V.S.Charati vs Hussein Nhanu Jamadar(Dead) By L.Rs on 18 November, 1998

PETITIONER:
V.S.CHARATI

Vs.

RESPONDENT:
HUSSEIN NHANU JAMADAR(DEAD) BY L.RS

DATE OF JUDGMENT: 18/11/1998

BENCH:
Sujata V. Monohar, G.B.Pattanaik

JUDGMENT:

DER The appellant is the landlord. He has claimed that in a partition effected in the year 1956 in the joint family of which he was a member an area admeasuring 1 acre 19 gunthas out of Revision Survey No. 8 of village Kudnoor in Gadhinglaj Taluka came to his share. This land is agricultural land of which the original respondent was a tenant at the material time.

On coming into force of the Bombay Tenancy & Agricultural Lands Act. 1948, the appellant filed an application under Section 31(1) read with Section 29 of the said Act for possession on the ground that he bona fide required the land for personal cultivation. Although the appellant was a minor at the time of the application, he chose to exercise his rights under Section 31(1). This application was ultimately dismissed by the Mamlatdar on 29.5.1957 on the ground that under Section 31-B, there is a prohibition against termination of tenancy if such termination would result in contravention of the provisions of Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. Therefore, by virtue of the dismissal of the appellant's application under Section 31(1) under the provisions of Section 31(1) the respondent became a deemed purchaser of the said land on the postponed date 29.5.1957, the latter being the date on which the application of the appellant was dismissed.

Thereafter proceedings lunder Section 31-G were taken for determination of purchase price. These proceedings, however, were dropped by the Agricultural Lands Tribunal on 31.5.1961 on the ground that the appellant was then a minor and the tenant could not purchase the land. The tenant did not take any steps to challenge the decision of the Tribunal dated 31.5.1961.

On 20.10.1964, by Maharashtra Act 39 of 1964, Chapter III-AA was added in the said Act to confer certain benefits on the members and ex-members of the armed forces. Under this Chapter, Section 43-18 provides, inter alia that it shall be lawful for a landlord at any time after commencement of

the said Amendment Act, to terminate the tenancy of any land and obtain possession thereof, but of so much of such land as will be sufficient to make the total land upto the ceiling area. Under sub-section (4) of Section 43-1B, nothing in the Bombay Prevention of Fragmentation & Consolidation of Holdings Act., 1947 shall affect the termination of any tenancy under this Chapter. The "landlord" for the purposes of this Chapter is defined in Section 43-1A as a person who is or has ceased to be, a serving member of the armed forces. The appellant, in the present case, joined the armed forces on 21.11.1965 after he attained majority on 7.11.1965. He served, on 11.4.1972, a notice terminating tenancy of the respondent under Section 43-1B(2). In the proceedings which took place thereafter, his application was allowed by the Sub-Divisional Officer on 31.3.1976. An appeal from this order to the Additional Commissioner was dismissed on 25.4.1976. The respondent-tenant thereupon moved the High Court by way of a writ petition which has been allowed by the impugned judgment & order dated 8.10.1980. Hence, the present appeal.

The short question that requires consideration is whether in view of the dismissal of the original application filed by the appellant-landlord under Section 31(1) on 29.5.1967, it was open to the appellant to avail of the provisions of Chapter III-AA. Under Section 43-1B, it is provided that notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful for a landlord (a member or ex-member of the armed forces) at any time after the commencement of the Tenancy and Agricultural Lands (Amendment) Act, 1964 to terminate the tenancy of any land and obtain possession thereof in the manner set out in the section. Section 43-1B, therefore, overrides the preceding provisions of the said Act. Section 43-1E which forms a part of Chapter III-AA, provides as follows:

> "Sec.43-IE: Nothing in this Chapter shall apply in relation to land which before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964 is purchased by any tenant under the provisions of Chapter III."

According to the appellant, Section 43-IE will come into operation only in those cases where there is a completed purchase in favour of the tenant. It will not protect a tenant who is only a deemed purchaser, but in respect of whom proceedings under section 32G have not been completed. The appellant therefore contends that as a member of the armed forces he can avail of Chapter III-AA and Section 43-IB forming a part thereof to terminate the tenancy of the respondent and obtain possession of the said land. According to the respondent. Section 43-IE will protect him against Chapter III-AA provisions because he has become a deemed purchaser on 29.5.1957.

This issue came up for consideration before a Division Bench of the Bombay High Court in the case of Bhimrao Tatoba Sawant & Anr. Vs Heramb Anant Patwardhan & Ors. reported in AIR 1986 Bombay 408. While considering the scheme of Chapter III-AA, the Bombay High Court held that Section 43-IE would come into operation only if there has been so as to say, a completed purchase of the land by the tenant under the provisions of Chapter III. It will not be possible to introduce, while interpreting that section the theory of "deemed purchase" and its ineffectiveness under certain circumstances. What is material is that the vested rights flowing from the purchase of the land by the tenant under Chapter III should not be disturbed. If the rights of the tenant as a purchaser have not been crystallised, the landlord belonging to the armed forces can claim benefit of the provisions

of chapter III-AA. In the present case, as section 32G proceedings were dropped the rights of the respondent-tenant as a purchaser have not been crystalised. The very purpose of introducing Chapter III-AA by the Amending Act of 1964 is to give additional benefits to those landlords who are members of the armed forces. The High Court has rightly observed in connection with Chapter III-AA as follows:

> "All these provisions would be set at naught if we accept the contention of Shri Bhonsale that under Chapter III a tenant would be the purchaser in every case except where the purchase has become ineffective under S.32G(3) or S.32F. It is material to note that wherever the purchase has become ineffective under these two provisions it is the landlord who has a first preference to get possession of the land. This right has been conferred on the landlord under S.32P. What is important is that under that section the landlord, whether he is a member of the armed forces or not is entitled to have his first preference. It would thus mean that the provisions of Chapter III-AA could not be implemented to the benefit of the landlord belonging to the armed forces if we record a finding that prior to the introduction of Chap. III-AA on the statute book the tenant should be held to have become the owner except lunder the two contingencies covered by Ss. 32G(3) and 32F. In our opinion, the interpretation sought to be put by Shri Bhonsale on S.43-IE would take away all the benefits which the Legislature intended to confer on the landlords who lhave been serving as members of the armed forces. It is material to note that S.43-IE uses the words 'purchase by the tenant'. It appear that the Legislature has purposefully chosen not to use the words 'deemed to have been purchased by the tenant' under Chap. III. The words 'purchased by the tenant' will have to be interpreted in such a manner that the intention of the Legislature to give additional benefits to the landlords belonging to the armed forces is implemented. This is permissible if there is no violence to the language used by the Legislature and the meaning of the phrase 'purchased by the tenant' can be opoperly understood as not to cover 'deemed to have been purchased by the tenant'."

(underling ours) The appellant, therefore, in the present dase, did not lose his rights under Chapter III-AA because the proceedings under Section 32-G had been dropped, and the tenant remained only a deemed purchaser and could not be called a purchaser as contemplated under Section 43-IE.

It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31.5.1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of Nago Dattu Mahajan Vs. Smt. Yeshodabai Huna Mahajan reported in (1976) 78 BLR 427 where this Court has held that lunder Section 31 the landlords have a choice to avail of one of the two provisions of resumption namely either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent, therefore, contends that in the present case the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 31G his disability as a minor under Section 31(3). The order of 31.5.1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31.5.1961 has become final and the decision rendered by the Agricultural

Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision simply because it may be wrong would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision of 31.5.1961 on the parties therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 31G being dropped he cannot now contend that the decision has no legal effect or that the proceedings under Section 31G ought to have been completed and, therefore, he should be looded lupon as a purchaser.

The appellant has also drawn our attention to Section 31F(IA) under which, if a tenant holding land from a landlord who was a minor has not been given intimation at the commencement of the Bombay Tenancy and Agriucltural Lands Amendment Act, 1969, but being in possession of the land on such commencement, is desirous of exercising the right conferred on lhim lunder sub-section(1) he may give such intimation to the landlord and the Tribunal within a period of two years from the commencement of the Act. Therefore, the tenant was given an additional opportunity to give intimation after the commencement of the Amendment Act of 1969. Even this opportunity was not availed fo by the tenant. The respondent has thus continued as a tenant. His tenancy can be terminated under Section 43-IB.

In the permises the High Court was not right in coming to the conclusion that the application of the appellant was barred under Section 43-IE. We, therefore, allow this appeal set aside the impugned judgment and order of the High Court and restore the order of the Sub-divisional Officer as confirmed by the Additional Commissioner. There will, however, be no order as to costs.