

(1971) 03 GUJ CK 0004
In the Gujarat High Court
Case No : Spl. Civil Application No. 14 of 1968

Bai Neksabbibi and Another	Vs	APPELLANT
Kashiben Maganbhai and Others		RESPONDENT

Date of Decision : 09-03-1971

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88

Citation : AIR 1971 Guj 287 : (1971) 12 GLR 1039

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Advocate : Gordhanbhai C. Patel, for the Appellant; V.S. Patel, for the Respondent

Judgement

1. The petitioners are the owners of S. Nos. 1742, 161/2, 1738/2, 1174/8 and 1174/7 of village Chaklasi in Kaira District. They are hereinafter referred to as the landladies. The landladies applied to the Mamlatdar for granting them Exemption Certificate u/s 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act" for the sake of brevity). In the first instance, the Mamlatdar found that their income was below Rupees 1500/- and, therefore, by his order dated 15th November, 1961 he granted Exemption Certificate to them.
2. The tenants appealed to the Collector. The Deputy Collector, Nadiad decided the appeal by his order dated 7th October, 1962. He set aside the order of the Mamlatdar and remanded the matter to him for a fresh decision. On remand, the Mamlatdar examined the merits of the case and also the question as to limitation. He, thereupon, dismissed the application on 31st October, 1964 on the ground that it was barred by time. The landladies appealed to the Collector. The Deputy Collector decided the appeal on 7th February, 1967 and, by his order, confirmed the order of the Mamlatdar and dismissed the appeal.
3. The landladies preferred a Revision Application to the Revenue Tribunal against the appellate order of the Deputy Collector.

4. The Revenue Tribunal, after hearing the parties, by its order dated 3rd July, 1967 dismissed the Revision Application.

5. It is against that order that this Special Civil Application has been directed.

6. Mr. G.C. Patel, appearing for the landladies, has pointed out to me that the Revenue Tribunal has confirmed the order of the Deputy Collector only on the ground that the original application made by the landladies was barred by time. Proviso to sub-section (2) of Section 88C states that a widow may make an application for Exemption Certificate before the 1st day of July, 1961 notwithstanding that the period prescribed elsewhere under the said section had expired. In this case, the landladies who are widows made the original application to the Mamlatdar on 26th June, 1961. It was, therefore, within time. The Revenue Tribunal, however, thought that the term "widow" used in Section 88C as well as in Section 32F means a widow having a limited interest in the property and not a widow who is the full owner of the property. In doing so, the Revenue Tribunal has relied upon an unreported decision of the High Court at Bombay in Spl. Civil Appln. No. 1192 of 1963 (Bom) and upon its own three decisions which have been rendered on the basis of the aforesaid unreported decision of the High Court at Bombay. I am not able to agree with the Revenue Tribunal in the interpretation of the term "widow" used in the Tenancy Act. The expression "widow" in my opinion, represents the physical state of a landlady. It has nothing to do with the limited interest or the full interest which a landlady has. If there is a landlady who became widow prior to 1st April, 1957 (Tillers' Day), she is a widow for the purposes of the Tenancy Act. In Spl. Civil Applns. Nos. 561 of 1967 and Spl. Civil Appln. No. 562 of 1967, D/-26-9-1970 (Guj) Mr. Justice Divan has taken a similar view of the matter. The unreported decision of the High Court at Bombay in Special Civil Application No. 1192 of 1963 (Bom) taking a contrary view was cited before him. I am in complete agreement with the view taken by Mr. Justice Divan in the matter. In my opinion, therefore, the Revenue Tribunal was in error in interpreting proviso to sub-section (2) of Section 88C so as to hold that the term "widow" used in the said section means a landlady with a limited interest.

7. I, therefore, quash and set aside the order made by the Revenue Tribunal in Revision Application No. TEN.A. 255 of 1967 decided on 3rd July, 1967. In this view of the matter, since the Revenue Tribunal has decided the matter only on the preliminary question of limitation, it would be necessary for me to remand the Revision Application to it for decision on merits. While remanding the matter to the Revenue Tribunal, I direct the Revenue Tribunal to consider amongst others the merits of the case and also the question whether the minors are the real owners of the lands in question. I set out this question for their consideration because the judgments of the Mamlatdar and the Deputy Collector have produced an impression on my mind that the landladies have been acting as guardians of two minors. It has, therefore, become necessary to determine who are the real owners of the lands and, therefore, landlords within the

meaning of the Tenancy Act.

8. In the result, the petition is allowed. Rule is made absolute. The case is remanded to the Revenue Tribunal for a fresh decision according to law and in light of the observations made in this judgment. In the circumstances of the case there shall be no order as to costs.

9. Petition allowed.