

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11774 OF 2018

VASANT GANPAT PADAVE (D)

BY LRS. & ORS.

...APPELLANT(S)

VERSUS

ANANT MAHADEV SAWANT (DEAD)

THRU LRS. & ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 11775-11798 OF 2018

SHRI ARJUN HARI

KAMBLE AND ETC. ETC.

...APPELLANT(S)

VERSUS

ANANT MAHADEV SAWANT (DEAD)

THRU LRS. & ORS.

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed against the common judgment dated 01.08.2014 of High Court of Bombay dismissing a bunch of writ petitions including those filed by the present appellants.

2. It shall be sufficient to notice the facts in Civil Appeal filed by Vasant Ganpat Padave for deciding these appeals.

3. One Balwant Sawant was landlord of Survey No.92/2, corresponding to new Survey No. 31 Hissa No.2/10, admeasuring about 0.01.3 H.R. at Village Padavewadi, Taluka & District Ratnagiri. Balwant Sawant died on 10.05.1950 leaving behind Smt. Indirabai Balwant Sawant, his widow as his legal heir and representative. Smt. Indirabai Balwant Sawant, widow became the owner of the said property. Her name was mutated in the Revenue Records. Bombay Tenancy and Agricultural Lands Act, 1948 was amended by Act 15 of 1957. Section 32 as amended provided that on 01.04.1957 (Tillers Day), every tenant shall be deemed to have purchased from the landlord free from all encumbrances the land held by him as a tenant. The predecessor of the appellants were tenants prior to 1956-1957, i.e. prior to 01.04.1957. The proceedings for declaring the appellants as purchaser under Section 32G were initiated during the lifetime of the landlady, Smt. Indirabai Balwant

Sawant but the mutation entry No. 1341 recorded that since landlady Indirabai Balwant Sawant is a widow, the proceedings as contemplated under Section 32G are suspended. On 12.05.1975, Smt. Indirabai Balwant Sawant executed last Will and Testament in favour of Anant Mahadev Sawant, respondent No.1. Smt. Indirabai Balwant Sawant died on 07.05.1999. The name of respondent No.1 was mutated in the Revenue Records on 29.02.2000, with regard to which no notice was issued to the appellants, hence they were not aware of either the death of Indirabai or mutation in favour of respondent No. 1.

4. In the year 2008, when the appellants came to know that landlady has died and in her place name of respondent No.1 has been mutated, they filed an application on 05.09.2008 before respondent No.2 - Additional Tahsiladar & A.L.T. Ratnagiri, Maharashtra for fixing the purchase price under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "1948 Act"). The respondent No.1 filed reply and opposed the said application. The respondent No.2 allowed the

application of appellants by order dated 09.09.2011. The respondent No.2 held that predecessors of appellants were tenants prior to 1956-1957. Proceedings under Section 32G for declaring the appellants as purchasers were initiated during the lifetime of the landlady and the same were suspended on 08.01.1964 during the lifetime of the landlady being a widow. Respondent No.2 fixed the purchase price and directed the appellants to deposit the same to enable issue of Sale Certificate in favour of the appellants. Aggrieved against the order dated 09.09.2011, the respondent No.1 filed an appeal under Section 74 of the 1948 Act before the respondent No.3- Sub-Divisional Officer, Ratnagiri, Maharashtra. The respondent No.3 allowed the appeal vide its order dated 08.01.2013. The respondent No.3 held that the appellant ought to have issued notice under Section 32F within the time as prescribed and no notice having been issued within the time as prescribed, the appellants have lost right of purchase.

5. The appellants aggrieved by the order of the Sub-Divisional Officer filed a Revision Application

before the Maharashtra Revenue Tribunal. There were other revisions filed by several other tenants who were aggrieved by the order of Sub-Divisional Officer. The Maharashtra Revenue Tribunal by a common order dated 20.04.2013 dismissed the revisions and confirmed the order of Sub-Divisional Officer. The Maharashtra Revenue Tribunal held that applicants were under legal obligation to give intimation expressing their desire to purchase within time stipulated under Section 32F, which having not been given, no right of purchase is available to applicants. Aggrieved against the judgment of Maharashtra Revenue Tribunal, writ petitions were filed by the appellants and several other similarly situated tenants. All the writ petitions were dismissed by common judgment dated 01.08.2014 of the High Court, against which judgment, these appeals have been filed.

6. Learned counsel for the appellants challenging the impugned order submits that by operation of law, i.e. by Section 32 as amended by Act 15 of 1957, all tenants were deemed to have purchased from their

landlord the land held by them but in case of appellants, the said purchase was suspended since on the Tillers Day, the landlady was a widow, who had protection under Section 31(3) and with regard to whom the purchase was suspended. It is submitted that the landlady or her legal heirs having never given any notice for termination of tenancy under Section 31(3), after expiry of period as mentioned in Section 31(3), appellants shall be treated to have purchased the land in his tenancy. It is submitted that under Section 32F, notice of intention to purchase the land under tenancy was given by the appellants as soon as they came to know about the death of the landlady. No notice having been given by the legal heirs of the landlady informing about her death or any intention to terminate the tenancy, the appellants could exercise their right of purchase only when they came to know about the death, i.e. in the year 2008. It is submitted that for enabling the appellants, who were tenants, to exercise the right of purchase, the notice by legal heirs was necessary. When no notice was issued by

the respondent No.1., i.e., legal heir of the landlady that he has succeeded to tenancy, no cause of action arose for appellants to exercise right of purchase, thus the right of purchase shall not be defeated due to the above reason. It is submitted that right of deemed purchase on the Tillers Day is only suspended in the case of landlady, who was widow and after her death, the right of purchase shall be revived in favour of the tenant and Courts below committed error in rejecting the application filed by the appellants for purchase. Learned counsel for the appellants has further submitted that appellant being permanent tenants, provisions of Section 31 were not attracted, hence, there was no period of limitation for purchase by the tenants.

7. Learned counsel for the respondents refuting the submissions of the appellants contends that the appellants having not exercised their right of purchase within the time stipulated under Section 32F, the right given under Section 32F, i.e., right of purchase of the tenant is lost and no error has

been committed by the Courts below in rejecting the application filed by the appellants for purchase of the land. He submits that death of the landlady having occurred on 07.05.1999, appellants cannot be permitted to move an application for purchase in 2008 on the ground that they were not aware of the death of the landlady. The period for exercising the right of purchase is statutorily fixed, which cannot be extended by anyone. Learned counsel for the respondents submits that the issues raised by the appellant are fully covered by the judgment of this Court in **Appa Narsappa Magdum (D) Through LRS. Vs. Akubai Ganapati Nimbalkar and Others, (1999) 4 SCC 443.**

8. Learned counsel for the parties in support of their respective submissions has relied on various judgments of this Court, which shall be referred to while considering the submissions in detail.

9. Before we proceed to consider the respective submissions of the parties, it is necessary to look into the Statutory Scheme of the 1948 Act. The 1948 Act was enacted to amend the law relating to tenancy

of agricultural lands and to make certain other provisions relating to those lands. Chapter III of the Act deals with "Special Rights and Privileges of Tenants and Provisions for Distribution of Land for Personal Cultivation". Section 31 of the Act provides for Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose. Section 31 of the Act is as follows:-

31. Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose.(1) Notwithstanding anything contained in sections 14 and 30 but subject to sections 31A to 31D (both inclusive), a [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; and

(iv) * * * * *

[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].

10. Section 31A enumerate the conditions of termination of tenancy. Section 32 of the 1948 Act

was comprehensively amended by Act No. 15 of 1957. Various measures of agrarian reform under which tillers of the soil were made the owners of the land, was introduced in the Act by Act No. 15 of 1957. This Court in **Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan Trade and Another (1983) 3 SCC 437** noticed the object of amendment Act No. 15 of 1957 in following words:-

"6. The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the soil the owner of the land. This was done to achieve the object of removing all intermediaries between tillers of the soil and the State. Section 32 provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without anything more on his part. A Constitution Bench of this court in *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459 held 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."

Therefore, it is unquestionably established that 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 or 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. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal under Section 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser. It is an admitted position that on April 1, 1957 Tarachand was the landlord and Janardhan was the tenant. Tarachand landlord was under no disability as envisaged by Section 32-F. Therefore on April 1, 1957 Janardhan became deemed purchaser and Mr Lalit could not controvert this position."

11. Section 32 as amended by Act No. 15 of 1957 provided that on the day of 1st April, 1957 (Tillers Day), tenants shall be deemed to have purchased from their landlord, free of all encumbrances subsisting thereon on the said day, the land held by them as tenant. Section 32(1), which is relevant for the present case is as follows:-

"32. Tenants deemed to have purchased land on tillers' day.- [(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 sections, 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] :

... .."

12. Section 32F, which is relevant in the present case is as follows:-

"32F. Right of tenant to purchase where landlord is minor, etc.- (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) xxxxxxxxxxxxxxxxxxxxxxxxx

[(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.

13. The facts of the present case as noticed above indicate that although predecessor-in-interest of the appellants were tenants of the land in question since before 01.04.1957 but on the relevant day, i.e. the

Tillers Day, the land was held by Smt. Indirabai Balwant Sawant, who was widow, hence the deemed purchase as contemplated by Section 32 stood suspended by virtue of Section 31(3). Section 31 enumerates landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose. In case of a minor or a widow or a person subject to mental or physical disability, by virtue of Section 31(3), an application for termination of tenancy and application for possession can be made by the minor on the date on which he attains majority and by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist. Widow, Smt. Indirabai Balwant Sawant having died on 07.05.1999, her interest ceased on 07.05.1999, which by virtue of Will was succeeded by respondent No.1. Thus, by virtue of Section 31(3) (ii), the respondent No.1 had a right to give notice of termination of tenancy and application for possession within one year from 07.05.1999. From the facts of the present case it is apparent from the record that neither any notice was given by the widow

in her lifetime for termination of tenancy nor her successor-in-title, i.e. respondent No.1 gave any notice under Section 31 for termination of tenancy within one year from 07.05.1999 and it was on 05.09.2008, the appellants made an application under Section 32F for purchase of land. The Sub-Divisional Officer, Revenue Tribunal as well as the High Court rejected the claim of the appellant only on the ground that appellants, i.e. tenants failed to exercise their right of purchase within the period as prescribed under Section 32F(1), they held that the appellant had a right of purchase under Section 32 within one year from the expiry of the period during which successor-in-interest of landlady was entitled to terminate the tenancy under Section 31. The tenants having not exercised their right of purchase within two years from 07.05.1999, the right of purchase of the appellants has been lost.

14. This Court had occasion to consider the provisions of Sections 31, 32 and 32F of the 1948 Act in large number of cases. It is useful to notice few of such cases, which are relevant for deciding the

issues raised in these appeals. In **Amrit Bhikaji Kale (supra)**, this Court held that Section 32F postponed the date of compulsory purchase by the tenant where the landlord is a minor or a widow. In paragraph No.8, following has been laid down:-

"8. It may be mentioned that Section 32-F has no application to the facts of this case. Section 32-F postponed the date of compulsory purchase by the tenant where the landlord is a minor or a widow or a person subject to mental or physical disability on the tillers' day. Section 32-F has an overriding effect over Section 32 as it opens with a non-obstante clause. The combined effect of Sections 32-F and 32 would show that where the landlord is under no disability as envisaged by Section 32-F the tenant of such landlord by operation of law would become the deemed purchaser but where the landlord is of a class or category as set out in Section 32-F such as a minor, a widow or a person subject to any mental or physical disability, the date of compulsory sale would be postponed as therein provided. Now, if Tarachand, the landlord was under no disability and he was alive on April 1, 1957 and he was the owner, his tenant Janardhan became the deemed purchaser. This conclusion, in our opinion, is unassailable."

15. In **Anna Bhau Magdum, since deceased by His Legal Representatives Vs. Babasaheb Anandrao Desai, (1995) 5 SCC 243**, this Court had occasion to consider

Section 32F(1A) of 1948 Act. In the above case, original owner by gift deed dated 04.09.1953 gifted the land to respondent, who was a minor and who attained the majority on 17.01.1965. The proceedings under Section 32-G of the Act were started in respect of the said land in the year 1960, but in view of the fact that the landlord was a minor, the said proceedings were dropped. Fresh proceedings were initiated in the year 1975 under Section 32-G before the Additional Tehsildar and Agricultural Lands Tribunal. Additional Tehsildar passed an order holding that the tenant has lost his right to purchase the land and declared that the purchase of land by the tenant has become ineffective. On remand, the Tehsildar again held that tenant could exercise his right of purchase by sending an intimation upto 17.01.1967 and since the tenant had failed to send such an intimation, his right of purchase is forfeited. It was also held that by the amendment incorporated in Section 32F(1A) by Maharashtra Act 49 of 1969, a further opportunity was given to the tenant to exercise his right of purchase

by sending the intimation upto 17.10.1971 and that even during this period of extension the tenant did not avail of the opportunity. An appeal and the revision filed by the tenant was dismissed. Writ petition filed by the tenant was also dismissed against which the appeal was filed. In Paragraph Nos. 10, 12 and 13, following was held by this Court:-

"10. In the present case it is not disputed that the tenant did not send any intimation as required by sub-section (1)(a) either up to 17-1-1967 or even up to 17-10-1971 as provided by the proviso under sub-section (1-A) of Section 32-F. Moreover, the tenant in his statement given on 25-8-1960 before the Agricultural Lands Tribunal stated that he was aware that the respondent-landlord would be attaining majority on 17-1-1965. Thus there was non-compliance on the part of the tenant with the provisions of sub-section (1-A) of Section 32-F of the Act and on that basis it has been held that the tenant could not avail the right of purchase conferred under Section 32 read with Section 32-F of the Act.

12. It cannot, therefore, be said that there is an automatic purchase of the land by the tenant in a case where the landlord happens to be a minor or a widow or a person subject to any mental or physical disability as mentioned in Section 32-F. In such a case the right of purchase conferred on the tenant can be effective only if it

is exercised in accordance with the provisions of Section 32-F.

13.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."

16. Again in **Appa Narsappa Magdum (D) Through LRS. vs. Akubai Ganpati Nimbalkar & others, (1994) 4 SCC 443**, this Court had occasion to examine Section 32F and Section 31 of the Act. The facts of the case as noticed in paragraph No.2 are as follows:-

"2. As landlady Shevantibai was a widow, the deemed date of statutory purchase by the appellant-tenant was postponed. It is not in dispute that his right to purchase the land was for that reason governed by the provisions of Section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948. Shevantibai died on 8-12-1965. The appellant thereafter on 15-6-1968 gave an intimation to the heirs of Shevantibai that he was interested in purchasing the land under Section 32-F of the Act. On 9-7-1968, the legal representatives of Shevantibai applied under Section 32-P of the Act for a

www.ecourtsindia.com

declaration that as the tenant had not complied with the requirements of Section 32-F the sale has become ineffective and therefore the possession of land may be restored to them as their holding was less than the ceiling area. The Tehsildar granted that application. Aggrieved by that order, the appellant filed an appeal to the Sub-Divisional Officer who allowed it and remanded the case for deciding it under Section 32-G of the Act. Therefore, the heirs of Shevantibai filed a revision petition before the Maharashtra Revenue Tribunal and contended that since the tenant had failed to exercise his right under Section 32-F within the stipulated period, the purchase had become ineffective and, therefore, the Sub-Divisional Officer was in error in allowing the appeal and sending the matter back to the Tehsildar for deciding the same under Section 32-G. The Tribunal accepted this contention and allowed the revision application and restored the order passed by the Tehsildar. The High Court in the writ petition filed by the appellant confirmed the order passed by the Tribunal."

17. The submission on behalf of the appellants that heirs of the landlady had not given any intimation to the appellants about her death and therefore they could not have known who are the heirs of the landlady and give intimation to them was rejected. The submission that the period of one year should be counted from the date of the knowledge of the tenants

was also not accepted. In Paragraph No. 4, following has been laid down:-

"4. It was submitted by the learned counsel that this being a welfare legislation enacted for the benefit of tenants should be construed in a liberal manner. He also submitted that the heirs of the landlady had not given any intimation to the appellant about her death and therefore he could not have known who were the heirs of the landlady and given intimation to them. He submitted that the period of one year should be counted from the date of the knowledge of the tenant. We cannot accept this submission because the language of Sections 32-F and 31 is quite clear and the period of one year will have to be counted in accordance with the said provisions and not from the date of the knowledge of the tenant. The provision of law being clear, we cannot in such a case grant relief on the basis of equity."

18. Sudam Ganpat Kutwal, Power-of-Attorney-Holder of Shankar Sitaram Bhosle Vs. Shevantabai Tukaram Gulumkar (Dead) by LR. Maruti Shankar Pachpute, (2006) 7 SCC 200 was a case where provisions of 1948 Act especially Sections 31 and 32F were elaborately considered. The appellant was inducted as tenant of agricultural land in the year 1954 and was cultivating the land personally. The landlord filed an application under Section 31 read with Section 29

in the year 1958. An order was made directing that possession of half of the land should be delivered to the landlord for her bonafide personal cultivation. Landlord filed another case in the year 1964 seeking possession of the remaining half of the land on the ground that the appellant had committed certain defaults. The petition was rejected. The landlord died on 23.03.1975, and thereafter her successor-in-title's name was entered in the record-of-rights. Successor-in-title filed an application under Section 32P read with Section 32F for a declaration that the deemed statutory purchase by the tenant be declared as void and ineffective, as the tenant had failed to fulfil the mandatory requirement of giving a notice of intimation of purchase within the time stipulated under Section 32F(1A). Agricultural Land Tribunal accepted the contention of successor-in-title holding that tenant had failed to issue a notice of purchase. The appellant had filed a writ petition aggrieved with the order of Agricultural Land Tribunal, which writ petition was dismissed. The issue, which was

considered by this Court has been noticed in Paragraph No. 14 to the following effect:-

"14. The dispute in this appeal relates to the question as to whether it was necessary for the tenant to issue a notice of intimation of purchase under Section 32-F (1-A) of the Act to the successor-in-title of Anusuyabai in regard to the half portion retained by him under Section 31-B(1) read with Section 31(1) of the Act and whether the failure to do so resulted in forfeiture of the tenant's right to the said land or right to purchase the said land under the Act."

19. After noticing various provisions of the Act, this Court in Paragraph No. 23 of the judgment recorded its conclusions, which is to the following effect:-

"23. The position as disclosed by a combined and harmonious reading of Sections 31, 32, 32-F and 32-G 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 the 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.

(c) A landlord had a right to give notice and make an application for possession after terminating the tenancy, if he wanted the land bona fide for personal cultivation, provided the notice was served on the tenant on or before 31-12-1956 (with copy to the Mamlatdar) and application for possession under Section 29 was filed on or before 31-3-1957.

(d) A landlord widow is also entitled to make an application for possession under sub-section (1) of Section 31 of the Act. Sub-section (3) of Section 31 which is an enabling provision, extends the time within which the widow can seek possession under Section 31(1) of the Act, beyond 31-12-1956. As a result, where the landlord is a widow, then the notice required under sub-section (1) of Section 31 may be given and the application for possession under Section 29 may be made by her so long as her interest in the land exists. Such notice can also be given by the successor-in-title of the widow within one year from the date on which the interest of the widow in the land ceases to exist.

(e) Where the landlord is a widow [and she does not exercise her right under Section 31(1) of the Act], the right to purchase under the deemed purchase is postponed till the expiry of the period during which such (disabled) landlord is entitled to terminate the tenancy under Section 31(3). The tenant desirous of exercising such right shall, however, give an intimation in that behalf to the landlord and the Tribunal within one year thereafter, as required under Section 32-F(1-A).

Consequently, where the landlord, being a widow as on 1-4-1957, does not choose to terminate the tenancy for personal cultivation, the tenancy continues during her lifetime and on the death of the widow, her successor-in-title will have the right to terminate the tenancy within one year from the date of death of the widow. 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 successor-in-title of the widow is given the right to terminate the tenancy under Section 31(3) by giving an intimation as required under Section 32-F(1-A).

(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 32-F also will not apply and there is no need for the tenant to give any intimation under Section 32-F(1-A).

(g) On an order for possession being made in favour of a widow landlord in regard to land up to 50% of the tenanted land under Section 31(1) read with Section 31-B(1), the widow will get possession of such land and the tenant continues in possession in regard to the remaining land. In regard to the land remaining with the tenant, rent has to be fixed under Section 31-D, until the purchase price is determined under Section 32-G(5) and is paid by the tenant purchaser."

20. In the above case, this Court held that there was no need at all for the tenant to issue any notice of intimation to the landlord as successor-in-title as the landlord has lost right to terminate the tenancy regarding remaining half land. The contention that tenant in facts of that case has to issue notice under Section 32F within the period prescribed was rejected while observing following in paragraph No. 27:-

"27. Learned counsel for the respondent relied on the decisions of this Court in *Amrit Bhikaji Kale v. Kashinath Janardhan Trade* (1983) 3 SCC 437, *Anna Bhau Magdum v. Babasaheb Anandrao Desai* (1995) 5 SCC 243, *Appa Narsappa Magdum v. Akubai Ganapati Nimbalkar* (1999) 4 SCC 443 and *Balchandra Anantrao Rakvi v. Ramchandra Tukaram* (2001) 8 SCC 616 to contend that the tenant has to issue a notice under Section 32-F within the period prescribed and if he fails to do so, he loses the right to purchase the land and the landlord will become entitled to the same absolutely. These were all cases where the landlord under disability had not sought possession for personal cultivation under Section 31(1) and where admittedly, Sections 31(3) and 32-F applied and consequently, there was an obligation on the part of the tenant to send an intimation under Section 32-F(1-A). None of the cases related to a widow landlord who had terminated the tenancy during her lifetime and taken possession of a portion

of the tenanted land. Therefore, the said decisions will not apply."

21. The next judgment to be noticed is **Tukaram Maruti Chavan Vs. Maruti Narayan Chavan (Dead) by LRS. And Others (2008) 9 SCC 358**, which judgment has been relied by Revenue Tribunal also in the present case. The facts of the case have been noticed in the Paragraph Nos. 2 to 5, which are to the following effect:-

"2. The relevant facts leading to the filing of this appeal, as emerging from the case made out by the appellant, may be summarised as follows:

The dispute arose out of the provision of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") relating to the land being Gat No. 44, measuring 5 hectares and 24 ares in Village Malangaon, Kavathe, Mahankal Tehsil of Sangli District in the State of Maharashtra (in short "the disputed land"). Late Smt Narmadabai who was a widow, was the original landowner of the disputed land. She died in 1964 leaving behind her two sons, Ramchandra and Laxman Bhau Sutar.

3. On 1-4-1957 i.e. on the Tiller's Day, the appellant was in cultivation of the disputed land. The original tenant named Maruti died subsequently in 1994 during the pendency of the writ petition in the High

Court of Judicature at Bombay. The original tenant had initiated proceedings under Section 32-G of the Act before the Additional Tahsildar, Kavathe Makhanlal, and the case was decided in his favour with the purchase price of the disputed land being fixed. Thereafter, one of the heirs of the deceased landowner Narmadabai, named Laxman, preferred an appeal to the appellate authority against the said order. After the matter was remanded back to the Additional Tahsildar, again an order affirming the previous position was passed in favour of the tenant under Section 32-G. This time, the other heir of late Smt Narmadabai, namely, Ramchandra, challenged the said order before the Sub-Divisional Officer, Miraj, and he again by his order dated 31-3-1978, remanded the matter to the Tahsildar for a detailed enquiry and decision on the following points:

“(1) The clear title of the disputed land of the applicant Ramchandra should be enquired.

(2) The point of giving notice under Section 32-F of the Act to the landlord and the Agricultural Lands Tribunal should be enquired as per the provisions under Section 32-F of the Act.”

4. When the matter came up before the Tahsildar, he passed an order holding the second respondent as the sole owner of the disputed land. The purchase of the disputed land by the appellant was therefore declared to be ineffective for want of notice under Section 32-F and the disputed land was ordered to be disposed of under Section 32-P of the Act. Thereafter, the appellant preferred a revision before the

Maharashtra Revenue Tribunal but the same was dismissed.

5. Being aggrieved by the decision of the Tribunal, the appellant filed a writ petition before the Bombay High Court on 28-12-1983. The Bombay High Court by its impugned judgment and order dated 16-4-1999, dismissed the said writ petition on the ground that the respondent (Ramchandra) was the sole owner of the disputed land in pursuance of the letters of administration obtained by him from the civil court. It is this decision of the High Court, which is impugned in this appeal in respect of which the writ petition was filed."

22. The contention of the appellant has been noticed in Paragraph No.10 of the judgment, which is to the following effect:-

"10. The learned counsel on behalf of the appellant contended that if Sections 31 and 32-F are read together, then the tenant is not required to give any notice to the landlord because neither Narmadabai nor her successor-in-interest ever gave any notice to the tenant under Section 31 of the Act. Counsel for the respondent on the other hand contended that Section 32-F is a complete section in itself and the provision of the earlier sections cannot influence or have overriding effect. He therefore contended that whatever be the right of the landlord under Section 31, the same gets separated by virtue of the provisions of Section 32-F. This contention was negated by the counsel for the appellant arguing that Section 32-F cannot be said to have overriding effect on all the earlier sections."

23. This Court held that tenant was under legal obligation or statutory duty to give notice of his intention to purchase the land as required under Section 32F. In Paragraph No. 13, following has been stated:-

"13. In our view, the High Court correctly pointed out that the provisions of Section 32-F are independent in nature and are separate from the provisions under Section 31 of the Act. The exception mentioned under Section 32-F(1) to sub-section (2) is limited to the sections referred to in it i.e. from Sections 32 to 32-E (both inclusive) and Sections 32-G to 32-R (both inclusive). Further the expression "Notwithstanding anything contained in the preceding sections" under sub-section (1) of Section 32-F is of paramount importance. Considering the fact that Section 31 is not included in the sections mentioned under sub-section (2) of Section 32-F, and the expression "Notwithstanding anything contained in the preceding sections" under sub-section (1) of Section 32-F, we are of the view that the right given to the landlord under Section 31 has nothing to do with the right given to the tenant under Section 32-F for purchasing the land and consequently it has to be held that the appellant in this case was under a legal obligation or statutory duty to give notice of his intention to purchase the land as required under Section 32-F."

24. The submission of the appellant that she could not serve a notice since she was not sure of the

title of the disputed land was also not accepted by this Court. Following was observed by this Court in Paragraph No.18:-

"18. The learned counsel appearing on behalf of the appellant has argued before us that the appellant could not serve a notice to the landowner since he was not sure about the title of the disputed land owing to a dispute between the two sons of late Smt Narmadabai who were claiming the title of the disputed land. We cannot accept this contention of the appellant. The order passed by the Tahsildar, Kavathe Mahankal, lays down the fact that Shri Ramchandra, Respondent 2 in this case, had produced a certified copy of the judgment and order dated 28-4-1966, passed by the Senior Joint Civil Judge in Miscellaneous Application No. 25 of 1965 in which it has been declared that Shri Ramchandra is the owner of the disputed land on the basis of the will executed by his mother late Smt Narmadabai. The appellant also in his deposition admitted that:

"The owner of the said land was Smt Narmadabai Bhau Sutar. Narmadabai died before 10/12 years. Ramchandra Bhau Sutar filed suit on the basis of the will, and got transferred the land of Narmadabai in his name."

25. The ratio of the above noted judgments can be restated in following words:-

- (i) For a landlord suffering from a disability on the Tillers Day i.e. 01.04.1957, the deemed purchase shall be suspended.
- (ii) Landlord suffering from a disability has a right under Section 31(3) of the Act to give notice of termination of tenancy and file an application for possession.
- (iii) Under Section 31(3), a minor, within one year from date on which he attains majority; a successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist; and landlord within one year from the date on which his/her mental or physical disability ceases to exist can also give an application for termination of tenancy and possession.
- (iv) Under Section 32F tenant has right to purchase where landlord was minor or a widow or a person subject to mental or physical disability within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

- (v) The tenant, in event, does not exercise his right of purchase within the period as prescribed under Section 32F(1)(a), his/her right to purchase shall be lost.

26. In the present case, it is undisputed fact that landlady died on 07.05.1999 and within one year thereafter her successor-in-title did not exercise his right under Section 31(3) and thereafter within one year tenant has not given any intimation for purchase as contemplated by Section 32(F). The question to be answered is as to whether in the above facts, Sub-Divisional Officer, Revenue Tribunal as well as the High Court were right in their conclusion that right of the tenant, i.e. the appellant has lost, he having not issued any intimation for purchase of the land within one year from expiry of the period as contemplated under Section 31(3).

27. The ratio of this Court as noticed above especially in judgments of this Court in **Appa Narsappa Magdum (supra)**, **Sudam Ganpat Kutwal(supra)** and **Tukaram Maruti Chavan (supra)** clearly support the submission of learned counsel for the respondents

that the appellants having not exercised their right to purchase under Section 32F(1) read with (1A) within the time prescribed the right of purchase of the tenant is lost. But there is one aspect of the matter which needs to be noted and has not been considered in the above judgments rendered by two-Judge Benches of this Court which we shall notice hereinafter.

28. The 1948 Act was amended by Tenancy and Agricultural Lands Laws (Amendment) Act, 1969. Section 32F was also amended by the above Amendment Act, 1969. It is useful to refer to the Statement of Objects and Reasons which led to amendment in Section 32 of the Act. L.A. Bill No. LXII of 1969 was introduced in the Maharashtra Legislative Assembly on 18th August, 1969. The Statement of Objects and Reasons of the Bill are relevant for the present case which are to the following effect:

"STATEMENT OF OBJECTS AND REASONS.

It has come to the notice of Government that a number of tenants in the Bombay area and the Vidarbha region of the State, failed to acquire ownership right in the lands held by them on account of their

being dispossessed from the land otherwise than in the manner laid down in the relevant tenancy law. It is, therefore, expedient to amend the tenancy laws in force in these regions for safe-guarding the interest of these dispossessed tenants.

It is also noticed that a large number of tenants in the Bombay area of the State holding land from landlords who were minors have lost right to purchase land for their failure to give intimation within the period laid down in sub-section (IA) of section 32, It is, therefore, necessary to give these tenants a fresh opportunity to purchase land. Section 32F is, therefore, being suitably amended for that purpose.

As a result of the decision of the Supreme Court of India, in Civil appeals Nos. 312(N) and 313(N) of 1966 from the judgement of the High Court of Gujarat regarding jurisdiction of Civil Court in certain matters, it has also become necessary to suitably amend certain sections of the tenancy laws in force in the three regions of the State.

The Bill seeks to achieve the above objects."

29. In the Statement of Objects and Reasons it is noticed that a large number of tenants in the Bombay area of the State holding lands from landlords who were minors have lost right to purchase land for their failure to give intimation within the period laid down in sub-section (1A) of Section 32. The

above reason lead to the amendment. By Amendment Act, 1969 in Section 32F sub-section (1) in clause (a) following words were added:

"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"

30. The above amendment caste a statutory obligation on a landlord who has attained the majority to send intimation to the tenant. The above amendment was made to enable the tenant to exercise the right of purchase which was the object and purpose of the amendment.

31. Section 31(3) enumerates three categories of landlord who suffers from one or other disabilities due to which the right of purchase of tenant has been suspended on Tillers Day. The three categories of landlord have been empowered to give notice of termination of tenancy. Section 31(3) for ready reference is reproduced again:

“Section 31(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; and

(iv) * * * * *

32. Amendment in Section 32(1)F(a) added by Act No.49 of 1969 expressly covered a case of landlord who was minor and has attained majority. Intimation by a minor landlord who has attained majority has been made a statutory obligation of the landlord so that tenant may exercise his right of purchase. The other two categories which are a widow or a person subject to mental or physical disability have not been expressly included in the amendment incorporated in Act 49 of 1969. The Statement of Objects and Reasons of the amendment given in 1969 as well as the express

provisions of such amendment are for the purposes and object to enable the tenant to exercise right of purchase. When for one category of landlord i.e. minor it is mandated that he will intimate the tenant after he attained the majority so that tenant may be enabled to exercise the right of purchase, we are of the view that the same object has to be read in two other categories of landlord that is the successor-in-title of a widow and a landlord whose mental or physical disability has been ceased. When the legislative object is to facilitate a tenant of a disabled landlord after cessation of disability to exercise right of purchase, the same benefit needs to be extended to other two categories of disabled landlord. We do not find any distinction in three categories of disabled landlord nor tenant of a landlord who was a minor can be put on any higher footing as compared to other landlords suffering from the above two disabilities. The question may be asked that amendment only expressly included the landlord who has attained majority to send intimation and the legislature consciously did not include the other two

categories of landlord i.e. successor-in-interest of a widow and landlord of a mental and physical disability ceases to exist. The Objects and Reasons and express amendment made by Act 49 of 1969 were with a view to enable the tenant to exercise his right of purchase. The said legislative intendment is to be extended to all tenants of landlords who were suffering from disability on the Tillers Day, whether successor-in-title of a widow or a landlord whose mental or physical disability ceases. All the three categories of tenants should be extended the same benefit and provision should be interpreted so that all tenants may be enabled to exercise their right of purchase effectively and in real sense.

33. As in the present case tenant's case is that he was unaware of the death of the landlady since for the last several years she was living in Bombay, the date of knowledge of death of the landlady cannot be said to be a irrelevant factor and unless the tenant is aware of the death of landlady or in case of landlord suffering from physical or mental disability, how he will exercise his right of

purchase is an important question. The 1948 Act and the Amendments made by 1969 Act were with intent to facilitate tenants to exercise their right. The Amendments by Act 15 of 1957 was agrarian reform making tillers of the soil the owners of the land which was done to achieve the object of making all tillers of the soil as owners of the land. While interpreting the provisions of Section 32F, 1A as well as Section 31(3) the purpose and object of the 1948 Act, amendments made therein from time to time cannot be lost sight.

34. When Section 32F of Act 1948 gives right to purchase to a tenant whose landlord was suffering from a disability on Tillers Day, the exercise of right to purchase by such tenant has to be interpreted in a manner so as to make the exercise of right meaningful and effective. The above said right cannot be defeated on the ground that it was not exercised within period prescribed when the tenant is unaware as to when the period has begun.

35. The period prescribed for exercising the right to purchase is not a period of limitation but a

reasonable period prescribed for the exercise of a right. The knowledge of cessation of disability of landlord by the tenant can only be commencement of period prescribed.

36. When a statute gives a right to a tenant, statute needs to be interpreted in a manner so as to make the right workable, effective and meaningful. Such right cannot be defeated unless it is proved that tenant even after knowing that disability has ceased does not exercise his right within the period prescribed.

37. A two-Judge Bench judgment of this Court in **Appa Narsappa Magdum (supra)** has expressly rejected the submission that tenant had no intimation of the death of landlady. Further judgments of this Court in **Sudam Ganpat Kutwal (supra)** and **Tukaram Maruti Chavan(supra)** also laid down the same ratio. The judgments in the above three cases were rendered by the two-Judge Benches in which cases the amendments made by Act 49 of 1969 were neither raised or considered. We, thus, are of the view that the ratio laid down in the above cases needs to be reconsidered and explained in view of the object and purpose for

which amendments were made in Section 32F(1)(a) by Act 49 of 1969 as noticed above. We, thus, refer following questions for consideration of a larger Bench:

- (1) Whether the object and purpose of amendment made in Section 32F(1)(a) by Act 49 of 1969 is also relevant and applicable for exercise of right to purchase by a tenant of landlord who was widow or suffering from mental and physical disability on Tillers Day ?
- (2) Whether the successor-in-interest of a widow is also obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase.
- (3) In the event the answer to above question (1) or (2) is in affirmative, whether decision of this Court in **Appa Narsappa Magdum, Sudam Ganpat Kutwal and Tukaram Maruti Chavan (supra)** needs reconsideration and explanation.

38. Let the papers be placed before the Hon'ble the Chief Justice for constituting a larger Bench. In the meantime, we direct that the parties shall maintain the status quo.

.....J.
(ASHOK BHUSHAN)

.....J.
(AJAY RASTOGI)

New Delhi,
December 14, 2018.