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JAYKUMAR GANPATI WAIKAR

v.

NIVRITTI SAKHARAM TITWE AND ORS.

SEPTEMBER 17, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

C

*Bombay Tenancy and Agricultural Lands Act, 1948 : Sections 31(3), 32 & 32F—Proceedings for ejectment of tenant—Initiated by appellant's mother on the ground that she was entitled to resume the land—Pending proceedings she died, and her son the appellant who was a minor, was brought on record—Proceedings ending in dismissal of the suit—Appellant attained majority and the tenant issued notice opting to purchase the land—Tenant filing writ petition in High Court—High court held that the tenant entitled to purchase the land since as on April 1, 1957, the tillers' day, he was in possession but could not opt to purchase the property due to the disability of the widow which stood in his way—On appeal, held : It was the mandatory duty of the minor landlord, after attaining majority, to issue notice to the tenant calling upon him, whether he would exercise his option to purchase, as envisaged under Section 32F of the Act—Admittedly, he did not issue any such notice—On the other hand, the tenant himself, on becoming aware of the appellant's becoming major, issued the notice exercising the option to purchase the property under Section 32F of the Act—There is no illegality in the ultimate conclusion reached by the High Court though this consideration was not adverted to by the High Court.*

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*Harshavardhan Shrinivas Potnis v. Mahadu Pundalik Gangurde, AIR (1980) Bom. 198, distinguished.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 688 of 1980.

G

From the Judgment and Order dated 23.11.78 of the Bombay High Court in Spl. C.A. No. 2589 of 1974.

Krishna Mahajan, P.H. Parekh for the Appellant.

V.N. Ganpule and V.B. Joshi for the Respondents.

H

The following Order of the Court was delivered :

This appeal by special leave arises from the judgment dated November 23, 1978 of the High Court of Bombay in Special Civil Application No. 2589/74 filed under Article 227 of the Constitution.

The admitted facts are that the appellant was a minor when his adoptive mother Guru Santabai Ganpati Waykar had initiated that proceedings under Section 31(3) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the "Act") for ejection of the respondent-tenant on the ground that she was entitled to resume the land. Pending proceedings, she died and thereafter the appellant had come on record. Admittedly, as on the date of the death of his mother the appellant was a minor. The proceedings under Section 31(3) ultimately ended in dismissal of the suit on March 13, 1972. In the meanwhile, the appellant had attained majority on March 19, 1968. Resultantly, the tenant got issued notice on April 21, 1968 under Section 32F of the Act opting to purchase the land under Section 32. The application, appeal and the revision arising under the Act came to be dismissed. Thus the tenant-respondent filed writ petition in the High Court. The writ petition was allowed and it was held that the respondent was entitled to purchase the lands since as on April, 1, 1957, the tillers' day, he was in possession but he could not opt to purchase the property due to the disability of the widow, which stood in his way under Section 32F of the Act. Thus this appeal by special leave.

The question is : whether the respondent had exercised that right under Section 32F of the Act within one year? Section 32F of the Act envisages as under :

"32F. (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 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."

- A It is seen that the widow had already exercised the option to terminate the tenancy of the tenant and the proceedings were pending in the appropriate forum during the course of which the widow died. On her demise, the appellant, admittedly being a minor yet another disabled landlord, came on record as legal representative of the adoptive mother.
- B It is also further seen that the proceedings under Section 31(3) came to be terminated on March 13, 1972. A literal interpretation of Section 32F would indicate that widow, the minor or the disabled landlord, on minor's attaining majority i.e., is cessation of disability, shall be required to intimate to the tenant of his attaining majority before his exercising the option to terminate the tenancy under Section 31(3) of the Act. Admittedly, the
- C mother having already opted for termination of the tenancy for personal resumption and the appellant having been a minor, stepped into the shoes of his mother and continued the proceedings for resumption of the land; those proceedings, as stated earlier, came to be terminated on March 13, 1972. Resultantly, even before the proceedings came to be terminated, the
- D tenant had opted to purchase the property by issuing the notice on April 21, 1968. Admittedly, the appellant had attained majority on March 19, 1968 and the notice of option to purchase the property was exercised by the tenant within one month thereafter. Under these circumstances, the limitation of one year had not expired. Since the mother, disabled landlady, was continuing the proceedings and on her demise the appellant having got
- E substituted himself as landlord, but he being a further disabled landlord, the need to issue notice to the mother of the appellant did not arise because she had already exercised the option under Section 31(3) to resume the land by terminating the tenancy for personal cultivation and the proceedings therefor were initiated. Since she died pending proceedings
- F and in the meanwhile, the appellant had attained majority, the need to issue notice by the tenant opting to purchase the property arose only after the disability ceased. The disability ceased on March 19, 1968 and the notice of option was given by the tenant within one month thereafter, namely, on April 21, 1968.
- G Shri Krishna Mahajan, learned counsel for the appellant, placed reliance on the judgment of the Division Bench of the Bombay High Court in Harshavardhan *Shrinivas Potnis v. Mahadu Pundalik Gangurde*, AIR (1980) Bom. 198 and contended that irrespective of his attaining majority or disability within one year from the date of the demise of his mother, the
- H respondent was to exercise the option and had not done so. Therefore, the

respondent is not entitled to the benefit. We find no force in the contention. In that case, the facts were that the mother who was widow had not exercised the option under Section 31(3) of the Act. On her demise, the minor who succeeded by virtue of bequeath made by the widow had exercised the option within one year from the date of the demise of the mother-donor. Therefore, it was interpreted that Sections 32F and 31(3) are to be read together and harmonious interpretation is required to be given. In this case that question does not arise for consideration.

It is also seen that the widow mother of the appellant had already exercised the option under Section 31(3) and continued the proceedings pending which she died. Subsequently, the appellant came on record as a legal representative and continued the proceedings. As held earlier, It was the mandatory duty of the minor landlord, after attaining majority, to issue notice to the tenant calling upon him, whether he would exercise his option to purchase, as envisaged under Section 32F of the Act Admittedly, he did not issue any such notice. On the other hand, the tenant himself, on becoming aware of the appellant's becoming major, issued the notice exercising the option to purchase the property under Section 32F of the Act. There is no illegality in the ultimate conclusion reached by the High Court though this consideration was not adverted to by the High Court.

The appeal is accordingly dismissed, but in the circumstances, without costs.

G.N.

Appeal dismissed.