

Bayaji Sambhu Mali @Borate(D) Thr. Lrs. vs Nazir Mohammed B.Zari Thr.Poa Hold. on 12 February, 2019

Equivalent citations: AIRONLINE 2019 SC 561

Author: K.M. Joseph

Bench: K.M. Joseph, Ashok Bhushan

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1644-1645 of 2019
[Arising out of SLP(C)No(s).13627-13628 of 2012]

BAYAJI SAMBHU MALI @
BORATE(D) THROUGH LRS.

APPELLANT(S)

VERSUS

NAZIR MOHAMMED BALAL ZARI
THROUGH GPA HOLDER & ORS.

RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.

2. By the impugned judgment and order, the High Court has dismissed the writ petition filed by the appellant under Article 227 of the Constitution against the order dated 09.01.1997 of the Maharashtra Revenue Tribunal and the review petition filed against the same.

3. These appeals arise under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act').

Reason: The appellant is the tenant and the respondent is the landlord. On what is described as Tillers day i.e. 01.04.1957, the landlord was a minor. The controversy, which we are called upon to resolve, is whether the appellant is a deemed purchaser within the meaning of Section 29 read with Section 32 of the Act or whether this is a case under Section 32F of the Act under which the tenant is obliged to give a notice under Section 32F(1A).

4. To appreciate the question which arises before us, it is necessary we should first set out the facts according to the appellant which are related to the impugned order.

5. It is the case of the appellant that the first respondent – landlord claimed that he had attained majority on 10.09.1966 and filed an application bearing Tenancy Case No. 1 of 1967 before the Mamalatdar for his personal cultivation under Section 31(3) of the Act. The appellant claimed that he had received a notice issued by Tenancy Awwal Karkun and was directed to appear on 05.06.1967. His statement was recorded. By order dated 27.07.1967, the application filed by the landlord seeking possession was dismissed.

6. It is the further case of the appellant that the first respondent – landlord filed Tenancy Appeal (bearing No. 148 of 1967) before the Appellate Authority. The said appeal came to be dismissed on 09.03.1968. The respondent – landlord carried the matter further before the Tribunal by way of a Revision Application. The Maharashtra Revenue Tribunal vide order dated 22.04.1970 dismissed the Revision Application. It is thereafter the tenant- initiated proceedings under Section 32G of the Act in the year 1977. The Original Authority, however, took the view that the tenant did not comply with the provision of Section 32F of the Act which was challenged before the Sub-Divisional Officer who confirmed the order vide order dated 30.09.1978.

7. The Tribunal, on a Revision filed by the appellant, set aside the order and remanded the matter for a fresh inquiry under Section 32G of the Act.

8. By order dated 20.07.1990, the Additional Tehsildar, after noticing certain discrepancies in the extract of Appeal Register relating to the proceeding commenced by the landlord found that the appellant had failed to prove that the landlord had exercised his right to recover possession under Section 31 of the Act and therefore the provision of Section 32F of the Act applies. Since the same had not been complied with, therefore the purchase in favour of the appellant was found to be ineffective.

9. The Appellate Authority, by order dated 24.04.1992, however, found otherwise and allowed the appeal filed by the appellant. The landlord challenged the order of the Appellate Authority. By order dated 09.01.1997, the Tribunal set aside the order of the Appellate Authority and confirmed the order passed by the Additional Tahsildar and found that the appellant had not complied with the provisions of Section 32F(1A). It is against the said order of the Tribunal, the appellant filed the writ petition. The High Court dismissed the writ petition and though the appellant filed a review petition, the same was also rejected.

10. We have heard learned counsel for the parties.

11. Learned counsel for the appellant contended that this is a case where the matter should be treated as governed by the provisions under Section 29 read with Section 31 of the Act. In a case governed by these provisions, learned counsel pointed out that there is no requirement of issuing notice within the meaning of Section 32F. He relied on *Tukaram Maruti Chavan v. Maruti Narayan Chavan (D)* by Lrs. and Ors. (2008) 9 SCC 358 and *Sudam Ganpat Kutwal v. Shevantabai Tukaram*

Gulumkar (2006) 7 SCC 200.

12. It is clear that the landlord had filed an application under Section 29 of the Act and the said application was rejected and the rejection was upheld right upto the Tribunal in Revision.

13. These documents have been brushed aside as also the legal effect of the orders passed. He would further contend that though he had produced certified copies along with review petition in the High Court even then the same were not considered. He would maintain that in a case where there is a deemed purchase, there is no requirement to issue a notice under Section 32F(1A).

14. Per contra, learned counsel for the respondent would support the order of the High Court. He would contend that it is mandatory to give a notice under Section 32F(1A). Without giving such a notice, it is not open to contend that he must be deemed to have purchased the right. He would also point out that the case of the respondent is that the application was not accepted since the certified copies were produced only after the dismissal of the writ petition that too in the review. Therefore, no store can be laid by the said documents. He also contends that it was appellant's case that there was substantial compliance of Section 32F(1A) in the High Court.

15. Time is now apposite to make a survey of statutory scheme of the Act. The Act was enacted in the year 1948. We must advert to the following provisions which we think are relevant for the purposes of this case.

16. Section 29 deals with Procedure of taking possession which, inter alia, reads as follows:

29. (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed [and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be].

(2) [Save as otherwise provided in sub- section (3A), no landlord] shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form [and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him].

(3) On receipt of application under sub- section (1) or (2) the Mamlatdar shall, after holding an inquiry, pass such order thereon as he deems fit :

[Provided that where an application under sub-section (2) is made by a landlord in pursuance of the right conferred on him under section 31, the Mamlatdar shall first decide, as preliminary issues, whether the conditions specified in clauses (c) and

(d) of section 31A and sub-sections (2) and (3) of section 31B are satisfied. If the Mamlatdar finds that any of the said conditions is not satisfied, he shall reject the application forthwith].

17. Section 31 deals with Landlord's right to terminate tenancy for personal cultivation and non agricultural purpose which reads as follows:

31. (1) Notwithstanding anything contained in sections 14 and 30 but subject to sections 31A to 31D (both inclusive), a 3 [landlord (not being a landlord within the meaning of Chapter III-AA) may], after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona-fide requires the land for any of the following purposes :-- (a) for cultivating personally, or

(b) for any non-agricultural purpose.

(2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given [and an application for possession under section 29 may be made,]--

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist;

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in the sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a large proportion].

18. 31A. The right of a landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions:--

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the

period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors 2 [but not of any person from whom title is derived, whether by assignment or Court sale or otherwise], or if the landlord is a member of a joint family, in the name of a member of such family].

19. Section 32 deals with Tenants deemed to have purchased land on tillers' day. It reads as follows:

32. [(1)] On the first day of April 1957 (hereinafter referred to as "the tillers' day") every tenant shall, [subject to the other provisions of this section and the provisions of] the next succeeding section, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if—

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; [or] [(iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands] :

Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the [Maharashtra Revenue Tribunal] under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date" : [Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that

proviso].

20. Section 32A provides that Tenants are deemed to have purchased upto ceiling area.

32A. A tenant shall be deemed to have purchased land under section 32,- (1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of the ceiling area, upto the ceiling area;

(2) in the case of a tenant who holds land as owner below the ceiling area, such part of the land only as will raise his holding to the extent of the ceiling area.

21. Section 32B provides for the circumstances in which the tenants are not deemed to have purchased lands. It provides that if the tenant holds land partly as owner and partly as tenant but the area of the land held as owner is equal to or exceeds ceiling area, he shall not be deemed to have purchased the land held by him as a tenant under Section 32.

22. Section 32C permits the tenants entitled to choose lands to be purchased. Section 32D contemplates when tenants are deemed to have purchased fragments. The balance of any land, if any, after the purchase by the tenant under Section 32 shall be disposed of in the manner laid down in Section 15 as if it were land surrendered by the tenant. This is the mandate of Section 32E.

23. Section 32F deals with Right of tenant to purchase where landlord is minor etc. which reads as follows:

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] :

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion].

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised—

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;

(iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces :

[Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion].

[(1A) A tenant desirous of exercising the right conferred on him under sub- section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub- section] :

[Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-

section (1), he may give such intimation within a period of two years from the commencement of that Act].

(2) The provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase.

24. Section 32G reads as follows:-

32G. (1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon –

(a) all tenants who under section 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. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) 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
tenant.		

(3) Where any 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 tenant is not willing to purchase the land and that the purchase is ineffective :

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32H and of sub-

section (3) of section 63A :

[Provided that where the purchase price in accordance with the provisions of section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement].

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be, after such date determine the

price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

25. Section 32H provides for the purchase price and its maxima.

26. Now that we have the case as setup by learned counsel for the appellant and learned counsel for the respondents and also the statutory scheme, we must delve a little deeper into the facts and also apply the same in the backdrop of the scheme of the Act. The High Court has proceeded on the basis that the appellant has not given notice under Section 32F(1A). According to the High Court, it is mandatory. Learned counsel for the respondent also relies on that reasoning. On the other hand, the case of the appellant is that in accord with his case, there is no requirement to give a notice under Section 32F(1A). The landlord would point out that the Court may notice that it is the case of the appellant that Section 32F(1A) has been substantially complied with by the appellant.

27. Section 29(2) contemplates that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. He is obliged to make an application within two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be is deemed to have accrued on him. Subsection (3) provides that the Mamlatdar is to pass an order after conducting such inquiry. In the proviso, it may be noticed that where an application under subsection (2) is made by a landlord in pursuance of the right conferred upon the landlord under Section 31, in such case, the Mamlatdar is to first decide preliminary issues which include whether the conditions in clauses

(c) and (d) of Section 31A are satisfied. He must also be convinced that the conditions mentioned under subsections (2) and (3) of Section 31B are fulfilled. He is dutybound to reject the application, if the conditions therein are not fulfilled. With the rest of the provisions contained in Section 29, we may not be detained. Therefore, now coming to Section 31, Section 31 falls under Chapter III titled Special Rights and Privileges of Tenants and Provisions for Distribution of Land for Personal Cultivation.

28. Chapter III is divided in two parts. Section 31 falls under Part (I) which provides - Termination of Tenancy for Personal Cultivation and Non Agricultural Use. It will be noticed that Section 32 and other provisions which follow the same fall under Part (II) which deals with Purchase of Land by Tenants.

29. Reverting back to Section 31, it contemplates that subject to Sections 31A to 31D both inclusive and notwithstanding whatever may be contained in Sections 14 and 30, a landlord after giving

notice and making an application for possession as provided in subsection (2) can terminate the tenancy of any land barring permanent tenancy, should he require the land for cultivating personally or for any non agricultural purpose.

30. Subsection (2) provides that a notice is to be given in writing. It shall state the purpose for which the landlord requires the land. It is to be served on or before 31st Day of December 1956. A copy of the said notice is to be sent to the Mamlatdar. It is thereafter clearly provided that an application for possession under Section 29 is to be made to the Mamlatdar on or before 31st day of March 1957.

31. However, subsection (3) of Section 31 contemplates that where a landlord is a minor or a widow or a person subject to mental or physical disability, the notice may be given and an application for possession under Section 29 may be made by the minor within one year from the date on which he attains majority. We are not concerned here with the other categories. Therefore, we can hold that if a landlord is a minor, he can invoke provisions of Section 29 and an application for possession under Section 29 can be made within one year from the date on which he attains majority. Section 31A provides for the conditions of termination of tenancy. It limits the right of the landlord to terminate a tenancy for cultivating the land personally under Section 31 by hedging the said right with certain conditions. The conditions also may not concern us. It is now that we must pass on to Section 32.

32. Section 32 declares that on Tillers day which is the First day of April 1957, every tenant shall be deemed to have purchased from his landlord free of all encumbrances subsisting thereon on the said day the land held by him. There are two limitations which can be culled out from the said provisions. A declaration under Section 32 is made subject to the other provisions of the said section. It is further made dependent on the operation of the next succeeding sections. In other words, the provisions which follow Section 32 will control the application of Section 32.

33. What is relevant to us is the first proviso of Subsection (1) which is relied upon by the appellant. This came to be added by the Bombay Act 38 of 1957. If it is broken down, it provides as follows:

1. The application is made by the landlord under Section 29 for obtaining possession of the land;
2. it has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal. [The Maharashtra Revenue Tribunal has been brought in by way of Maharashtra Act 23 of 2007 with effect from 13.12.2007];
3. if the aforesaid elements are satisfied the proviso declares that the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed;
4. the date on which the final order of rejection is passed is to be referred to as 'the postponed date'.

34. Since Section 32 has been made subject to the next succeeding sections, it will be noted that the next succeeding sections in the form of Sections 32A, 32B, 32C and 32D provide for the conditions and limitations subject to which the deeming provision operates. In other words, the deemed right which is conferred on a tenant under Section 32 will be enjoyed subject to the restrictions under Sections 32A to 32D.

35. Before we discuss Section 32F, we deem it appropriate to refer to Section 32G. Section 32G deals with the power of the Tribunal to issue notice and determine the price of the land to be paid by the tenants. Section 32G(5) declares that in the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall determine the price of the land. The 'Tribunal' is defined in Section 2(19) as the Agricultural Lands Tribunal under Section 67.

36. Section 32G inter alia provides that the Tribunal shall publish or cause to be published a public notice calling upon the persons who are deemed to have purchased the lands. This is apart from calling upon the landlords and other persons to appear on the date specified in the notice. The failure of the tenant to appear or a tenant who makes a statement that he is not willing to purchase the land will result in the Tribunal ordering in writing declaring that such tenant is not willing to purchase and the purchase is ineffective. If the tenant is willing to purchase, the Tribunal after giving an opportunity to the landlord and the tenant determine the price.

37. Reverting back to Section 32F, it begins with a non obstante clause. The non obstante clause is qua anything which is stated in the preceding sections.

38. It provides inter alia for a right of the tenant to purchase where the landlord is a minor tenant. In such a case, he would have the right to purchase within a period of one year under Section 32. This period of one year will begin to run from the expiry of the period during which the landlord is entitled to terminate the tenancy under Section 31.

39. Section 31 provides for a period of one year from the date on which the minor attains majority when the landlord is a minor for him to give notice and followed by an application under Section 29.

40. Section 32F further provides that the landlord is obliged to send an intimation to the tenant of the fact that he has attained majority before the expiry of the period during which the landlord can terminate the tenancy under Section 31.

41. We will illustrate working of the Section with a concrete example.

If a landlord is a minor and he attains majority as on 01.01.1966 then under Section 31, he will get a period of one year for terminating the tenancy. The period will run out on 31.12.1966. The landlord is obliged to intimate his tenant about the fact that he has attained majority before 31.12.1966. Thereupon, the tenant if he wishes to purchase, he would have the right to give a notice within a period of one year from 31.12.1966. Thus, he would have the period till 30.12.1967. As to how the intimation is to be given under subsection (1) of Section 32F is provided in Section 32F(1A). Section 32F(1A) provides he must give an intimation about his exercising the right under subsection (1) both

to the landlord and the Tribunal in the manner prescribed within the period mentioned in subsection (1) which we have explained by way of an illustration. The proviso which was added by the Act 49 of 1969 contemplates an extended period of giving the intimation by a tenant who is in possession with which we may not be concerned.

42. We are inclined to proceed in this case on the basis that the appellant had not given intimation within the meaning of Section 32F(1A) of the Act. On the other hand, the specific case which is pressed before us is that what is crucial is he must be treated as a deemed tenant having regard to the fact that the respondent – landlord unsuccessfully filed an application within the meaning of Section 29 read with Section 32.

43. At this juncture, we must focus on the facts given by the landlord more closely. As we have noticed, the case of the appellant is that the respondent filed an application under Section 29 and the same came to be rejected by order dated 27.07.1967. The landlord, according to the appellant, preferred an appeal which was rejected on 09.03.1968.

44. In the order dated 09.03.1968, the Appellate Authority found glaring loopholes in the evidence of the first respondent. On the one hand, there was an entry regarding the date of birth which was in the school register and on the other hand there was an entry in the birth register. One date of birth was shown as 10.09.1947 whereas the other date of birth was shown as 04.06.1948. The school certificate shows that the date of birth is 04.06.1948 where as the date given in the birth register is 10.09.1947.

45. The application was filed by the first respondent

- landlord on 20.05.1967. If the date of birth is taken as 04.06.1948, which was apparently pressed upon by the first respondent, the application dated 20.05.1967 would have been within time. Whereas if the date of birth is taken as 10.09.1947, the application filed by the respondent was clearly time barred. The Authority did not accept the version of the landlord.

46. From the orders which are produced before us in the revision application filed by the first respondent, the Maharashtra Tribunal has confirmed this finding. The revision application was dismissed.

47. It is thereafter that the appellant filed an application purporting under Section 32G. As we have noticed the matter travelled upto the Tribunal which remanded it to the Original Authority, it is thereafter that a new round of litigation commenced and which culminated in the impugned order of the High Court. In this round, the order of the Original Authority went against the appellant and it is found that the landlord became a major on 04.06.1966.

48. He found that the provisions of Section 32F are applicable. The Original Authority further reasoned that it was necessary for the appellant to exercise a right of purchase by giving intimation under Rule 20 of the Rules, 1956 within two years from the date of attaining majority i.e. by 04.06.1968. This mandatory provision was not complied with by the tenant and he lost his right.

Regarding the proceedings at the hands of the first respondent – landlord, it is stated as regards extract of appeal register, there is some discrepancy in the extract. It has mentioned that the date of lower court order is 27.07.1967 and the date of receipt is 19.06.1967 (apparently the date of receipt is the date of receipt of the appeal, in other words, the discrepancy is that the date of the appeal is earlier than the date of the order which is impugned in the appeal). It is further stated that there is no evidence by the first respondent to establish that the landlord terminated the tenancy and filed an application for possession of the suit land under Section 29 read with Section 31 after attaining majority. Therefore, it was for the tenant to exercise his right of purchase under Section 32F(1A) which he failed to exercise and thus resulted in the loss of his right. The Assistant Collector in the appeal filed by the appellant allowed his appeal. The Tribunal reversed the order of the Appellate Authority and restored the order of the Original Authority. The Tribunal has proceeded on the basis of the discrepancy in the appeal and the order is substantially on the lines of what the Original Authority has proceeded to hold. It is further pointed out that where the party is to produce the primary evidence it would be a certified copy and nothing else. The landlord has denied the filing of the case for possession and the tenant / appellant has failed to comply with the provisions of Section 32F. He has lost the right to purchase the suit land.

49. The High Court has adverted to the provisions and found there was a serious doubt expressed about the initiation of proceedings filed by the landlord and the learned Single Judge could not see how the Tehsildar and the Agricultural Land Tribunal have committed an error apparent on the face of the record or perversity in regard to the finding about giving intimation. It was further found that in the proceedings under Section 32G, it was permissible to the landlord to raise an issue of non compliance under Section 32F(1A) by the tenant.

50. It was reiterated that intimation to the landlord and the Tribunal under Section 32F(1A) is a mandatory pre-requisite.

51. The argument of the appellant that the proceedings after the remand must be treated as a continuation of an earlier round of litigation and there is a substantial compliance with Section 32F(1A) was not accepted.

Interplay between Section 29 read with first proviso to Section 32(1) and Section 32F

52. A perusal of the First Proviso to Section 32(1) read with Section 29 would show that when an application is filed by the landlord for possession and that application is rejected then the tenant is deemed to have purchased the land. With reference to the date on which the order rejecting the landlord's application under section 29 read with Section 32 is passed. This is a case of deemed purchase. Section 32F, on the other hand, entitles the tenant to purchase. This is applicable in a situation where the landlord is a minor and on attaining majority though he has a period of one year from the date on which he attains majority to terminate the tenancy and he does not do so. Then the time starts ticking for the tenant from the expiry of the period of one year from which the minor landlord becomes major.

53. If there is no deemed tenancy within the meaning of Section 32 proviso read with Section 29 then the only alternative available for the tenant is to purchase the right by invoking provision of Section 32F. Both cannot exist together viz. if a person has a deemed status, there is no need for him to apply for purchase under Section 32F. Section 29 read with Sections 32 and 32F deal with two mutually exclusive situations. In a case covered by Section 29 read with Section 32(1) the tenant acquires the deemed status and in a case where a matter is covered by Section 32F, there is no deemed status for the tenant but he has to invoke provision of section 32F and issue a notice both to the landlord and to the Tribunal within the meaning of Section 32F(1A) and the matter has to be decided by the Authority.

54. In the facts of this case, if it is established that provisions contained in Section 32 read with Section 29 are applicable in so far as if we accept the case of the appellant that the respondent landlord had invoked Section 29 read with Section 32, being a case of a minor who became entitled to apply within a period of one year from the date of attaining majority and the application culminated in the rejection of his case then the appellant would acquire deemed status. If he acquires deemed status, then there could be no need to invoke Section 32F. Rather there is no need for him to again acquire a status which is conferred upon him by law by a deeming provision. Nothing more is required to be done by the tenant in such a case.

55. Coming to the merits of the matter, the appellant has produced material, the orders passed by the Appellate Authority and also by the Tribunal in Revision. It does show by invoking Sections 29 and 32, the first respondent had applied by projecting the case that he was born in 1948. The application filed by him stood rejected on the basis that the application was barred as birth register showed that he was born in 1947. Though the appellant has not produced certified copies earlier, the appellant has produced the same in the High Court after the judgment was delivered in the writ petition along with the review petition.

56. A reference to case law does not advance the case of the respondents. In *Amrit Bhikaji Kale and Ors. v. Kashinath Janardhan Trade and Anr.* (1983) 3 SCC 437 which related to the proceedings under the Same Act, this Court held as follows:

“On the tillers’ day the landlord’s interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law of Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof.

Section 32F has an overriding effect over Section 32 as it opens with a non obstante clause. The combined effect of Sections 32F and 32 is that where the landlord is under no disability as envisaged by Section 32F the tenant of such landlord by operation of law would become the deemed purchaser by where the landlord is of a class or category as set out in Section 32F, the date of compulsory sale would be

postponed as therein provided. Since ‘T’, the landlord was under no disability and was alive on April 1, 1957 his tenant ‘J’ became the deemed purchaser on the tillers’ day. Therefore, the relationship of landlord and tenant between ‘T’ and ‘J’ came to be extinguished and no right could be claimed either by ‘T’ or anyone claiming through him such as ‘A’ or the present purchasers on the footing that they are the owners of the land on or after April 1, 1957.”

57. In *Anna Bhau Magdum, Since Deceased by LRs v. Babasaheb Anandrao Desai* (1995) 5 SCC 243, the Court, no doubt, held that requirement under Section 32F(1A) was mandatory. There cannot be any automatic purchase under Section 32 read with Section 32G in such a case. However, it is relevant to note para 15.

“15. The submission of Shri Wad is that if express statement made by the tenant could not stand in the way of his availing the right conferred by the Act, there is no reason why merely because of inaction on his part a tenant should be deprived of the right. The observations aforementioned made in *Amrit Bhikaji Kale* have to be read in the context of the facts of that case where it was found that the landlord who was major and was under no disability, was alive on 1-4-1957 and the provisions of Section 32F were not attracted and there was deemed purchase of the land by the tenant by virtue of Section 32. The subsequent statement made by the tenant in proceedings before the Aval Karkoon were, therefore, held to be of no avail. The position in the instant case is, however, different. The respondent – landlord was a minor on 1-4-1957 and the case was governed by Section 32F and there has been non compliance of sub- section (1A) of Section 32-F.”

58. It is also relevant to note that it was not a case where the question related to ‘postponed date’ within the meaning of the first proviso to Section 32(1), but the principle relating to deemed status under Section 32(1) will apply in respect to deemed status under the proviso.

59. In *Sudam Ganpat Kutwal v. Shevantabai Tukaram Gulumkar* (2006) 7 SCC 200, the landlord filed an application under Section 31 read with Section 29 of the Act. The claim was accepted and possession of half of the land was directed to be delivered for a bona fide cultivation. The other half was to remain with the tenant. Thereafter, the landlady filed an application seeking possession of the remaining half of the land alleging certain defaults by the tenant. Later, the successor-in-interest of the landlady filed an application under Section 32(P) read with Section 32F for declaration that the deemed statutory purchase by the tenant was void as there was no required notice under Section 32F(1A) of the Act. This Court referred to the provisions and culled out its conclusions in para 23, which read, inter alia, as follows:

“23. The position as disclosed by a combined and harmonious reading of Sections 31, 32, 32F and 32G may be stated thus :

a) Where the landlord has not served on the tenant, a notice of termination (as stated in clause (b) of sub-section (1) of section 32), the tenant is deemed to have purchased the land on the tillers day (1.4.1957);

b) Where the tenant is deemed to have purchased the land on the Tillers Day (1.4.1957), the Lands Tribunal is required to issue notice and determine the price of land to be paid by tenant.

Where there is a deemed purchase, but the right to purchase is postponed, the Land Tribunal shall determine the price of land, as soon as may be after the postponed date;

f) Where a landlord, who is a widow, exercises her right of termination and secures possession of part of the tenanted land for personal cultivation under section 31(1) of the Act, then there is no question of her successor- in-title giving a notice of termination within one year from the date on which the widow's interest ceases to exist. When section 31 (3) ceases to apply, section 32F also will not apply and there is no need for the tenant to give any intimation under section 32F(1A)."

60. In *Tukaram Maruti Chavan v. Maruti Narayan Chavan (Dead) by LRs and Others* (2008) 9 SCC 358, the question was whether the appellant could exercise right to purchase in the absence of intimation under Section 32F(1A) to the landlord and to the Tribunal.

61. The original landlady who was a widow died in 1964 leaving behind him two sons. The original tenant initiated proceedings under Section 32G which was ordered in his favour.

62. The Court was of the view that notice under Section 32F(1A) is mandatory. However, the Court also *inter alia* held as follows:

"The required notice is not mandatory only in a case when a widow landlady has already exercised her right under Section 31(1) i.e. when during her lifetime, a notice is served to the tenant that the landlady requires the land *bona fide*. Once a notice under Section 31(1) is served by such a widow landlady, the further benefit of Section 31(3) is not available."

63. No doubt, learned counsel for the respondent submitted that in the event the Court is inclined to take a view that the certified copies are to be looked into, the matter may be remitted back.

64. We are of the view that there is a wealth of documents showing that the respondent litigated the matter at three levels i.e. the application filed by the landlord dated 20.05.1967, the order passed in appeal and still further the order in revision before the Tribunal. Relying on some discrepancy as noted as regards the date of filing of the appeal and the date of the impugned order, the Authorities and the High Court should not have found against the appellant.

65. There is no doubt in the case that the appellant admittedly was a tenant of the first respondent. We hold it is a case where there was no need for the appellant to send any intimation within the meaning of Section 32F(1A). He had acquired a deemed status with the rejection of the application filed by the landlord. The appellant was not obliged to do anything further. In view of the matter, we

allow the appeals and set aside the impugned decisions passed by the High Court and restore the order passed by the Collector. There will be no order as to costs.

.....J. [ASHOK BHUSHAN]J. [K.M. JOSEPH] NEW DELHI;

FEBRUARY 12, 2019.