

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5906 OF 2006

SAMPATI GOVIND BHIL [DECEASED] TR. HIS L.RS. APPELLANT(S)

VERSUS

SUDAM BAPU WARIK RESPONDENT

ORDER

1. By filing this appeal, the appellant has challenged the judgment and order dated 10th October, 2006 passed by the High Court of Judicature at Bombay whereby the High Court dismissed the writ petition filed by the appellant herein.
2. The appellant herein are the tenants and the respondent is the landlord. It is an admitted position that the parties herein are governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.
3. The respondent-landlord was a minor on 1st April, 1957. He attained majority on 26th May, 1960. It is also an admitted position between the parties that the provisions of Section 32F are applicable to the facts and

circumstances of the present case. The whole controversy in the present appeal is centered around the provision of Section 32F(1A) of the said Act.

4. The Bombay High Court had an occasion to consider the said provisions in the case of Tuka Ram Maruti Chavan v. Maruti Narayan Chavan (Dead) by LRs. & Ors. wherein the Bombay High Court interpreted the aforesaid provisions and held that the provisions of Section 32F(1A) mandate that a tenant has to give to the landlord a notice of his intention to purchase the land of which he is in possession as a tenant. The said judgment rendered by the Bombay High Court was challenged in this Court which has been decided, and is reported in 2008 (9) SCC 358 titled Tuka Ram Maruti Chavan v. Maruti Narayan Chavan (Dead) by LRs. & Ors. In paragraphs 12 & 13 of the said judgment, this Court has held that the provisions of Section 32F are independent in nature and are separate from the provisions under Section 31 of the said Act. It was further held that the right given to the landlord under Section 31 has nothing to do with the right given to the tenant under Section 32F for purchasing the land and that a tenant has a legal obligation or statutory duty under Section 32F to give to the landlord as well as to the Tribunal a notice of his intention to purchase the land which is in his possession as a tenant. We also wish to refer to a judgment of this Court, which has relevance in the context of the case at hand, viz., Anna Bhau Magdum (since deceased by his legal representatives) v. Babasaheb Anandrao Desai, reported in (1995) 5 SCC 243. The Court in para 13 of its judgment held as follows: -

“13. *The contention of Shri Wad that the provisions of sub-section (1-A) 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 (1-A) 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 (1-A) would result in 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 (1-A) an indication about the mandatory nature of the said provision 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 (1-A), 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 (1-A) 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 Section 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 (1-A) 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.”*

The aforesaid position is the settled position in law.

5. In the backdrop of the aforesaid settled legal position, we wish to examine the facts of the present case. There is nothing on record to indicate that any

notice as required under the provisions of Section 32F(1A) was issued by the appellant-tenants. In absence of such a notice, it has to be held that the precondition for the applicability of the provisions of Section 32 would not be satisfied.

6. It was pointed out by the counsel appearing for the appellants that since they had no knowledge of the fact that the respondent-landlord had attained majority, the appellants could not serve notice as required and instead they initiated proceedings under Section 32G of the said Act.
7. In our considered opinion, initiation of said proceedings by the appellants under Section 32G was wholly unjustified and uncalled for. The same was not maintainable. In any event, in the absence of service of a notice as required under Section 32F(1A), the appellant could not have claimed the relief which has now been claimed before us. Apart from that this Court in the decision of Tukaram Maruti Chavan (supra) has also held that the initiation of the proceedings under Section 32G would not absolve the appellant from his responsibility of issuing a notice to the respondent under Section 32F(1A). The High Court, therefore, was justified in dismissing the claim of the appellant.
8. We, therefore, find no reason to interfere with the order passed by the High Court. The present appeal lacks merit and is therefore dismissed. The parties are left to bear their own costs.

..... J
[DR. MUKUNDAKAM SHARMA]

..... J
[A.K. PATNAIK]

NEW DELHI
MARCH 18, 2010.

