

Ganpati Bayaji Patil

Vs

Shridhar Babaji Vibhute [Dead] By Lrs. and Others

Civil Appeal No. 1328 of 1991

(M. M. Punchhi, Sujata V. Manohar JJ)

22.08.1996

ORDER

1. The appellant is the tenant of the land in dispute which is situated in Taluka Walwa, District Sangli in the State of Maharashtra. On Tillers' Day, i.e., 1-4-1957, the appellant was the tenant in occupation of the lands in question. The landlord as of 1-4-1957 was a joint family of which the original respondent was a member. On 31-3-1958 a partition took place of the joint family and the lands in question came to the share of the original respondent.
2. Thereafter, the original respondent applied for a certificate under Section 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act). It is the case of the appellant that no notice was given to him of this application under Section 88-C nor was he aware of a certificate being granted under Section 88-C in favour of the original respondent on 14-4-1959.
3. In 1962, the original respondent made an application under Section 33-B for obtaining possession of the land. In these proceedings under Section 33-B, the appellant challenged the bona fide requirements of the original respondent for cultivating these lands personally. During the pendency of these proceedings the original respondent died and his heirs were brought on record; as a result a fresh enquiry was required to be made about the bona fide requirements of the heirs of the respondent under Section 33-B. Before the Maharashtra Revenue Tribunal, the appellant contended that there was no valid certificate under Section 88-C on the basis of which the respondent(s) could make an application under Section 33-B because, on the relevant date, namely, 1-4-1957, the original respondent was not the landlord of the land in question. Only the joint family which was the landlord on the relevant date, could have applied for a certificate under Section 88-C. In the absence of any such application by the joint family, the appellant's rights as on 1-4-1957 under Section 32-G cannot be now defeated by a subsequent certificate under Section 88-C obtained by a person who was only a member of the joint family on the relevant date and who had subsequently acquired these lands under a partition which took place after Tillers' Day. The Revenue Tribunal has upheld this contention. The High Court, however, in a writ petition filed by the respondents to challenge the findings of the Revenue Tribunal, held that the certificate under Section 88-C cannot be examined. On the basis of this certificate, the respondents are entitled to succeed in their application under Section 33-B in the light of the findings given by the Revenue authorities in their favour.
4. The High Court was not right in coming to this conclusion. Under the scheme of the Act, a tenant becomes the deemed purchaser of the land on 1-4-1957. Under Section 88-C, however, an exemption is granted to the lands of a small landlord whose land does not exceed an economic holding as defined under the Act and whose total annual income does not exceed Rs. 1500. The landlord must fulfil these criteria on the date (1-4-1957) when the tenant would have become the

deemed owner of the land, under Section 32-G in order to save his lands from the operation of Section 32-G. Any subsequent change in ownership will not confer any right on the subsequent 'owner' to get the benefit of Section 88-C. Unless the person who is the landlord on 1-4-1957 makes an application under Section 88-C, the rights of a tenant cannot be defeated. (See in this connection *Chanchalben v. Gujarat Revenue Tribunal* [12 Guj LR 428].)

5. It is contended on behalf of the respondents that since the original respondent was a member of the joint family on 1-4-1957, he was entitled to apply for a certificate under Section 88-C. The requirements of Section 88-C, however, have to be complied with by the joint family looking to the holding of all the members of the joint family as also the income of the joint family, because it was the joint family which was the owner of the land on 1-4-1957. (See in this connection *Jainabai Haji Ramjan Shaikh v. Bakaji Bhau Mandalik* [(1961) 63 Bom LR 657].). The Revenue Tribunal was, therefore, right in coming to the conclusion that the original respondent who obtained these lands on partition of the joint family on 31-3-1958 was not entitled to apply for a certificate under Section 88-C. The rights of the appellant could not be defeated by such a certificate.

6. It is also submitted by the respondents that in proceedings under Section 33-B, there cannot be any collateral challenge to a certificate under Section 88-C. The respondents have relied upon a decision of this Court in *Krishnabai Anaji Ghule v. Nivrutti Ramchandra Raykar* [(1984) 1 SCC 179 : (1983) 3 SCR 822] in support of this submission. In that case, however, there had been previous proceedings between the tenant and the landlord in connection with the certificate issued under Section 88-C which had culminated against the tenant. In this context, this Court observed that the same challenge cannot be repeated collaterally in proceedings under Section 33-B. In the present case a certificate under Section 88-C was obtained behind the back of the tenant and without any notice to him. Moreover, in the present case, there is no certificate under Section 88-C in favour of the landlord who held the land on 1-4-1957 and this fact is not in dispute. It is, therefore, open to us in the light of the undisputed facts to examine the validity of the certificate on the basis of which proceedings under Section 33-B have taken place. Since the certificate is void ab initio, the appellant is entitled to succeed. The appeal is allowed, the order of the Maharashtra Revenue Tribunal dated 19-8-1992 is restored and the order of the High Court is set aside.

7. There will, however, be no order as to costs.