

SUPREME COURT OF INDIA

MORESHWAR BALKRISHNA PANDARE & ORS.

Vs.

VITHAL VYANKU CHAVAN & ORS.

11/05/2001

(Syed Shah Mohammed Quadri & S.N. Phukan)

Appeal (civil) 3872 of 1992

JUDGMENT

Syed Shah Mohammed Quadri, J.

This appeal, by special leave, is from the judgment and order of the High Court of judicature at Bombay, allowing Writ Petition No.1560 of 1981, filed by the respondents, on July 19, 1991.

Before advertng to the contentions of the parties it will be appropriate to refer to the relevant facts. The predecessor- in-interest of the appellants was the landlord of agricultural land bearing Survey No.238/1 measuring acres 2 & guntas 5 in village Kalgaon, District Satara, Maharashtra State (for short, the land). He filed tenancy case No.252/61 before the Tenancy Aval Karkun Karad (for short, the Mamlatdar) against Vyanku Daji Chavan, the tenant of the land, claiming exemption certificate under sub-section (4) of Section 88C of the Bombay Tenancy & Agricultural Lands Act, 1948 (all sections referred to in this judgment are of the said Act unless otherwise stated). During the pendency of the tenancy case both the landlord as well as the tenant died. The appellants are the legal representatives of the landlord and the respondents are the legal representatives of the tenant. By order dated April 26, 1972 the Mamlatdar granted exemption certificate under sub- section (4) of Section 88C in favour of the appellants. The aggrieved respondents carried the matter in appeal before the Sub-Divisional Officer, Satara Division, who set aside the order of the Mamlatdar by order dated February 25, 1974. The appellants challenged the validity of the said order in the Bombay High Court in Special Civil Application No.2526 of 1974. On January 11, 1979 the High Court set aside the said order of the Sub-Divisional Officer holding that for purpose of Section 88C the total income of the deceased landlord as on April 1, 1957 should be the criteria and not that of the appellants and thus restored the order of the Mamlatdar by allowing the said writ petition. Immediately thereafter the appellants terminated the tenancy by issuing notice to the respondents on January 27, 1979 and making application to the Mamlatdar for possession of the land for personal cultivation under Section 33B(3)(b) read with Section 29 in March 1979. On August 2, 1979, during the pendency of the said application, the respondents applied under Section 88D(1)(iv) for revocation of exemption certificate on the ground that the income of the appellants had exceeded Rs.1500/- per year. The Additional Commissioner, Pune Division, Pune, having regard to the order of the High Court in the Writ Petition No.2526 of 1974 dated January 11, 1979, rejected the application of the respondents as not maintainable by order dated January 17, 1981. The respondents assailed the correctness of that order in the High Court in Writ Petition No.1560 of 1981. By the impugned order dated July 19, 1991, the High Court quashed the order of the Additional

Commissioner holding that the application for revocation of the certificate was maintainable and remanded the case for fresh disposal on merits. It is that order which is the subject matter of the appeal before us. The first contention of Mr.A.S.Bhasme, the learned counsel appearing for the appellants, is that as the High Court had restored the order of the Mamlatdar granting exemption certificate in favour of the appellants on the ground that the annual total income of the deceased landlord as on April 1, 1957 was less than Rs.1,500/- which had become final, therefore, now the income of the appellants cannot be taken into account which would amount to reopening the issue before the Additional Commissioner in proceedings under Section 88D as such the High Court erred in quashing the order of the Additional Commissioner.

Mr.V.B.Joshi, the learned counsel appearing for the respondents, has argued that Section 88D gives an independent right to the tenant to have the exemption certificate revoked on establishing, inter alia, that the annual income of the landlord had exceeded Rs.1,500/-, therefore, the contention that the exemption certificate has attained finality, is untenable. Here, it will be useful to read Section 88D(1)(iv) under which revocation of the certificate is applied for and it runs as follows :

88D. Power of Government to withdraw exemption.

(1) Notwithstanding anything contained in Sections 88, 88A, 88B and 88C, if the State Government is satisfied, -

(i) to (iii) * * * * *

(iv) in the case of lands referred to in Section 88C, that the annual income of the person has exceeded Rs.1,500 or that the total holding of such person exceeds an economic holding, the State Government may, by order published in the prescribed manner, direct that with effect from such date as may be specified in the order such land or area, as the case may be, shall cease to be exempted from all or any of the provisions of this Act from which it was exempted under any of the sections aforesaid, and any certificate granted under Section 88B or 88C, as the case may be, shall stand revoked.

From a plain reading of the provisions, extracted above, it is evident that in view of the opening words -- a non-obstante clause -- Section 88D(1) overrides Sections 88, 88A, 88B and 88C provided the requirements thereof are satisfied. Thus, it follows that a certificate granted under sub-section (4) of Section 88C which is final in view of sub-section (5), can be revoked under Section 88D(1) if the State Government is satisfied that in the case of the land referred to in Section 88C, the total annual income of the person holding the certificate has exceeded Rs.1,500/- or that the total holding of such person exceeds the economic holding, as the case may be. It may be noted that for grant of certificate under Section 88C(4) income of the applicant-landlord as on April 1, 1957 is the criteria but for the purpose of revocation of the certificate what is relevant is the income of the person holding the certificate as on the date of the application for revocation of the certificate. The words employed in clause (iv), noted above, are, the annual income of the person has exceeded Rs.1500/-. They imply that even if on April 1, 1957 the total income was not exceeding Rs.1500/- but subsequently it has exceeded that amount as on the date of the revocation application, clause (iv) will be attracted. Therefore, the first contention of Mr.Bhasme cannot but be rejected.

Mr.Bhasme next contended that after the appellants terminated the tenancy of the respondents by notice in writing and applied for possession of the land for bonafide personal cultivation under Section 33B, the respondents could not seek the revocation of the certificate under Section 88D.

Mr.V.B. Joshi, however, argued that in the absence of any constraint in Section 88D with regard to either the limitation or the stage of any proceedings, the respondents could solicit revocation of the certificate and that termination of tenancy would not bar their application for revocation of the certificate unless the Mamlatdar has already passed order on the application. The germane question that arises for consideration is : whether the application of the respondents under Section 88D(1)(iv), for revocation of the exemption certificate granted under Section 88C(4), filed after termination of their tenancy by issuing notice and filing of application for possession of the land by the appellant, under Section 33B read with Section 29, is maintainable.

It is a common ground that the Act is a beneficial legislation and it confers valuable rights on the tenants of agricultural lands. Among others Section 32 provides that on April 1, 1957 (the Tillers Day) every tenant shall be deemed to have purchased from his landlord free of all encumbrances, subsisting thereon as on that date, the land held by him as tenant. Such deemed purchase is subject to the provisions of that Section and Sections 32A to 32R. Side by side the benefits conferred on tenants, a few rights of the landlords are preserved to terminate tenancy under Sections 14, 31, 43(1B) and in somewhat truncated form, a right embodied in Section 88C read with Section 33B.

Now, we shall refer to Section 88C. It will be appropriate to quote it here. 88C. Exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs.1,500. -

(1) Save as otherwise provided by Sections 33A, 33B and 33C, nothing in Sections 32 to 32R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of person including the rent of such land does not exceed Rs.1,500:

Provided that the provisions of this sub- section shall not apply to any person who holds such lands as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption.

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of Section 32 to 32R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

(5) The decision of the Mamlatdar under sub- section (3), subject to appeal to the Collector, shall be final.

An analysis of the Section, quoted-above, discloses that sub-section (1) of Section 88C postulates : (a) exemption of the land leased by any person, if such land does not exceed an economic holding and the total annual income of the person including the rent of such land does not exceed Rs.1500/-, from the provisions of Section 32 to 32R (both inclusive); (b) the exemption is subject to the provisions of Sections 33A, 33B and 33C; and (c) the exemption does not apply to a person who holds such lands as a permanent tenant or who has leased such land on permanent tenancy to any other person from its provisions. Sub-section (2) which is procedural, provides that every person

eligible for exemption under sub-section (1) shall make an application in the prescribed form, within the prescribed period, for a certificate that he is entitled to such exemption, to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate. Sub-section (3) casts an obligation on the Mamlatdar to hold inquiry after notice of such application to tenant or tenants of the land and to decide as to whether the land leased by such person is exempt, under sub-section (1), from the provisions of Sections 32 to 32R; in other words he has to decide whether the twin requirements of sub-section (1), namely, (i) the land leased does not exceed an economic holding and (ii) the total income of the applicant including the rent of such land does not exceed Rs.1,500/-, are satisfied. In the event of the Mamlatdar deciding that the said requirements are satisfied and therefore the land is so exempted, sub-section (4) enjoins on him to issue a certificate in the prescribed form to such person. Sub-section (5) declares that the decision of the Mamlatdar under sub-section (3), subject to appeal to the Collector, shall be final. We have already held above that certificate of exemption issued under Section 88C(4), notwithstanding its finality, is liable to be revoked under Section 88D(1).

Inasmuch as sub-section (1) of Section 88C says save as otherwise provided by Sections 33A, 33B and 33C, it will be necessary to notice them here. Section 33A defines two expressions, employed in the aforesaid provisions: (i) certificated landlord to mean a person who holds a certificate issued to him under sub-section (4) of Section 88C but a landlord within the meaning of Chapter III-AA (a serving member of armed forces) holding a similar certificate is not included within the meaning of the expression; and (ii) excluded tenant to mean a tenant of land to which Sections 32 to 32R (both inclusive) do not apply by virtue of sub-section (1) of Section 88C.

Section 33B confers a special right on the certificated landlords to terminate tenancy for personal cultivation. It is necessary to advert to it which is as follows :

33B. Special right of certificated landlord to terminate tenancy for personal cultivation.

(1) Notwithstanding anything contained in Section 31, 31A or 31B a certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord bona fide requires such land for cultivating it personally.

(2) The notice may be given and an application made by a certificated landlord under sub-section

(3), notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with sub-section (2) of Section 31

(i) is pending before the Mamlatdar or in appeal before the Collector, or in revision before the Maharashtra Revenue Tribunal, on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (hereinafter referred to in this section as the commencement date), or

(ii) has been rejected by any authority before the commencement date.

(3) The notice required to be given under sub-section (1) shall be in writing, and shall be served on the tenant

(a) before the first day of January 1962, but

(b) if an application under Section 88C is undisposed of and pending on that date then within three months of his receiving such certificate, and a copy of the notice shall, at the same time, be sent to the Mamlatdar. An application for possession of the land shall be made thereafter under Section 29 to the Mamlatdar before the 1st day of April 1962, in the case falling under (a) and within three months of his receiving the certificate in the case falling under (b).

(4) Where the certificated landlord belongs to any of the following categories, namely

(a) a minor, (b) a widow, (c) *** **

(d) a person subject to any physical or mental disability, then if he has not given notice and not made an application as required by sub-sections (1) and (3), such notice may be given and such application made

(A) by the landlord within one year from the date on which he, -

(i) in the case of category (a) attains majority;

(ii) *** **

(iii) in the case of category (d), ceases to be subject to such physical or mental disability; and

(B) in the case of a widow, by the successor-in-title within one year from the date on which widows interest in the land ceases :

Provided that, where a person belonging to any category is a member of a joint family, the provisions of this sub-section shall not apply if any one member of the joint family does not belong to any of the categories mentioned in this sub-section, unless the share of such person in the joint family has been separated by metes and bounds before the 31st day of March 1958 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.

(5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say, -

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on the ground that that other land was required for cultivating it personally under Section 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

(c) 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 until the commencement date in the name of

the landlord himself, or of any of his ancestors (but not of any person from whom title is derived 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.

(6) The tenancy of any land left with the tenant after the termination of the tenancy under this Section shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

(7) If, in consequence of the termination of the tenancy under this section, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land so left with the tenant.

A close reading of the section, quoted above, shows that sub-section (1) enables a certificated landlord who bona fide requires the land, covered by the certificate, for cultivating it personally, to terminate the tenancy of the excluded tenant by giving him notice and making an application for possession, in the manner prescribed in sub-section (3). The said sub-section requires the certificated landlord to give notice in writing which shall be served on the excluded tenant on or before January 1, 1962; however, in a case where the application of such landlord under Section 88C is not disposed of and pending on that date, he can do so within three months of his receiving such certificate sending simultaneously a copy of the notice to the Mamlatdar. The application for possession of the land has to be made under Section 29 to the Mamlatdar before April 1, 1962 in the case where notice was served before April 1, 1962 on the tenant and in a case where notice was served on him within three months of receiving a certificate under Section 88C, the application can be made for possession under Section 29 within three months of his receiving the certificate. The right conferred on a certificated landlord to terminate the tenancy of an excluded tenant is an independent right and is not affected by the provisions of Sections 31, 31A and 31B. It may be noticed here that under the scheme of the Act a landlord's right to terminate the tenancy of an agricultural land is regulated by the provisions contained in Section 31 which enables a landlord to terminate the tenancy of his tenant of an agricultural land for personal cultivation or for non-agricultural purposes. Sections 31A and 31B incorporate conditions subject to which the tenancy shall stand terminated and enumerate cases in which tenancy cannot be terminated under Section 31. Sub-section (2) of Section 33B clarifies that even if in respect of the same tenancy an application of the landlord under Section 31(2) is pending before the Mamlatdar or in appeal before the Collector, or in revision before the Maharashtra Revenue Tribunal on the commencement date*; or if it has been rejected before the commencement date by any authority, notice under sub-section (1) may be given. _____ *The date of commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (Act IX of 1961)

Sub-section (4) which deals with a certificated landlord who is either a minor, a widow or a person subject to any physical or mental disability, is not relevant for our purposes. Sub-section (5) enumerates conditions subject to which the right of the certificated landlord to terminate a tenancy under Section 33B can be exercised.

A safeguard is provided for the tenant in sub-section (6) which says that the tenancy of any land left with the tenant after the termination of the tenancy under Section 33B shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

The import of sub-section (7) is to safeguard the interest of the tenant by causing proportionate

Section 33C. From the examination of the provisions of Section 88C and Section 33B, it is incontrovertible that they are enacted to give relief to landlords having small parcel of land to enable them to cultivate the land personally and augment their meager income. These provisions have, therefore, to be so interpreted as to make them meaningful and not to render them illusory. A combined reading of Sections 33B and 33C discloses that for purposes of terminating the tenancy of an excluded tenant both giving of notice and filing of an application for possession, are necessary. The certificated landlord should take both the steps either within the dates specified therein or within three months from the grant of exemption certificate under Section 88C(4). In the event of the certificated landlord not taking the steps, as noted above, the deeming provisions of Section 33C will be attracted and the excluded tenant will be deemed to have purchased the land free from all encumbrances thereon if such land is cultivated by him personally. Be it noted that the provisions of Section 33C override the provisions of Section 88C.

From the above discussion, it appears to us that where the landlord has complied with the requirements of Section 33B, by giving notice and applying for possession within the statutory period of three months after receipt of certificate under Section 88C, the right of the landlord crystallises and the exemption certificate gets exhausted, therefore, thereafter the excluded tenant cannot seek revocation of exemption certificate granted under Section 88D(1)(iv). The contention that application for revocation of exemption certificate under Section 88D will be maintainable till the order is finally passed by the Mamlatdar on the application for possession of the land, cannot be accepted for reasons more than one. First, the provisions of Sections 88C, 33B and 88D(1) cannot be so construed as to lead to a situation where an excluded tenant by seeking revocation of the exemption certificate sets at naught the benefit conferred on the certificated landlord who has complied with the provisions of Sections 33B as it will frustrate the provisions of Sections 88C as well as 33B for no fault of the certificated landlord; where, however, the certificated landlord fails to give notice in writing within the prescribed time or having thus given notice, omits to make application for possession of the land under Section 29, within the specified period, the certificated landlord loses the benefit of the exemption certificate as the right of the excluded tenant to be a deemed purchaser will get revived under Section 33C. Secondly, when to realise the fruits of the certificate given under Section 88C(4) the certificated landlord has taken steps under Section 33B read with Section 29 and has done what all could be expected of him delay in disposal of such an application by the Mamlatdar, cannot be allowed to prejudice the interest of the certificated landlord. Thirdly, a valuable right of certificated landlord cannot be allowed to be defeated with reference to an uncertain event i.e. the date of passing of order by the Mamlatdar on the application under Section 29, because the period for disposal of the application may vary from a day to a decade or even more. If two landlords similarly situated apply for possession before the Mamlatdars in two different areas under the said provisions or even before the same Mamlatdar and in one case the order is passed immediately, no application under Section 88D(1)(iv) of the Act could be entertained against him but in the other case if the proceedings are kept pending for some years, for no fault of the certificated landlord, his position would be vulnerable and the application for revocation of certificate under Section 88D(1)(iv) would be maintainable against him. It would not be just and reasonable to adopt such an uncertain criteria. And fourthly, it would not be in conformity with the scheme of the said provisions to prescribe a criteria which yields different consequences in similar cases depending upon the date of passing of the order by the Mamlatdar. In our view, it will, therefore, be just and reasonable to hold that after a certificated landlord has complied with the provisions of Section 33B within the specified time, the application of the excluded tenant under Section 88D(1)(iv) for revocation of certificate cannot be entertained.

We shall now advert to the cases cited at the Bar. The High Court relying on the judgments of

Bombay High Court in *Parvatibai Ramchandra Rokade Vs. Mahadu Tukaram Varkhede* [1967 (69) Bombay Law Reporter 383] and *Bandu Kesu Jagadale and Ors. Vs. Gopinath Ramchandra Inamdar and Anr.* [AIR 1976 (63) Bombay 216] held that the application under Section 88D(1)(iv) filed by the respondents prior to passing of final order by the Mamlatdar on the application in terms of Section 33B read with Section 29 of the Act, was maintainable.

In *Parvatibai* (supra) the question before the Division Bench of the Bombay High Court was: Whether the right of a certificated landlord to apply in terms of Section 33B for possession of land from an excluded tenant is personal to the certificated landlord and lapses on his death or whether it can be exercised by his successors. In dealing with that question the Division Bench observed that the object of section 88C was to give some limited protection to small holders with limited incomes and on their death, the successors-in-interest in majority of the cases would also be small holders of limited income so it would be in conformity with reason and justice to hold that if a certificated landlord dies before the expiry of the last date for filing an application for possession in terms of Section 33B, his successors-in-interest should be able to file such an application within the specified time. This case undoubtedly emphasises that protection is given to small land holders under the said provisions, but it did not deal with the question the High Court was concerned with.

In *Bandu Kesu* (supra) the question before the Division Bench of the High Court was : Whether the certificate granted to a landlord under Section 88C of the Act gets exhausted when the landlord makes an application for possession in terms of Section 33B of the Act or only when the Mamlatdar makes a final order disposing of the said application of the landlord. There the landlord obtained the certificate under Section 88C on May 29, 1971 and made an application on November 15, 1971 for obtaining possession of the land in terms of Section 33B of the Tenancy Act. While that application was pending the tenants made an application under Section 88D(1)(iv) on July 29, 1972. The said application was disposed of by the Mamlatdar taking the view that such a certificate got exhausted as soon as the landlord has instituted proceedings under Section 33B of that Act so the question of revocation of certificate did not survive in cases where proceedings in terms of Section 33B have been started. The Mamlatdar was fortified in his approach by the judgment of a learned Single Judge of Bombay High Court in *Atmaram Onkar Talele vs. Ananda Shrawan Kolambe* [1970 (72) Bom.L.R.287]. However, the High Court followed an unreported judgment of another Division Bench of the said court in Special Civil Applications Nos.868 of 1970 and 2085 of 1973 (Bom.) taking the view that though no express words of limitation or restriction are to be found in Section 88D of the Act, the scheme of the provisions of Sections 33B and 33C read with Sections 88C and 88D of the Act would suggest that the reasonable limitation that could be put upon the power of the Government or the Commissioner under Section 88D to entertain an application for cancellation of exemption certificate thereunder and held that after the date of final order of the Mamlatdar on the application of certificated landlord in terms of Section 33B read with Section 29 of the Act, no request for cancellation of the exemption certificate under Section 88D(1) would be entertainable. While we agree with the conclusion of the Division Bench that under the scheme of the said provisions reasonable limitation has to be read in Section 88D, we are unable to subscribe to the view that the date of final order of the Mamlatdar on the application of the certificated landlord should be treated as limitation after which no application under Section 88D(1)(iv) could be entertained. In our opinion, the proper date should be the date on which the certificated landlord makes the application in terms of Section 33B read with Section 29 for possession of the land after giving notice to the excluded tenant which would meet the ends of justice and on this aspect we approve the view taken by the learned Single Judge in the case of *Atmaram Onkar Talele* (supra).

It has been pointed out above that the date of passing of the final order by the Mamlatdar on an

application under Section 29 read with Section 33 of the Act, is an uncertain factor. Having regard to the various amendments made in the Act by inserting Sections 88C, 88D, 33B and 33C in the Act and prescribing a period of three months from the date of receipt of certificate under Section 88C within which the certificated landlord may terminate tenancy of the excluded tenant by issuing a notice and filing of an application in terms of Sections 33B read with 29(2) of the Act, and for the afore- mentioned reasons, in our view, it would be just and appropriate to treat the date of filing of an application after notice to the excluded tenant in terms of Section 33B read with Section 29 as the date before which an application for revocation of exemption certificate under Section 88D(1)(iv) of the Act shall be maintainable.

In this view of the matter, we cannot sustain the order of the High Court under challenge; the order under challenge is set aside and the order of the Additional Commissioner is restored. The appeal is accordingly allowed; in the circumstances of the case we make no order as to costs.