

(1982) 01 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 1402 of 1981

Ananda Maruti Jadhav and Others

APPELLANT

Vs

Hansabai Bandu Ghunake

RESPONDENT

Date of Decision : 28-01-1982

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32(B), 88(C)

Citation : (1983) 1 BomCR 21

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : D.R. Banavalikar, for the Appellant; S.S. Pandit, for the Respondent

Judgement

R.A. Jahagirdar, J.—This petition under Article 227 of the Constitution arises out of proceedings instituted by the respondent u/s 33-B of the Bombay Tenancy and Agricultural Lands Act, hereinafter referred to as the "Bombay Tenancy Act." The respondent had earlier applied for a certificate u/s 88-C of the Bombay Tenancy Act and the certificate was directed to be issued on 31st of July, 1965. Thereafter she filed an application u/s 33-B of the Bombay Tenancy Act on 10th of March, 1966. That application was treated as Tenancy Case No. 30 of 1966. Before the proceedings pursuant to this application could be commenced, the tenants who were four in number of the suit land challenged the order granting the certificate u/s 88-C of the Bombay Tenancy Act. That challenge failed sometime in the year 1976 whereafter proceedings u/s 33-B in Tenancy Case No. 30 of 1966 were taken up. Before this happened, one of the four tenants, Maruti Govinda had died on 10th of July, 1966 and his heirs and legal representatives were brought on record on 9th August, 1966. Another tenant, Ganpati, also died on 6th of December, 1966, but unfortunately his heirs and legal representatives were not brought on record till 9th of September, 1976. The heirs of Ganpati had been brought on record in the proceedings arising out of the order passed u/s 88-C of the of the Bombay Tenancy Act, but in the parallel proceedings, namely u/s 33-B of the Bombay Tenancy Act, no separate application was made for bringing the

heirs of Ganpati on record. It is only after the proceedings were taken up u/s 33-B, after the termination of the challenge to the issuance of the certificate u/s 88-C, that the heirs of Ganpati were brought on record.

2. The Tenancy Aval Karkun of Hatkanangale Taluka allowed the application by his judgment and order dated 11th of July, 1977. While so doing he held that he application which had been filed on 10th of March, 1966 was within time, that the respondent has proved her bona fide and reasonable requirement of the suit land, and that each of the tenants were holding for persona cultivation an area which was in excess of his share in the leased lands. The question of equalisation of the holding, therefore, resolved itself. Since the finding on the bona fide requirement was in favour of the respondent, the Tenancy Aval Karkun proceeded to pass the order as mentioned above.

3. This order of the Tenancy Aval Karkun was challenged by the petitioners in an appeal, being Tenancy Appeal No. 1 of 1978. The Sub-Divisional Officer of the Kavir Division partly allowed this appeal and remanded the case to the Court of first instance to fine out whether the certificate u/s 88-C of the Bombay Tenancy Act was actually delivered on 5th of December, 1965 or was delivered on 15th of December, 1965 . If the certificate was delivered on 5th December, 1965, the application filed in Tenancy Case No. 30 of 1966 on 10th of March, 1966 would be beyond the prescribed period of limitation; if, however, the certificate had been actually delivered on 15th of December, 1965, the said application would be within time. In fact the Tenancy Aval Karkun had found that the application was within time. Unfortunately, when the sub-Divisional Officer of Karnir examined the record it was noticed that on the reverse of the certificate the date of the delivery appeared to be 5th of December, 1965. The order of the Sub-Divisional Officer is specific that the matter is remanded to the Court of first instance only to find out whether the certificate u/s 88-C was actually delivered on 5th of December, 1965 and on no other point . This necessarily implied that on the question of bona fide requirement and on the question of the equalisation of the holding the Sub-Divisional Officer agreed with the findings of the Tenancy Aval Karkun. Indeed, on going through the judgment of the Sub-Divisional Officer, I find that there is warrant for this view though the findings have not been couched in very precise and clear language.

4. This order of the Sub-Divisional Officer was challenged by the petitioners in a revision application, being No. M.R.T.-K-P-327/79, which was heard and allowed by the member of the Maharashtra Revenue Tribunal at Kolhapur by his judgment and order dated 20th February, 1981. While so doing, the Maharashtra Revenue Tribunal noticed that the certificates must have shown the date of 15th of December, 1965 on its reverse as the date of delivery. Part of the certificate is torn and it was clear to the Maharashtra Revenue Tribunal that the part which is torn bore the digit "1" before the digit "5" of the date mentioned on the reverse of the said certificate. It was, therefore, held that the application which had been filed on 10th of March, 1966 was within time. The Maharashtra Revenue Tribunal

also noted that on the question of the bona fide and reasonable requirement and on the question of equalisation of the holdings, there was a concurrent finding by both the authorities below and no perversity in the said findings was brought to the notice of the Tribunal.

5. One point which was argued with some vehemence before the Maharashtra Revenue Tribunal as well as before me related to the abatement of the application originally filed by the respondent on the ground that Ganpati's heirs were not brought on record within the time prescribed u/s 18(3) of the Mamlatdar's Courts Act. Relying upon an authority reported in "1974 Tlr 75 (High Court)" the Maharashtra Revenue Tribunal held that there is no abatement of an application made u/s 33-B of the Bombay Tenancy Act. The judgment relied upon by the Revenue Tribunal is not of the High Court, but of a single member of the Maharashtra Revenue Tribunal itself and it held that "where a suit u/s 33-B of the Tenancy Act is kept in abeyance because the tenant had filed a writ petition in the High Court to challenge the validity of the certificate u/s 88, then both the matters can be treated as one because the fate of the suit depends upon the decision of the petition. The Maharashtra Revenue Tribunal in that case has further held that if a party dies and his legal representatives are brought on record in proper time before the High Court, the suit does not abate only for the reason that the legal representatives have not been brought on record in the suit u/s 33-B of the Act. Consistent with the view which the Revenue Tribunal took, the revision application was allowed and thus the order of the Court of first instance was restored.

6. The petitioners-tenants have now approached this Court under Article 227 of the Constitution. Mr, Banavalikar, the learned Advocate appearing in support of the petition, has assailed the judgment of the Maharashtra Revenue Tribunal mainly on three grounds. In the first place he contended that the Revenue Tribunal was not justified in interfering with the order of remand passed by the Sub-Divisional Officer which was the final Court of facts and which was not satisfied on the material placed before it that the certificate had actually been delivered on 15th of December, 1965. The order passed by the Sub-Divisional Officer was to further the ends of justice by finding out the actual date of delivery of the certificate and did not require interference by the Maharashtra Revenue Tribunal. Secondly he contended that it should have been held that the application originally he contended that it should have been held that the application originally filed by the respondent had abated on the ground that the heirs and legal representatives of Ganpati were not brought on record within the prescribed time and thirdly he proceeded to contend that the Revenue Tribunal at best could have remanded the matter to the Sub-Divisional Officer, who was the final Court of facts, to determine the question relating to the bona fide and reasonable requirement and equalisation of the holdings. None of there arguments has appealed to me and I wish to deal with them in that order.

7. In the first place, there is no substance in the criticism levelled against the

view taken by the Maharashtra Revenue Tribunal on the question of the date of issuance of the certificate u/s 88-C of the Act. Mr, Pandit, the learned Advocate appearing for the respondent, has invited my attention to the cross-examination of the respondent wherein it has been put on behalf of the petitioners that the respondent had deliberately shown such a date on the reverse of the certificate as to bring the filing of the application within the prescribed time. This necessarily implied that the certificate as it was originally on the record of trial Court did bear the date 15th of December, 1965 and not 5th of December, 1965. It is only after the closure of the proceedings before the trial Court that a part of the certificate was torn and that part must have contained the digit "1" before the digit "5" in the date. This is partly the way the Maharashtra Revenue Tribunal has looked at the question. Beside this, Tribunal has given convincing reasons in the paragraph dealing with this question and has shown how the certificate must have been issued on 15th of December, 1965 and not on any earlier date. The order of the Sub-Divisional Officer remanding the case to the Court of first instance in order to find out the actual date of the issuance of the certificate was thus found to be wholly unjustifiable. I am in full agreement with this view of the Maharashtra Revenue Tribunal.

8. On the question of abatement, considerable debate took before me because there is a vague prevalent idea that an application made under the Bombay Tenancy Act must abate if a party dies and the legal representatives of that party are not brought on record as provided u/s 18(3) of the Mamlatdar's Courts Act. This view is based partly on the provisions contained in section 72 of the Bombay Tenancy Act. A brief reference to the provisions may not be out of place at this stage.

9. Section 71 of the Bombay Tenancy Act mentions that save as expressly provided by or under the Tenancy Act, all inquiries and other proceedings before the mamlatdar or Tribunal shall be commenced by an application which should contain particulars mentioned in section 71. It is not necessary to reproduce the said particulars. This section must, therefore, necessarily mean that if in any other section under the Act a particular procedure has been provided for the commencement of the proceedings, this section 71 will not apply. It is only under those sections where the provision for filing an application has not been made that the provisions of section 71 are attracted. Section 72 of the Bombay Tenancy Act then proceeds to mention that in all inequities and proceedings commenced on the presentation of applications u/s 71 the Mamlatdar or the Tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act and shall also follow the provisions of the said Act as if the Mamlatdar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In other words, this provision requiring the Mamlatdar or the Tribunal to follow the procedure under the Mamlatdar's Courts Act will be attracted only when an application is made as provided u/s 71 of the Act. I have already pointed out above that section 71 is attracted only when enquiries and proceedings are

started under those sections where provisions for filling an application has not been made. This procedure of following the Mamlatdar's Courts Act is dispensed with when under a particular section of the Bombay Tenancy Act an application itself is required to be made. In such a case, the mamlatdar or the Tribunal is required to follow the procedure as may be prescribed by the State Government.

10. The application in the instant case has been filed u/s 33-B read with section 28 of the Bombay Tenancy Act. Indeed, section 33-B (3) specifically mentions that an application for possession of the land pursuant to a certificate issued u/s 88-C shall be made u/s 29 of the Bombay Tenancy Act. It must, therefore, necessarily follow that the application is u/s 29 of the Bombay Tenancy Act and not under any other section. In the light of the analysis of sections 71 and 72 , which I have made above, the provisions of the said sections shall not apply to an application made u/s 29 of the said Act. The question of abatement of the said application on the ground that the legal representatives of a deceased party were not brought on record within the time prescribed u/s 18 of the Mamlatdar's Courts Act, therefore, does not arise at all. This indeed is the view which has been taken by Joshi, J., in special Civil Application No. 1838 of 1970 (with Special Civil Application No. 2669 of 1970) decided on 19/20th June, 1974. Joshi, J. has, with respect, analysed all the relevant provisions of both the Bombay Tenancy Act and the Mamlatdar's Court Act and taken the aforesaid view and I do not find any reason to differ from the same.

11. That apart, Joshi, J., himself has relied upon a judgment of a Division Bench of this Court given by K.K. Desai, J., (with V.S. Desai,J.,) on 11th November, 1966 in Special Civil Application No. 1022 of 1964. In this judgment of the Division Bench, the question which arose was whether an application u/s 88-C of the Bombay Tenancy Act could abate if the legal representatives of a deceased party were not brought on record as mentioned in section 18(3) of the Mamlatdar's Courts Act. The reasoning which I have mentioned above while analysing the provisions of sections 71 and 72 of the Bombay Tenancy Act, is the one which I have practically borrowed from the judgment of the Division Bench. The Division Bench took the view that the question of following the procedure under the Mamlatdar's Courts Act as required in the first part of section 72 of the Bombay Tenancy Act, will arise only when a particular proceeding is taken under a particular section and when that section does not provide for the filing of an application. In the instant case, the application is u/s 29 of the Bombay Tenancy Act and on a partly of reasoning this application also cannot be held to have abated on the ground that Ganpati's heirs were not brought on record within the time prescribed u/s 18 of the Mamlatdar's Courts Act. The view of the Tribunal that the application has not abated must, therefore, be upheld though on slightly different grounds.

12. Mr. Banavalikar's grievance that the Revenue Tribunal was incorrect in holding that there was concurrent finding of fact on the question of bona fide requirement and the equalisation of holdings is also, in my opinion, unjustified. I

have, while summarising the findings of the authorities below, mentioned that the Sub-Divisional Officer has though not in a very artistic words, given a finding about the bona fide requirement of the respondent. The findings relating to the equalisation of the holdings has been given in clear-cut words by the Court of first instance and no foundation has been laid in the memo of this petition that the areas mentioned in the order of the Court of first instance are in any way incorrect. The finding on equalisation of holdings also must be held to be correct. It must also be noted that the Sub-Divisional Officer remanded the matter to the Court of first instance only for the purpose of finding out whether the certificate u/s 88-C of the Bombay Tenancy Act had been actually delivered on 5th of December, 1965 or 15th of December, 1965 and on no other point. The petitioner did not make a grievance against the said order by approaching the higher authority. It is, therefore, not permissible for Mr. Banavalikar to contend at this stage that there was no finding on these two questions by the Sub-Divisional Officer. To that extent the opinion expressed by the Revenue Tribunal that there is a concurrent finding of fact on these two questions must be held to be correct.

In the result, this petition must fail.

Rule is accordingly discharged with costs.