

(1962) 08 BOM CK 0020

In the Bombay High Court

Case No : Special Civil Application No. 948 of 1961

Anna Balgonda Patil and Others

APPELLANT

Vs

Vasant Raghunath Kulkarni and Others

RESPONDENT

Date of Decision : 09-08-1962

Acts Referred:

Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 — Section 14, 32, 32
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14(1), 14(2), 29, 29(3),
31(3)
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 53

Citation : AIR 1963 Bom 36 : (1962) 64 BOMLR 591 : (1963) ILR (Bom) 198

Hon'ble Judges : Chainani, C.J;K.K. Desai, J;Chandrachud, J

Bench : Full Bench

Advocate : S.C. Pratap, for the Appellant; S.N. Srikhande and Govt. Pleader, for the Respondent

Judgement

Chainani, C.J.—The question, which has been referred to the Full Bench, is as follows:

"Whether, for the purpose of section 88C of the Bombay Tenancy and Agricultural Lands Act, the material date for ascertaining who is the landlord entitled to apply, whether the lands leased by him do not exceed an economic holding, and whether his total annual income does not exceed Rs. 1500/-, is the 1st of April 1957 or the "postponed date" specified in the first proviso to Sub-section (1) of section 32?"

2. In order to answer this question, it is necessary to consider the relevant provisions of the Bombay Tenancy and Agricultural Lands Act. Sub-sec, (1) of Section 14 states that notwithstanding any law, agreement or usage, or the decree or order of a Court, the tenancy of any land shall not be terminated except on the grounds mentioned in Sub-clauses (i) to (v) of clause (a) of this Sub-section. This Sub-section, therefore, curtails the ordinary right of the landlord to terminate the tenancy of his tenant. He can do so only on one of the

grounds mentioned in this Sub-section. Section 31 enables the landlord to terminate the tenancy of his tenant on two other grounds and these are that he requires the land for cultivating it personally or for using it for a non-agricultural purpose. Sub-section (1) of this section provides that notwithstanding anything contained in section 14 a landlord may, after giving notice and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land, if the landlord bona fide requires the land for cultivating it personally, or for any . non-agricultural purpose. Sub-section (2) of section 31 states that the notice required .to be given under Sub-section (1) shall be served on the tenant on or before the 31st December 1956 and that an application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March, 1957. Sub-section (3) enlarges the period for giving a notice under Sub-section (1) and for making an application to the Mamlatdar where the landlord is a minor or a widow or a person subject to mental or physical disability or a serving member of the armed forces. The proviso to this Sub-section is as follows :

"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 large proportion."

This section therefore lays down 31st March, 1957, as the date on or before which an application for possession on the grounds mentioned in Sub-section (1) could be made by a landlord, unless he belonged to one of the categories referred to in Sub-section (3). Section 32 makes the tenants the owners of the lands in their possession, with effect from 1st April, 1957. except in certain cases. Subsection (1) of this section is in the following terms :

"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 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 u/s 31; or
- (ii) notice has been given u/s 31, but the landlord has not applied to the

Mamlatdar on or before the 31st- day of March, 1957, u/s 29 for obtaining possession of the land; or

(iii) the landlord has not terminated this 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, u/s 29 for obtaining possession of the lands :

Provided that if an application made by the landlord u/s 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date".

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to Subsection (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso."

Under this section, therefore, every tenant is deemed to have purchased the land held by him as a tenant on 1st April, 1957, referred to as the tillers" day, unless before this date an application for obtaining possession of the land had been made by. the landlord u/s 29 read with section 14 or section 31 of the Act. If the landlord had made such an application, then the date on which tEa tenant will become the owner of the land (which for the sake of convenience, I will refer to hereafter as the date of vesting), is the date on which the application is finally rejected. In the case of a landlord, who is entitled to the benefit of Subsection (3) of section 31, and whose share in the joint family property has not been separated by metes and bounds before 31st. March, 1958, the tenant will be deemed to have purchased the land on 1st April, 1958. Tho effect of this section is, as observed by the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, , that the title to the land, which was vested originally in the landlord, passes to the tenant on the tiller"s May or the alternative date prescribed in that behalf.

3. Clause (a) in Sub-section (1) of section 32-F states that notwithstanding anything contained in the preceding sections, including section 32, where the landlord is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. There is a proviso to this clause, which is in the same terms as the proviso to Sub-section (3) of section 31 refer- -red to above. Section 32-0 confers the right of our chasing the land on a tenant, whose tenancy had been created after the tiller"s day. Sections 3.3-A. 33"B and 33-O were inserted in the Act in 1961. Section 33-A, defines the term "certificated landlord" to mean a person who holds a

certificate issued to him under Sub-section (4) of section 88-C. The expression "excluded tenant" is defined as meaning a tenant of the land to which sections 32 to 32-B do not apply by virtue of Sub-section (1) of section 88-C. Sub-section (1) of section 33-B states that notwithstanding anything contained in section 31, a certificated landlord may, after giving a 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. Sub-section (a) of this section provides that 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 is pending on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, that is, 9-2-1961, or has been rejected by an authority before this date. Section 33-C provides that notwithstanding anything contained in sub-section (1) of section 88-C, every excluded tenant shall be deemed to have purchased the land on 1st April, 1962, subject to the conditions mentioned in this section. Where a certificated landlord has made an application for possession under Sub-section (3) of section 33B, the tenant shall be deemed to have purchased the land, which he is entitled to retain in his possession, on the date on which the application is finally decided.

4. Sub-section (1) of section 88-C provided that save as otherwise provided by sections 33-A, 33-B and 33-C, nothing in sections 32 to 32-R shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1500/-. Subsection (2) states that every person eligible to the exemption provided in Sub-section (1) shall make an application in the prescribed form to the Mamlatdar within the prescribed period for a certificate that he is entitled to such exemption. Sub-section (3) lays down that the Mamlatdar shall hold an inquiry and decide whether the land leased by such person is exempt from the provisions of sections 32 and 32-R. Sub-section (4) states that if the Mamlatdar decides that the land is so exempt he shall issue a certificate in the prescribed form to such person. An application under this section has therefore to be made within the prescribed period. Rule 53 of the Bombay. Tenancy and Agricultural Lands Rules, 1956, prescribes the date before which an application u/s 88-C must be made. This date has been changed from time to time and the rule as amended now states that such an application shall be made on or before the 31st day of December, 1961. The time for making an application has, however, been extended in the case of landlords, who belong to the categories specified in Sub-section (3) of section 31. Thus where the landlord is a minor, the application u/s 88-C may be made by him within six months from the date on which he attains majority. Similarly where the landlord is a widow, her successor in title may make an application within six months from the date on which the widow's interest in the land ceases to exist.

5. The object of this section 88-C read with section 33-B is to give relief to small

landlords and enable them to obtain possession of their lands and increase their income by cultivating them personally. If a landlord satisfied the conditions laid down in section 88-C, sections 32, 32-F and 32-0, which confer the right to purchase the land on the tenant, will not apply and the tenant will not become the owner of the land, except as provided in section 33-C.

6. The question, which arises for consideration, is what is the date, on which the landlord must fulfil the conditions prescribed by section 88-C, in order to be eligible for obtaining a certificate under this section, that is, in order that his tenant may not become the owner of the land. For the sake of convenience, I will refer to this date as the material date. The section itself is silent on this point, nor is there anything in the section to indicate what the material date should be. Three different answers have been suggested. Mr. Shri-khande, who appears for the landlord, has contended that the material date should be the date of vesting and that where an application has been made before 1st April, 1957, on the grounds mentioned in section 14 or section 31, the material date should be the postponed date on which the tenant will be deemed to have purchased the land. Mr. Pratap, who appears for the tenant, has on the other hand urged that the material date in all cases should be the tiller's day, 1st April, 1957. The learned Government Pleader, whom we have requested to assist us in this case, has argued that the material date should be the date on which the application is made by the landlord u/s 88-C of the Act. It seems to us that the correct answer to the question is that in cases in which the title to the land had passed to the tenant before the disposal of the application u/s 88-C, the material date will be the date on which the title became vested in the tenant and that in other cases it should be the date of the application.

7. The right of purchase conferred on a tenant by sections 32, 32-F and 32-0 is made subject to the right conferred upon the landlord by section 88-C to obtain an exemption in respect of his lands. If the landlord satisfies the requirements of this section, that is, if his income is less than Rs. 1500/- or if the area of the lands leased by him is less than the area of an economic holding, the tenant loses the right of purchasing the land. There is no provision in section 88-C or in any other part of the Act that the tenant shall not be deemed to have purchased the land until the application u/s 88-C has been disposed of. If, therefore, the landlord does not belong to one of the categories specified in Sub-section (3) of section 31 and if he has not made an application for possession before 1st April, 1957, the tenant will u/s 32 be deemed to have purchased the land held by him on the tiller's day. If the landlord subsequently obtains a certificate u/s 88-C, the tenant will be divested of the right, which he had previously acquired u/s 32. If, however, an application for possession had been made by the landlord before 1st April, 1957, then the tenant will be deemed to have purchased the land only on the date on which such application is finally rejected. The consequence of a certificate being granted u/s 88-C, therefore, is that the tenant is debarred from becoming the owner of the land on the date on which he would otherwise be deemed to have purchased it. Logically, therefore, the question whether any

landlord is eligible to obtain a certificate u/s 88-C must be decided by reference to the date, on which the tenant would otherwise become its owner. It is on this date that the position of the landlord must be examined in order to decide whether the tenant can or cannot be deemed to have purchased the land. The material date should therefore be the date on which the title to the land passes to the tenant. This would be the 1st of April, 1957, or the postponed date. We would have been inclined to hold accordingly, but for the fact that Subsection (2) of section 88-C provided that an application under this section must be made within the prescribed period. Except in the case of landlords belonging to the categories specified in Sub-section (3) of section 31, the last date for making an application u/s 88-C was 31st December, 1961. On this date several applications for possession made on the grounds referred to in section 14 or section 31 before 1st April, 1957, were still pending. In such cases the postponed date had not yet arrived. It would be difficult for a landlord to prove, or for the Tenancy Court to find, that on some uncertain date in the future on which the application for possession might be disposed of, the landlord's income will be less than Rs. 1500/- or that on that date the land leased by him will be in area less than an economic holding. Mr. Srikhande has urged that all applications u/s 88-C should be kept pending and should not be disposed of until the applications made u/s 29 read with section 14 or section 31 have been decided. This argument must be rejected, because Sub-section (2) of Section 333 gives a right to a certificated landlord to make an application for obtaining possession of the land on the ground that he requires it for personal cultivation, even though his previous application made in accordance with Section 3r was pending on 9th February 1961. A certificated landlord is a person to whom a certificate has been granted u/s 88C. The Legislature has therefore clearly contemplated that applications u/s 88C may be disposed of, even before the applications for possession made on the grounds mentioned in section 14 or Section 31 are decided. It necessarily follows that the material date may be earlier than the postponed date.

8. There are also several difficulties in accepting the argument that the tillers' day 1st April 1957 should be the material date in all cases. It will be seen from the provisions of the Act, to which reference has been made above, that all tenants do not become the purchasers of the lands held by them on the same date. The Legislature has prescribed different dates for different classes of landlords. There is therefore no reason why in all cases the position of the landlord as on 1st April 1957 should be the deciding factor.

9. It has been argued that if a date subsequent to 1st April 1957 is held to be the material date, a landlord might deliberately alter his position and create such circumstances as would entitle him to obtain a certificate u/s 88C. This argument is not without force. But while in some cases a landlord may manipulate his position, there may be other cases in which his position may deteriorate for no fault of his own. For instance, if he was himself a tenant of another landlord, he might lose the land held by him as a tenant. There may also be cases in which a landlord's position may improve in the intervening period. He may come in

possession of other properties by inheritance or otherwise. If he was a minor on 1st April 1957, he may attain majority and begin to earn. It may also be noted that section 32 and Section 88C came into force on 1st August 1956. The tillers' day was 1st April 1957. The landlords had therefore several months, in which they could have effected a change in their position. The proviso to Sub-section (3) of Section 31 and the second proviso to Sub-section (1) of Section 32 gave to the landlords belonging to the categories specified in Subsection (3) of Section 31 time till 31st March 1958 to alter their position by getting their shares in the joint family properties separated. Under Rule 53 of the Bombay Tenancy and Agricultural Land Rules, 1956, the landlords have been given time till 31st December 1961 to make applications u/s 88C. It has been argued by the learned Government Pleader, and we think there is considerable substance in this argument, that if it was intended that 1st April 1957 should be the material date in every case, it is not likely that the landlords would have been given over four and a half years' time after the tillers' day to apply for exemption u/s 88C. This time has been further extended in the case of landlords belonging to the categories mentioned in Sub-section (3) of Section 31. For instance the successor in title of a widow may make an application for exemption u/s 88C within six months from the date on which the widow's interest in the land ceases to exist. If, therefore, a widow lives for another 40 years, her successor in title will be entitled to make an application after 40 years. During this time the circumstances might have - radically changed. It will therefore be unreasonable to hold that the material date should be 1st April 1957 in every case.

10. In our opinion, therefore, the material date cannot be the same in all cases. It seems to us that a distinction must be drawn between cases in which the title to the land had passed to the tenant before the decision of the application u/s 88C and those in which the tenant might acquire the right of purchasing the land after such application has been decided. Where the landlord does not belong to one of the categories specified in Sub-section (3) of Section 31 and where no application for possession was made u/s 29 read with section 14 or section 31 before 1st April 1957, the tenant will be deemed to have purchased the land on 1st April 1957. Where an application for possession was made before 1st April 1957 and has been rejected before the decision of the application made by the landlord u/s 88C, the tenant is to be deemed to have become the owner on the date on which the application for possession was decided. In both these classes of cases, the date on which the title became vested in the tenant is a known and a certain date- The circumstances of the landlord as on this date should therefore be considered in order to determine whether he is entitled to claim exemption u/s 88C. Consequently in such cases the material date would be the date on which the tenant is deemed to have purchased the land. If it is found that on this date the landlord fulfilled the conditions laid down in section 88C, the tenant will lose the right of purchase previously acquired by him. In other cases, in which the applications u/s 88C are decided before the tenants can be deemed to have purchased the lands held by them, the material date cannot obviously be the

postponed date. It will also not be 1st April 1957 for the reasons which have been already mentioned. In such cases, as it cannot be ascertained at the time the application u/s 88C is decided, on what date, if any, the tenant will be deemed to have purchased the land, the conditions as obtaining on the date on which the landlord seeks exemption, that is the date on which he makes an application u/s 88C, should be considered. Consequently, in cases in which the application u/s 88C is decided before the postponed date, that is before the date on which the tenant might acquire the right to purchase the land, the date on which the landlord's position, in regard to his income and the extent of lands leased by him, should be ascertained for the purposes of Section 88C, should be the date, on which he had made the application under this section.

11. I will now refer to the previous decisions of this Court. As pointed out by Mr. Justice Tarkunde in the referring judgment, it has been held in several cases that the circumstances obtaining on 1st April 1957 must be considered for the purpose of deciding whether the landlord is entitled to a certificate u/s 88C. In most of these cases either no application for possession had been made on the grounds mentioned in Section 14 or S, 31 before 1st April 1957, or the fact of such an application having been made was not brought to the notice of this Court. Consequently it was rightly held that the material date was 1st April 1957. In special Civil Appln. No. 304 of 1961, which has been referred to by Mr. Justice Tarkunde, the facts were that both the applications, which had been made by the landlord for obtaining possession of the lands, had been dismissed on 12th September 1957, whereas the application for obtaining a certificate u/s 88C was made a long time thereafter in 1959. Before then the tenant had already acquired the right to purchase the lands. It was therefore held that the material date for the purpose of Section 88C was 12th September 1957. The view taken in that case is, therefore, in accordance with the view, which we are now taking.

12. Reference has been made to the decision of a Full Bench of the Gujarat High Court in Madhaji Lakhiram Vs. Mashrubhai Mahadevbhai Rabari and Others, . It was held in that case that the landlord, who claims exemption u/s 88C of the Bombay Tenancy and Agricultural Lands Act, must fulfil the condition of annual income mentioned therein with reference to the year preceding the tillers' day, i.e. from 1st April 1956 to 31st March 1957, and not the postponed date or any other date. The learned Judges have given two main reasons for taking this view. The first is, that the condition imposed by Section 32 on a tenant that he must cultivate the land personally, before he can be deemed to have purchased the land, must be fulfilled by him on 1st April 1957. The second reason, which weighed with the learned Judges, was that if 1st April 1957 is not taken as the material date, it would "be tantamount to putting a premium upon the course of action of a landlord and of permitting him to alter the rights of his tenant by resort to a proceeding which was ultimately found to be unjustified by a competent authority" and during the pendency of which proceeding, "a landlord could) devise means to alter his position in such a way . as to fulfil the conditions laid down in Section 88C though he might not have fulfilled the same on the

tillers" day." With regard to the first reason, it seems to us, with great respect to the learned judges, that for reasons, similar to those which we have given why 1st April 1957 should not be the material date in all cases, it may be reasonable to hold that the tenant must satisfy the requirement about the land being cultivated by him personally on the day on which he would otherwise be deemed to have purchased the land. We do not also think that the second reason mentioned above would be a sufficient ground for holding that the material date should be 1st April 1957 in every case.

13. In our opinion, therefore, the reply to the question referred to the Full Bench will be that in cases, in which a tenant is deemed to have purchased the land held fay him as a tenant before the application made by the landlord u/s 88C of the Act is decided, the date on which the land lord should satisfy the requirements of Section 88C, in order to be eligible to obtain a certificate under this section, is the date on which the tenant is- deemed to have purchased the land. In other cases the material date, by reference to which it should be decided whether the landlord is entitled! to a certificate u/s 88C, will be the date on which the landlord had made an application under this section.

14. Answer accordingly.