

SAKHARAM GANESH PUJARI (D) THR. HIS LRS

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v.

HUSEN ABA BAHADUR (D) BY HIS LRS.& ANR.

(Civil Appeal No. 882 of 2009)

NOVEMBER 16, 2017

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[S. A. BOBDE AND L. NAGESWARA RAO, JJ.]

Bombay Tenancy and Agricultural Act, 1948 – s.32P – Tribunal’s power to resume and dispose of land not purchased by tenant – Held: s.32P confers power on the Tribunal to summarily evict the tenant if the right to terminate the tenancy by landlord and right to purchase by tenant has become ineffective – In the instant case, landlord failed to exercise his right to terminate the tenancy and tenant also failed to give notice for purchase within one year of retirement of landlord from armed forces – Since period within which the landlord and tenant could not exercise their rights had expired, a proceeding under s.32P was initiated – The landlord having retired in 1959, Chapter IIIA which was introduced in 1964 had no application to the rights of the parties in this case – By the time Chapter IIIA was introduced in 1964, the appellant’s right to terminate the tenancy within one year, was not available to him because one year had passed after the one year made available to the landlord – The provisions of Chapter IIIA were not made retrospective by any express provision or by necessary intendments in the amendment – Thus, as the matter stood then, there was only power to terminate and hand over possession to the landlord and that had been validly exercised by the Appropriate Authority under s.32P – High Court, therefore, fell into an error in applying V.S. Charati case and thereupon proceeding to hold that Chapter IIIA is applicable in the different facts of the present case – Appropriate Authority under the Act is directed to proceed with the action under s.32P of the Act.

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Rajakka v. S.M. Shinde Spl. C.A. No.2593/70 decided by Bombay High Court on 3.3.74; V. S. Charati v. Hussein Nhamu Jamadar (Dead) by Lrs. [1998] 3 Suppl. SCR 30 : (1999) 1 SCC 273 – referred to.

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Case Law Reference

[1998] 3 Suppl. SCR 30

referred to

Para 14

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 882 of 2009.

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From the Judgment and Order dated 20.08.2002 of the High Court of Judicature at Bombay in Writ Petition No. 4794 of 1988.

Makrand D. Adkar, Braj K. Mishra, Vijay Kumar, Vishwajit Singh, Advs. for the Appellant.

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Pravin Satale (For Rajiv Shankar Dvivedi), Balraj Dewan, Advs. for the Respondents.

The following Order of the Court was delivered:

ORDER

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1. We have heard the learned counsel for the appellants and respondent No. 2. Though, several opportunities granted earlier, none has appeared on behalf of respondent nos.1 (a) to 1(f).

2. We have perused the appeal and relevant material.

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3. This is a landlord's appeal against the judgment of the Bombay High Court¹ holding that the tenants' right to purchase the land under Section 32G of the Bombay Tenancy and Agricultural Act, 1948 (hereinafter referred to as 'the Act') is still in existence and the proceedings can go on.

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4. The High Court rejected the contention of the landlord that in the absence of the exercise of the right to terminate the tenancy by the landlord, and the right to purchase the land by the tenant within two years from the date of retirement of the landlord from the armed services, the rights got extinguished.

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5. The land in question is a little above 10 acres and located in Kolhapur District. The landlord (now deceased) served in the Armed Forces from 13.12.1955 till his retirement on 10.12.1959. On 01.04.1957, the tillers' day, the land was in possession of the respondent (now deceased) as tenant.

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¹ Dated 20.08.2002

6. Because the landlord was serving in the army, the proceedings under Section 32P of the Act which empowered the tribunal to resume and dispose of land not purchased by tenant were postponed. A

7. The right of the tenant to purchase the land upon non termination of the tenancy by the landlord conferred by Section 32 F of the Act can be exercised if notice is given by the tenant within one year from the date of retirement of the landlord from the Armed Forces. The landlord herein failed to exercise his right to terminate the tenancy; however no such notice was given upto 09.12.1960 or upto 09.12.1961. Thus, at the end of the two years period, beginning from 10.12.1959, both, the landlord and the tenant had failed to exercise their respective rights of terminating the tenancy and purchasing the land. B
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8. In 1964, an amendment was made to the Act by Maharashtra Act No.39 and Chapter IIIAA was added. This amendment was brought into effect from 20.10.1964. Whether this amendment was purported to take effect retrospectively has been decided in the negative by the Bombay High Court in *Rajakka vs. S.M. Shinde*². It was held that there is no provision in the Amending Act which gives such retrospective effect. D

9. Section 32P³ of the Act confers power on the Tribunal to summarily evict the tenant if the right to terminate the tenancy by the tribunal is not exercised within the specified period. E
² Spl. C.A. No.2593/70 dated 3.3.74

³ Section 32P. Power of [Tribunal] to resume and dispose of land not purchased by Tenant

(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, [32-O, 33-C or 43-ID], the [Tribunal] may suo motu or on an application made in this behalf [***] [and in cases other than those in which the purchase has 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). F

(2) Such direction shall provide—

(a) that [***] the [former tenant] be summarily evicted; G
(b) that the land shall, subject to the provisions of section 15, be surrendered to the [former landlord];

(c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list")— H

- A landlord and the right to purchase by the tenant has become ineffective. Since the period within which the landlord and the tenant could have exercised their rights had expired, a proceeding under Section 32P was initiated. The Tehsildar held that as no notice was given, the purchase was ineffective.
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- B (i) a co-operative farming society the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;
- (ii) agricultural labourers;
- (iii) landless persons;
- (iv) small holders;
- C (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who are artisans;
- (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who is an artisans;
- D (vii) any other co-operative farming society;
- (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;
- E (ix) any person, not being an agriculturist, who intends to take to the profession of agriculture:
- [Provided that the State Government may, by notification in the Official Gazette give in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government have been displaced, and require to be re-settled.]
- F (3) Where any land is to be surrendered in favour of the [former landlord], under sub-section (2), the [former landlord] shall not be entitled to the possession thereof until any amount refundable to the [former tenant] is refunded to him or recovered from the [former landlord]; and until such refund or recovery is made the [former tenant] shall continue to hold the land on the same terms on which it was held by him previously.
- G (4) Where any land or portion thereof cannot be surrendered in favour of the landlord and where such land or portion is offered for the sale under sub-section (2), but no person comes forward to purchase such land or portion, as the case may be, shall vest in the State Government and the [Tribunal] shall determine the price of such land or portion in accordance with the provisions of section 63A and the amount of the price so determined shall, subject to the provisions of section 32Q, be paid to the owner thereof.
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10. In a challenge to the proceedings by the tenant, the Appellate Authority reversed the order of the Tehsildar in favour of the tenant and held that the tenant could purchase the land. The landlord preferred a revision petition in which the Maharashtra Revenue Tribunal reversed the order of the Appellate Authority and agreed with the order of the Tehsildar holding the purchase to be ineffective. A

11. Against the order of the Maharashtra Revenue Tribunal, the tenant approached the High Court by way of a writ petition. The High Court set aside the order of the Tribunal and held that the provisions of Chapter IIIAA, which were introduced in 1964, were applicable to the proceedings in the present case and the tenant could exercise his right to the purchase the land. Under this Chapter if the landlord had failed to terminate the tenancy within two years of ceasing to be in the Armed Forces, the tenant could exercise his right to purchase the land within one year thereafter. B C

12. The High Court relied upon a judgment of this Court in *V.S. Charati vs. Hussein Nhamu Jamadar (Dead) by LRs.*⁴ where this Court has held that the landlord could invoke 43-1B introduced by Chapter IIIAA and terminate the tenancy of the tenant and the said Chapter IIIAA would apply only if the proceedings in favour of the tenant had not been completed. D

13. It is significant to note that in the case of *V.S. Charati (supra)* the landlord had joined the Armed Forces in 1965 and had retired in 1972. In the present case, the landlord had retired in 1959. It is, therefore, E

(5) Where any land is sold under sub-section (2), the [Tribunal] shall determine the price of the land in accordance with the provisions of section 63A and the price so determined shall be payable by annual installments not exceeding six with simple interest at the rate of 4½ percent per annum as the [Tribunal] may determine and the price of the land recovered from the purchaser shall, subject to the provisions of section 32Q, be paid to the owner thereof. F

[(6) On the deposit of the last instalment of the purchase price, the Tribunal shall issue a certificate of purchase in the prescribed form to the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. If the purchaser is at any time in arrears of two installments, then unless the [Tribunal] after holding such inquiry as it thinks fit is satisfied with the reasons given and allows a further period not exceeding one year to pay the arrears, the purchase shall be ineffective and the amount deposited by such purchaser shall be refunded to him.] G

⁴ (1999) 1 SCC 273

A clear that Chapter IIIAA which was introduced in 1964 had no application to the rights of the parties in this case. By the time Chapter IIIAA was introduced in 1964, the appellant's right to terminate the tenancy within one year, was not available to him because one year had passed after the one year made available to the landlord.

B 14. Chapter IIIAA introduced by the Amending Act, 1964, does not have any application in the present set of facts. The provisions of Chapter IIIA were not made retrospective by any express provision or by necessary intendments in the amendment [See paragraphs 24 to 26 of '*Shakti Tubes Ltd. vs. State of Bihar and Ors.*' (2009)7 SCC 673]. Thus, as the matter stood then, there was only power to terminate and hand over possession to the landlord and that had been validly exercised by the Appropriate Authority under Section 32P.

C 15. The High Court, therefore, fell into an error in applying the decision of this Court *V.S. Charati (supra)* and thereupon proceeding to hold that Chapter IIIA is applicable in the different facts of the present case.

D 16. The appeal is allowed. The judgment and order of the High Court is set aside. Appropriate Authority under the Act is directed to proceed with the action under Section 32P of the Act.