

PATEL SURESHBHAI JASHBHAI

v.

PATEL SATABHAI MATHURBHAI

April 28, 1983

[D. A. DESAI AND O. CHINNAPPA REDDY, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948—ss. 32, 32 G, 32 PP—Scope of—Tenant—Deemed Purchaser of land—Failed to be present—Sale declared ineffective—Application under section 32 PP for determination of price—Landlord entitled to contend applicant not a tenant—Not precluded by res-judicata.

By the operation of s. 32 of the Bombay Tenancy and Agricultural Lands Act 1948 the respondent who was recorded as a tenant on the tillers' day i.e. 1st April, 1957 was deemed to have purchased the land from the appellant-landlord subject to other provisions of the Act. The respondent having refused to accept notice u/s 32G for determining the price of the land and failing to appear, the Tribunal declared the sale ineffective. Subsequently the respondent made an application under s. 32 PP that afforded a fresh opportunity to a tenant who had failed to appear before the Tribunal as a result of which the sale was held ineffective, requesting the Tribunal to determine purchase price of the land. The Tribunal held that the respondent was not a tenant of the land and was not entitled to be declared a deemed purchaser and accordingly it is not necessary to determine the price. The Deputy Collector dismissed the appeal preferred by the respondent. The Revenue Tribunal in a revision petition held that once the notice was issued to a person who is shown to have purchased the land u/s 32 and if the sale is held ineffective because of his absence in the proceeding under s. 32G, in a subsequent proceeding u/s 32 PP it is not open to the landlord to challenge that such a person was not tenant. A petition under Article 227 of the Constitution moved by the appellant-landlord was dismissed *in limine* by the High Court,

Dismissing the appeal,

HELD : The view of the Revenue Tribunal is not correct. Section 32 PP confers a right upon a person claiming to be a tenant to make an application for determining the price and the pre-condition is that he failed to appear before the Tribunal in a proceeding u/s 32G. In such a situation, the landlord is a necessary party. The landlord can and would be entitled to contend that the person claiming to be a tenant and making an application u/s 32 PP was not a tenant on April 1, 1957. Undoubtedly only that person is entitled to make an application u/s 32 PP who having failed to appear before the Tribunal in a proceeding u/s 32G, the statutory sale was declared ineffective but on that account such person making an application under s. 32 PP must be accepted as tenant without further enquiry and without permitting the landlord to challenge the status of the applicant is not warranted by the

language of s. 32 PP. The Revenue Tribunal's view that unless the landlord challenged the order u/s 32G declaring the sale having become ineffective on the footing that a person to whom notice was sent was a tenant on April 1, 1957 and his failure to appear without anything more would clothe him with the status of a tenant overlooks the possibility of a person to whom notice is served not appearing because he had nothing to do with the land.

[1996 H, 997 A-H]

The failure of the landlord to question the sale being declared ineffective on account of the absence of the person to whom notice was sent and who defaulted would not either on the general principle of *res judicata* or principle analogous to constructive *res judicata* preclude the landlord from challenging the status in the subsequent enquiry. There is only one situation which may preclude the enquiry in that if on receipt of notice the tenant did not appear and the landlord appeared and unequivocally admitted that the defaulting person was a tenant on the relevant date and on his failure to appear the sale should be declared ineffective, the landlord in subsequent proceeding under s. 32 PP would be estopped from challenging the status of the applicant tenant. [1998 A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1583 of 1970.

Appeal by special leave from the Judgment and Order dated the 22-12-1969 of the Gujarat High Court in S.C.A. No. 1630 of 1969.

V. A. Bobde and A. G. Ratnaparkhi for the Appellant.

R. B. Datar and Ms. Madhu Moolchandani for the Respondent.

The Judgment of the Court was delivered by

DESAI J. Appellant Sureshbhai is the owner of land bearing Survey No. 21 situated at Village Ode, Taluka Anand, District Kaira in Gujarat State. One Nathabhai Zaveribhai and the present respondent were recorded as tenants on the tillers' day i.e. 1st April, 1957. Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act for short) provided that on the 1st day of April, 1957 (hereinafter referred to as the tillers' day) every tenant shall subject to the other provisions of the section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free from all encumbrances subsisting thereon on the same date the land held by him as tenant. Section 32G provided for the follow up action of the compulsory purchase that ensues by the

A operation of sec. 32. Section 32G thus envisages the determination of the price in accordance with the various provisions of the Act, of the land deemed to have been purchased by the tenant on the tillers' day and the methodology of its payment. In order to determine the price the Agricultural Lands Tribunal ('Tribunal' for short) has to serve a notice in the prescribed manner to (a) all tenants who u/s 32 are deemed to have purchased the lands (b) all landlords of such lands; and (c) all other persons interested therein to appear before it on the date specified in the notice. Sub-sec. 2 provides 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. Sub-sec. 3 provides that where 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 a person is not willing to purchase the land and that the purchase is ineffective. The remaining sub-secs. provide the manner and method of determining the price. The Tribunal having jurisdiction in the area in which the land involved in the dispute is situated issued notice to Nathabhai Zaveribhai and the present appellant as well as the landlord of the land u/s 32G. It appears both the tenants i.e. Nathabhai Zaveribhai and the present respondent refused to accept notice to remain present and when summons was served by substituted service both of them did not remain present. The Tribunal accordingly declared the sale ineffective as provided by sec. 32G(3). The Tribunal accordingly made its order annexure B dated July 20, 1962 declaring that the sale is ineffective. Subsequently the present respondent made an application u/s 32 PP requesting the Tribunal to determine the price of the land deemed to have been purchased by him being Survey No. 21 of Village Ode on April 1, 1957. It may be clarified that sec. 32-PP was designed to give a further opportunity to the tenant who had failed to appear before the Tribunal which led to the sale being held ineffective, to purchase the land. This application was resisted by the appellant-landlord. The Tribunal held that the present respondent was not a tenant of the suit land and Nathabhai Zaveribhai was the only tenant who has not made an application u/s 32 PP and therefore the present respondent is not entitled to be declared a deemed purchaser and accordingly it is not necessary to determine the purchase price. The respondent preferred an appeal to the Deputy Collector. This appeal was dismissed by the Deputy Collector concurring with the findings of the Tribunal. The respondent moved a revision petition u/s 76

of the Tenancy Act in the Gujarat Revenue Tribunal. A learned member of the Gujarat Revenue Tribunal held that once the notice was issued to person who is shown to have purchased the land u/s 32 and if the sale is held ineffective because of his absence under sec. 32-G, in a subsequent proceeding u/s 32 PP it is not open to the landlord to challenge that such a person was not tenant. Alternatively, on the merits it was held that the present respondent was tenant of the land on April 1, 1957 and he has become a deemed purchaser and the Tribunal was bound to determine the price. The matter was accordingly remitted to the Tribunal. Present appellant-landlord moved a petition under Art. 227 in the High Court of Gujarat which was dismissed in limine. Hence this appeal by special leave.

It is not in dispute that the notice u/s 32G was issued to the present respondent and Nathabhai Zaveribhai with a view to determining the price of land bearing Survey No. 21. The notice was also served upon the appellant-landlord. In a proceeding for determining the price, the necessary parties are the landlord and the tenant as the tenant becomes the owner of the land by operation of law. A statutory duty is cast on the Tribunal to proceed to determine the purchase price. But as held by a Constitution Bench of this Court in *Sri Ram Ram Narain Medhi v. The State of Bombay*⁽¹⁾, that "the title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal."

Thus, it is clear that the title passes by the operation of law. The Tribunal has to determine the price as envisaged by s. 32G. In order to effectively dispose of the proceedings in the presence of the necessary parties, the Tribunal is under an obligation to issue notice to the landlord and the tenant. Order of the Tribunal dated July 20, 1962 shows that both the tenants and the landlord were served. The order further shows that the tenants refused to accept the notice and after substituted service did not remain present. It

(1) [1959] Supp. 1 S.C.R. 489 at 518.

A appears that the landlord remained present. The Tribunal declared the sale ineffective on account of the absence of the tenants. So far there is no dispute,

B It appears that the Legislature became aware of the fact that for want of legal literacy a sizeable number of tenants did not appreciate the implication of such a revolutionary measure and presumably under some influence of the landlord and the local atmosphere, the tenants did not appear before the Tribunal with the result that the statutory sales were declared ineffective. The Legislature took notice of this phenomenon defeating an agrarian reform legislation and introduced sec. 32 PP by the Amending Act of 1965.

C Sec. 32 PP was designed to give a further opportunity to the tenant to purchase the land. The relevant portion of sec. 32 PP reads as under;

D "s. 32 PP. Notwithstanding anything contained in sections 32G and 32P, where before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 (hereinafter referred to in this section as "the said date")—

- E
- F (i) any land has been at the disposal of the Collector under section 32P on account of the purchase of the land by the tenant thereof having become ineffective under sub-section (3) of section 32G by reason of the tenant failing to appear before the Tribunal or making a statement expressing his unwillingness to purchase the land, and"
- * * *

G Pursuant to this fresh opportunity afforded by sec. 32PP respondent made an application requesting the Tribunal to determine the purchase price. The Gujarat Revenue Tribunal (Revenue Tribunal for short) held that the sale had become ineffective under sub-sec. (3) of sec. 32G by reason of the tenant failing to appear before the Revenue Tribunal and therefore in an application under sec. 32PP the status of the applicant being a tenant is no more open to debate or dispute and must be deemed to be concluded between the parties. It is difficult to subscribe to this view. Sec. 32PP

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confers a right upon a person claiming to be a tenant and the precondition is that he having failed to appear before the Tribunal in a proceeding u/s 32G, can make an application for determining the price. In such a situation, the landlord is a necessary party. The landlord can and would be entitled to contend that the person claiming to be a tenant and making an application u/s 32PP was not a tenant on April 1, 1957. It is difficult to subscribe to the interpretation of sec. 32PP adopted by the Tribunal. Undoubtedly only that person is entitled to make an application u/s 32PP who having failed to appear before the Tribunal in a proceeding u/s 32G, the statutory sale was declared ineffective but on that account such person making an application under sec.32PP must be accepted as tenant without further enquiry and without permitting the landlord to challenge the status of the applicant is not warranted by the language of sec. 32PP. It is undoubtedly true that an application u/s 32PP can be made where the purchase of the land by the tenant has been declared ineffective u/s 32G(3) by reason of the tenant failing to appear before the Tribunal or making a statement expressing his unwillingness to purchase the land. But it should not be overlooked that where a notice was sent by the Tribunal u/s 32G to the person to whom the Tribunal *prima facie* believed to be a tenant and if such a tenant did not appear and the Tribunal without anything more proceeded to declare the sale becoming ineffective, the application u/s 32 PP would not preclude the landlord from contesting the petition by showing that the applicant was not a tenant on 1.4.57. In any proceeding u/s 32G and 32PP the most important issue to be determined is whether the person claiming to be a tenant was a tenant on April 1, 1957 and an additional issue will have to be determined in an application u/s 32PP whether to such a person notice had been issued u/s 32G and on his failure to appear the sale became ineffective. The Revenue Tribunal appears to be of the view that unless the landlord challenged the order u/s 32G declaring the sale having become ineffective on the footing that a person to whom notice was sent was a tenant on April 1, 1957 and is failure to appear without anything more would clothe him with the status of a tenant. This approach overlooks the possibility of a person to whom notice is served, not appearing because he had nothing to do with the land.

In such a situation an unadjudicated inferential determination of status cannot preclude an inquiry into the status which is a *sine*

A *qua non* for claiming the right in a subsequent proceeding between the parties. Therefore the failure of the landlord to question the sale being declared ineffective on account of the absence of the person to whom notice was sent and who defaulted would not either on the general principle of *res judicata* or principle analogous to constructive *res judicata* preclude the landlord from challenging the status in the subsequent enquiry. There is only one situation which B may preclude the enquiry in that if on receipt of notice the tenant did not appear and the landlord appeared and unequivocally admitted that the defaulting person was a tenant on the relevant date and on his failure to appear the sale should be declared ineffective, the landlord in subsequent proceeding under sec. 32 PP would be C estopped from challenging the status of the applicant tenant. Such is not the case. Otherwise on a challenge by the landlord in a proceeding under sec. 32 PP the Tribunal have to determine the jurisdictional facts that (i) the applicant was a tenant on April 1, 1957 and (ii) that the sale was declared ineffective under sec. 35G. Therefore, the view of the Tribunal that in a proceeding u/s 32PP, the status of the applicant as a tenant is incontrovertible does not commend to us and is not correct. D

Mr. Bobde contended that once the view of the Tribunal is not in consonance with law the only course open to us is to remit the matter to the Tribunal. We are not inclined to accept the submission E for the obvious reason that there is material on record that the respondent was a tenant on the relevant date. Apart from a piece of circumstantial evidence that a notice was sent to the respondent both by a registered post and service was sought to be effected by substituted service on the basis of tenancy record, his name appears F in the record of tenancy for certain years. Further the landlord has not put on record his statement in the proceeding u/s 32G whether he disputed the status. The landlord did not take any step under sec. 15 after the sale was declared ineffective. Nathabhai Zaverbhai who according to the landlord was the only tenant of land was not G examined by the landlord. The cumulative effect of these circumstances would affirmatively show that the respondent was a tenant and if he was a tenant on the relevant date, the Tribunal was right in directing that the purchase price be determined.

H This is the only point involved in this appeal. As we find no merit in it, the appeal fails and is dismissed with costs.