

(2000) 06 BOM CK 0104

In the Bombay High Court

Case No : Writ Petition No. 3324 of 1981

Babu Bala Dinde since deceased by his L.Rs.. Nivrutti Babu
Dinde and others

APPELLANT

Vs

Shivaram Govinda Jadhav since deceased by his L.Rs..
Baburao Shivaram Jadhav and others

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33B, 88C, 88CA
Constitution of India, 1950 — Article 227

Citation : (2000) 06 BOM CK 0104

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.S. Gokhale, for the Appellant; G.R. Rege for Respondent No. 3 and N.J. Patil, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This petition under Article 227 of the Constitution of India is directed against the judgment of the Maharashtra Revenue Tribunal, Kolhapur, dated November 26, 1980 in M. R. T. K. P/I 64/1979.

2. The petitioner is the tenant in respect of the land bearing survey No. 177-A of Village Bahireswar, Taluka Karvir, District Kolhapur. The respondents are the owners of the suit land. The respondents are the heirs of Shivram Govind Jadhav. The said Shri Shivram Govind Jadhav, since deceased, had obtained certificate u/s 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the tenancy Act") on December 31, 1960. By virtue of the said certificate, the said deceased Shri Shivram Govind Jadhav, predecessor-in-title of the respondents, became entitled to terminate the tenancy of the petitioners in respect of the suit land on the ground of bona fide requirement u/s 33-B of the tenancy Act. He accordingly gave notice on December 20, 1961 terminating the tenancy of the petitioner in respect of the suit land. The said notice was received

by the petitioner on December 3, 1961. It is thereafter that the said Shri Shivram Govind Jadhav filed an application purporting to be u/s 33B of the tenancy Act before the Tenancy Awal Karkun, Karvir, for possession of the suit land, being TNC Case No. 532 of 1962. He also claimed possession of the lands which were in possession of other two tenants as well. However, in the said proceedings, Shri Shivram Govind Jadhav did not press for possession of the lands which were held by the other two tenants but pursued the matter only against the petitioner herein in respect of the suit land. The Tenancy Awal Karkun, Karvir, after considering the rival submissions and material on record, by judgment and order dated September 20, 1965, was pleased to allow the application and ordered that the petitioner shall handover possession of the suit land to the landlord after the appeal period was over. Being aggrieved, the petitioner preferred an appeal before the Special Land Acquisition Officer, Chikotra Project, Koihapur, being Tenancy Appeal No. 38 of 1978, albeit beyond limitation. The petitioner prayed for condonation of delay, mainly, on the ground that the order passed by the trial Court was not communicated to the petitioner and as such the limitation for filing the appeal did not commence. According to the petitioner, there was no delay in filing the said appeal. The Appellate Court, after considering the matter, treated the appeal to be within limitation. On merits, the Appellate Court took the view that the trial Court has failed to enquire into the bona fides of the landlord and as such thought it appropriate to remand the matter to the trial Court for disposal on merits in accordance with law. The Appellate Court, accordingly, allowed the appeal and remanded the matter to the trial Court by its judgment and order dated 31-3-1979. The respondents, being dissatisfied, carried the matter in revision before the Maharashtra Revenue Tribunal, Kolhapur. The Maharashtra Revenue Tribunal, Kolhapur, by its order dated 26-11-1980, was pleased to allow the revision application filed by the respondent and set aside the order passed by the Appellate Court. The Maharashtra Revenue Tribunal, Kolhapur restored the order passed by the Tenancy Awal Karkun which, in turn, had granted the prayer for possession of the suit land in favour of the landlord.

3. Learned Counsel for the petitioner raised two points for consideration in this writ petition while assailing the correctness of the decision of the Maharashtra Revenue Tribunal, Kolhapur. It is contended that the Appellate Court has noticed that the lands were inam lands and the occupancy price in respect of the suit lands was paid on April 22, 1964 from which date the landlord became occupant thereof. Learned Counsel thus relied on section 88 CA of the tenancy Act to contend that the provisions of section 33B of the Tenancy Act, which were invoked by the respondent-landlord in respect of the suit lands, were not available since the suit lands were inam lands and exempted by the said provision. The second point raised on behalf of the petitioner is that in any case since the original landlord had died during the pendency of the proceedings, it became imperative for the surviving heirs of the original landlord to prove their personal qualification as to bona fides and holding by reference to date of being

brought on record. In support of this contention, Learned Counsel relied on a Division Bench Judgment of this Court reported in the case of Maruti vs. Dattatraya, 1977 Mh.L.J. 848. According to the Learned Counsel for the petitioner, the writ petition will have to be allowed as the proceedings u/s 33B of the Tenancy Act deserve to be quashed and set aside and dropped qua the petitioner since the suit land is inam land. According to the Learned Counsel, at any rate, the matter requires to be remanded for an enquiry as to whether the heirs of the landlord would prove personal qualifications as to bona fide and their holding by reference to the date of being brought on record

4. Shri G. R. Rege, the Learned Counsel for the respondents, on the other hand, contended that the appeal filed by the petitioner ought to have been dismissed being barred by limitation. With regard to the legal question raised on behalf of the petitioner, the Learned Counsel for the respondents contends that there is no clear finding recorded by the Courts below that the suit lands are inam lands and, in any case, the same were held as inam for service useful to Government. According to him, unless the suit lands are held to be for inam service the bar u/s 88CA of the Tenancy Act will not be attracted, in which case the application u/s 33B of the Tenancy Act by the landlord was competent. Regarding the second point, the Learned Counsel was unable to seriously challenge the same in view of the well-settled principle enunciated in the abovesaid decision of the Division Bench of this Court.

5. Shri N. J. Patil, Learned Counsel appearing for respondent No. 4, adopted the arguments of Shri G. R. Rege.

6. After considering the rival arguments, I find that insofar as the objection regarding the appeal filed by the petitioner being time-barred is concerned, the same has been considered by the Appellate Court and the Appellate Court has taken the view that the appeal as presented can be treated to be within limitation. Besides the Appellate Court, even the Maharashtra Revenue Tribunal, Kolhapur in exercise of revisional jurisdiction examined the said question and has found that from the record it was clear that there was no communication of the order passed by the trial Court to the petitioner-tenant. The Maharashtra Revenue Tribunal, Kolhapur accordingly held that the appeal filed by the petitioner was within limitation and the delay, if any, deserved to be condoned. Naturally, the objection regarding petitioner's appeal being time barred deserves to be stated to be rejected.

7. Now, coming to the merits of the stand taken by the rival parties, I shall first deal with the question about the scope of section 88CA of the Tenancy Act. Section 88CA of the Tenancy Act reads thus :

88CA. Nothing in sections 32 to 32-A (both inclusive), 33-A, 33-B and 33-C shall apply to land held as inam or watan for service useful to Government but not assigned as remuneration to the person actually performing such service for the time being u/s 23 of the Bombay Hereditary Offices Act, 1874, or any other law

for the time being in force.

On a plain reading of this section, it appears to me that the said provision is attracted only in respect of the lands held as inam for service useful to Government and not with regard to inam lands generally. In the present case, it is not disputed that the suit lands are inam lands. The landlord in his evidence before the Court below has admitted that the suit lands are inam lands. The Appellate Court while considering the matter, in paragraph (5) of its judgment, has observed that from 7/12 extract in respect of the suit lands it is not clear as to what kind of inam was granted in favour of the landlord. In other words, if the suit lands were held by the landlord as inam for service useful to Government, only then the bar u/s 88 CA of the Tenancy Act would come into operation disentitling the landlord to invoke the provisions of section 33B of the Tenancy Act. On the other hand, if the lands are held as inam but not for service useful to Government, nonetheless, the landlord would become entitled to invoke the provisions u/s 33B of the Tenancy Act and ask for possession of the suit land from the tenant. However, in the present case, it is not possible to authoritatively conclude that the suit lands were held by the landlord as inam for service useful to Government. Consequently, there is no other option but to remand the case to the trial Court to frame an issue :- as to whether the provisions of section 88CA of the tenancy Act are attracted in respect of the suit lands. In the event the trial Court comes to the conclusion that the suit lands were held as inam for service useful to Government, only in that case the bar u/s 88CA of the tenancy Act would be clearly attracted, disentitling the respondents from pursuing their application u/s 33B of the Tenancy Act.

8. In the event the trial Court answers the aforesaid question in the negative, then the next question which will have to be considered by the trial Court is : as to whether the respondents herein, who are the heirs of the original landlord, have independently proved their bona fides and personal requirement of the suit land and holding by reference to date of being brought on record. It will be imperative to make enquiry regarding this question in the light of the decision of this Court in the case of Maruti vs. Dattatraya, 1977 Mh.L.J. 848.

9. In view of the aforesaid discussion, the order passed by the Maharashtra Revenue Tribunal, Kolhapur, dated 26-11-1980 as well as that of the Tenancy Awal Karkun, Karvir, Taluka Karvir, dated 20-9-1965 are set aside and the matter is remanded to the file of the Tenancy Awal Karkun, Karvir to frame the necessary issues, as aforesaid, and decide the same in accordance with law. Since, the proceedings have been initiated in the present case as far back as in the year 1962, it would be appropriate that the Tenancy Awal Karkun, Karvir decides the proceedings within a period of six months from the date of receipt of this order. The parties will be at liberty to lead further evidence, both oral and documentary, in support of their respective cases. The Tenancy Awal Karkun, Karvir shall consider the evidence already on record along with the further evidence adduced by the parties in deciding the matter afresh without being

influenced by any observations made by the Courts below in the earlier proceedings.

10. Office is directed to send back the record to the office of the Tenancy Awal Karkun, Karvir, forthwith.

11. The writ petition is accordingly allowed to the above extent with no order as to costs. Rule is made absolute.

Certified copy expedited.

Parties to act on an ordinary copy of the judgment duly authenticated by the Court Sheristedar.