This provision appears to have been inserted with a view to enable the tenant to know the date on which the landlord has attained majority so that he can exercise the right conferred on him and send the necessary notice as required under sub-section (1A) of section 32-F. Since the respondent landlord had attained majority prior to the insertion of this provision, it has not application in the present case. The proviso that has been inserted in sub-section (1A) of section 32-F conferred a further benefit on a tenant who had failed to give intimation as required by sub-section (1A), but was in possession of the land on the date of the commencement of the Amendment Act of 1969 and who was desirous to exercise the right conferred upon him under sub-section 1(a) of section 32-F. Such a tenant was given further opportunity to give the intimation as required under sub-section (1A) within a period of two years from the date of commencement of the Amendment Act 1969, i.e., upto October 17, 1971.

E In the present case it is disputed that the tenant did not send any intimation as required by sub-section 1(a) either upto January 17, 1967 or even upto October 17, 1971 as provided by the proviso under sub-section (1A) of section 32-F. Moreover, the tenant in his statement given on August 25, 1960 before the Agricultural Lands Tribunal stated that he was aware that the respondent-landlord would be attaining majority on January 17, 1965. Thus there was non-compliance on the part of the tenant with the provisions of sub-section (1A) of section 32-F of the Act and on that basis it has been held that the tenant could not avail the right of purchase conferred under section 32 read with Section 32-F of the Act.

G Shri S.B. Wad, learned counsel appearing for the appellants, has urged that in view of section 32 read with Section 32-G of the Act there was automatic purchase by the tenant of the land held by him and purchase can be treated as ineffective only if the tenant indicates his intention that H he is not willing to purchase the land and that mere failure on the part of

A
the tenant to send an intimation under sub-section (1A) of section 32-F would not result in rendering the purchase by the tenant as ineffective. According to Mr. Wad the provision requiring sending an intimation contained in sub-section (1A) of section 32-F is not mandatory but directory in nature. In support of his aforesaid submission Ms. Wad has emphasised that the provisions regarding purchase of land by the tenant have been enacted as a measure of agrarian reform to make the tiller of the soil the owner of the land and remove intermediary between tiller of the soil and the State. We are unable to accept this contention. By virtue of section 32(1) every tenant is deemed to have purchased from the landlord free from all encumbrances subsisting thereon on the tiller's day, the land held by him as tenant. This right is, however, subject to the provisions contained in section 32 itself as well as other provisions contained in Part II Chapter III of the Act. Clause (a) of sub-section (1) of section 32-F imposes a limitation on this right conferred on the tenant where the landlord is a minor, or a widow or a person subject to any mental or physical disability by prescribing that this right to purchase has to be exercised within one year from the expiry of the period during which the landlord is entitled to terminate the tenancy under section 31. Sub-section (1A) of section 32-F gives effect to this limitation by imposing an obligation on the tenant who is desirous of exercising the right conferred on him under sub-section (1A) to give an intimation in that behalf to the landlord in the prescribed manner within the period specified in that sub-section. These provisions indicate that there is no automatic purchase of the land by the tenant in cases where the landlord happens to be a minor, or a widow or a person subject to any mental or physical disability and the said right of purchase can be availed by the tenant if he complies with the requirements of section 32-F. In *Amrit Bhikaji Kale & Ors. v. Kashinath Janardhan Trade & Anr.*, [1983] 3 SCC 437, this Court has referred to the distinction that has been made by the Act between a case where the landlord is under no disability as envisaged in section 32-F and a case where the landlord is of a class or category set out in Section 32-F. It has been observed :

B
C
D
E
F

G
"Section 32-F postponed the date of compulsory purchase by the tenant where the landlord is a minor or a widow or a person subject to mental or physical disability on the tillers' day. Section 32-F has an overriding effect over Section 32 as it opens with a non obstante clause. The combined effect of sections 32-F and 32 would show that where the landlord is under no disability as envisaged by
H

A section 32-F the tenant of such landlord by operation of law would become the deemed purchase but where the landlord is of a class or category as set out in section 32-F such as a minor, a widow or a person subject to any mental or physical disability, the date of compulsory sale would be postponed as therein provided." [p.444]

B It cannot, therefore, be said that there is an automatic purchase of the land by the tenant in a case where the landlord happens to be a minor or a widow or a person subject to any mental or physical disability as mentioned in section 32-F. In such a case the right of purchase conferred on the tenant can be effective only if it is exercised in accordance with the provisions of section 32-F.

C

The contention of Shri Wad that the provisions of sub-section (1A) of section 32-F are not mandatory but only directory in nature and non-compliance with the said provisions does not render the purchase ineffective cannot be accepted for the reason that sub-section (1A) of section 32-F prescribes the condition for the exercise of the right conferred on the tenant under sub-section 1(a) of section 32-F and the failure on the part of the tenant to comply with the requirements of sub-section (1A) would result is non-exercise of the right of purchase by the tenant and as a result the tenant should be treated as having not availed of the right that has been conferred on him. Apart from the use of the word "shall" in sub-section (1A) an indication about the mandatory nature of the said provisions is also given by the proviso to sub-section (1-A) inserted in 1969 whereby the tenant who had failed to give an intimation as required by sub-section (1A), but was in possession of the land on the date of commencement of the Amendment Act of 1969 and was desirous of exercising the right conferred under sub-section 1(a), was permitted to give such intimation within a period of two years from the date of commencement of the Amendment Act of 1969. Furthermore, we find that the consequences for non-compliance with the provisions in sub-section (1A) of Section 32-F are laid down in section 32-P (1) wherein it is provided that where a tenant fails to exercise the right to purchase the land held by him within the specified period under sections 32-F the Tribunal may *suo motu* or on an application made in this behalf after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2). Such a direction could provide for summary eviction of the tenant. We are, therefore, of the opinion that requirement regarding intimation by the tenant to the landlord prescribed under sub-section (1A) of section 32-F

D

E

F

G

H

is mandatory in nature and the failure on the part of the tenant in the present case to give such an intimation to the landlord within the prescribed period has resulted in the tenant having failed to avail the right to purchase conferred on him and it has been rightly held that the tenant having failed to exercise the right to purchase conferred on him by the Act was liable to summary eviction under section 32-P(1) of the Act.

Shri Wad has urged that in *Amrit Bhikaji Kale* (supra) the tenant had made an express statement before the Aval Karkoon in proceedings under section 14 read with section 29 of the Act that he had become old and was unable to cultivate the land and was willing to hand over possession and that in spite of the said statement this Court did not attach any importance to the said statement and the court has observed :

"We are not unaware of the landed gentry exercising such influence over the tenants that in the absence of legal literacy they may make any statement contrary to their legally protected interest. A measure of agrarian reform cannot be permitted to be defeated by such devious means adopted by the landlords."

The submission of Shri Wad is that if express statement made by the tenant could not stand in the way of his availing the right conferred by the Act, there is no reason why merely because of inaction on his part a tenant should be deprived of the right. The observations aforementioned made in *Amrit Bhikaji Kale* (supra) have to be read in the context of the facts of that case where it was found that the landlord who was major and was under no disability, was alive on April 1, 1957 and the provisions of section 32-F were not attracted and there was deemed purchase of the land by the tenant by virtue of section 32. The subsequent statement made by the tenant in proceedings before the Aval Karkoon were, therefore, held to be of no avail. The position in the instant case is, however, different. The respondent-landlord was a minor on April, 1, 1957 and the case was governed by section 32-F and there has been non-compliance of sub-section (1A) of section 32-F.

For the reasons aforesaid, we do not find any legal infirmity in the judgment of the High Court. The appeal, therefore, fails and it is accordingly dismissed, but in the facts and circumstances of the case without any orders as to costs.