

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 15643 of 2018**

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CHAVDA VIRUBA VAJESINH & ANR.

Versus

ZALA GOVUJI TAKHUJI & ORS.

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Appearance:

MS MOHINI BHAVSAR FOR MR BHARAT JANI(352) for the Petitioner(s) No. 1,2

MR JK SHAH ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No.

10

MR JV VAGHELA(5809) for the Respondent(s) No. 1,2,3,4,5,6,7

NOTICE SERVED BY DS for the Respondent(s) No. 8,9

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**CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

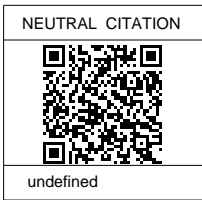
**Date : 18/06/2024**

**ORAL ORDER**

1. Heard learned Advocate Ms. Mohini Bhavsar for learned Advocate Mr. Bharat Jani on behalf of the petitioners, learned Assistant Government Pleader Mr. J.K. Shah on behalf of respondent- State and learned Advocate Mr. J.V. Vaghela on behalf of respondents no. 1 to 7.

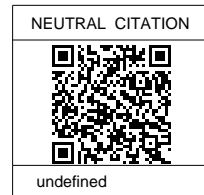
2. Issue Rule returnable forthwith. Learned AGP and learned Advocate waive service of notice of rule on behalf of respective respondents.

3. By way of this petition, the petitioners have challenged an order dated 05.07.2018 passed by the learned SSRD whereby the challenge by the respondents herein to an order dated 30.08.1963 by the Mamlatdar, under Section 32(G) of the Bombay ( Gujarat) Tenancy and Agricultural Lands Act, 1948 has been upheld.



4. Learned Advocate Ms. Bhavsar on behalf of the petitioners would submit that the petitioners before this Court are the descendants of the original landlord and whereas it would appear that in the year 1963, proceedings under Section 32G of the Bombay (Gujarat) Tenancy and Agricultural Lands Act, 1948 had been initiated and whereas it was recorded that the tenant does not wish to purchase the land in question and therefore, the tenancy was brought to an end and the land was restored in the name of the landlord. Learned Advocate would submit that the said order passed by the Mamlatdar and ALT in the year 1963 i.e. on 30.08.1963 in Tenancy Case No. 18 of 1963, clearly reflects that at the relevant point of time, the tenant did not intend to purchase the land in question and therefore, the land stood vested with the landlord and whereas the private respondents herein were not entitled to challenge the proceedings after such a long delay. Learned Advocate would submit that the learned SSRD, without appreciating this aspect, had set aside the order passed by the Mamlatdar and ALT on 30.08.1963 and whereas under such circumstances, interference of this Court is respectfully warranted.

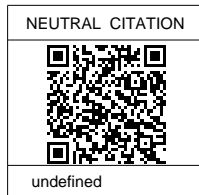
5. On the other hand the present petition is vehemently opposed by learned AGP Mr. J.K. Shah and learned Advocate Mr. J.V. Vaghela on behalf of the State and the private respondents respectively. Learned AGP Mr. Shah would draw the attention of this Court to the very order dated 05.07.2018 and would submit that as such, the proceedings under Section 32G had been initiated with regard to the land in question somewhere in the year 1958 and whereas vide an order an dated 27.04.1958, the Mamlatdar and ALT had recorded that the tenant i.e. the predecessor of the private respondents herein was inclined to pay the purchase price and had paid Rs.700/- as determined and whereafter the land stood vested in the tenant



and a certificate under Section 32M dated 19.09.1959 had been issued in favour of the tenant more particularly showing the land as being granted to the tenant under restricted tenure under Section 43 of the Tenancy Act.

5.1 Learned AGP would also further draw the notice of this Court to further proceedings which had been initiated in the year 2014 whereby the private respondents herein had sought for change of tenure of the land from restricted tenure to unrestricted tenure for purpose of agriculture purpose and whereas the same had been granted vide an order dated 28.05.2014 by the Mamlatdar. It is also submitted by learned AGP that entry with regard to both the proceedings, was already mutated in the revenue records at the relevant point of time. Learned AGP would submit that the proceedings under Section 32G having been initiated and completed in the year 1958 upon the tenant paying the purchase price and being granted the land in question and therefore, thereafter there was no question of a fresh proceedings under Section 32G in the year 1963. Learned AGP would submit that the proceedings clearly reflect complete non application of mind on part of the then Mamlatdar and ALT and whereas it is submitted that the order passed by the learned SSRD in this context is correct and may not require any interference by this Court.

6. Learned Advocate Mr. J.V. Vaghela on behalf of the private respondents would submit that the land has remained with the present private respondents from the year 1958 onwards and whereas the said fact has been noticed by the authorities concerned. It is submitted that order of the year 1963, appears to have been mutated in the revenue record in the year 2016 and whereas it is at this stage that the private respondents had come to know about such an order. Learned Advocate would submit that



under such circumstances the application before the learned SSRD was not at all delayed and whereas the learned SSRD had rightly entertained the revision application and set aside order dated 30.08.1963.

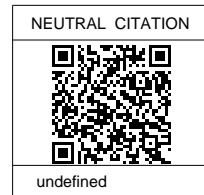
7. Learned Advocates have not submitted anything further.
8. Heard learned Advocates for the respective parties and perused the documents on record.
9. At the outset it requires to be noted that while there are two sets of proceedings under Section 32G, one in favour of the private respondents and one in favour of the petitioners, before proceeding further it would be appropriate to notice the scope and ambit of section 32G of the Tenancy Act. Section 32G being relevant for the present purpose is quoted hereinbelow for benefit:

**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 not willing to purchase the land held by him as a 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:

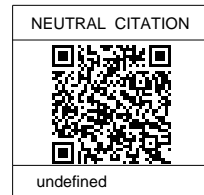
Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(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 naturally 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

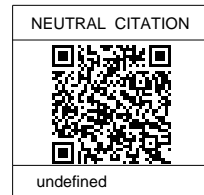


before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.”

10. The question to be determined here would be that once proceedings under Section 32G had been initiated by the Agriculture Land Tribunal and whereas the tenant appeared and had shown his willingness to pay the purchase price and having deposited the purchase price the land is vested in the tenant then would there be any scope for the ALT to have initiated a fresh proceedings under Section 32G.

11. Upon perusing the scope of the Section, the answer to the said question would be an emphatic ‘No’. In the considered opinion of this Court, upon the ALT, issuing notice to all the parties and the tenant appearing before the Tribunal and showing his willingness to purchase the land held by him as tenant and whereas the tenant having paid the price as determined by the Tribunal, then the land would be granted in favour of the tenant herein and once such land is granted, section 32G does not envisage either reopening of the proceedings or initiating a fresh proceedings under Section 32G for the very land.

11.1 Corelating the above with the fact situation it would appear that upon order dated 27.04.1958 being passed by the Mamlatdar and ALT recording that the tenant i.e. predecessor of private respondents no. 1 to 7 being interested in purchasing the land and having paid the purchase price of Rs. 700/- as determined by the Tribunal and the land having vested in the tenant, Section 32G had exhausted itself with regard to the land in question and there remained no further scope of initiating a fresh proceedings under

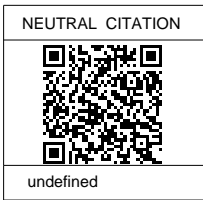


Section 32G of the Act at all.

12. Considering from the above prospective it would clearly appear that proceedings in the year 1963 under Section 32G were clearly without jurisdiction.

13. It would further clearly appear that in the year 1963 if at all any proceedings had been initiated the same was also clearly initiated without verifying the record more particularly without verifying the earlier order dated 27.04.1958 by the ALT which was in existence, as noted by the learned SSRD. Under such circumstances the order dated 30.08.1963, set aside by the learned SSRD, was completely without jurisdiction and initiated without verifying any record whatsoever.

14. Insofar as the issue with regard to delay it would appear that as such, since order of the year 1963 was without jurisdiction it could have been challenged by the private respondents herein at any point of time yet, it also requires to be mentioned that fact of an order having been passed in the year 1963 under Section 32G, had been mutated in the revenue record only in the year 2016. Thus the respondents no. 1 to 7 would be well within the rights to contend that in addition to the order being without jurisdiction, the private respondents i.e. the successors of the original tenant, were aware about such an order only in the year 2016 whereupon they have immediately approached the learned SSRD and while there was a back and forth of the proceedings i.e both the learned SSRD and learned GRT having initially taken a stand that the issue did not relate to their jurisdiction yet upon direction of this Court, the SSRD had decided the said issue vide order impugned dated 05.07.2018.



15. In the considered opinion of this Court, for the reasons set out hereinabove, it would clearly appear that order passed by the learned SSRD dated 05.07.2018, was completely correct and in order and whereas no interference whatsoever is called for. Hence the following directions are passed:

[1] The order dated 05.07.2018 passed by the learned SSRD in Revision Application No. 9 of 2017 is hereby confirmed.

[2] The present petition is hereby disposed of as rejected. Pending Civil Application if any, stands disposed of consequently. Rule is discharged.

NIRU

(NIKHIL S. KARIEL,J)