

(2002) 07 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 301 of 1985

Dasharath Nana Ghuge and Another	APPELLANT
Vs	
Deoram Pandurang Watpade since deceased by L.Rs. Tanubai Deoram Watpade and Others	RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33(C)(1), 33B(4)

Citation : (2003) 3 ALLMR 226 : (2003) 1 BomCR 599 : (2002) 4 BOMLR 281 :
(2002) 4 MhLj 447

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

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; G.B. Karandikar, for respondent Nos. 2A to 2g, 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition, under Article 227 of the Constitution of India, takes exception to the order passed by the Maharashtra Revenue Tribunal, dated 27th September 1984 in No. TEN-A-130 of 1982. The short question that arises for consideration in this writ petition is whether provisions of Section 33C(1) or 33C(3) and (4) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act) will apply to the facts of the present case. If it is held that the provisions of Section 33C(1) of the Act would apply, then the view taken by the Tribunal will not variant any interference. On the other hand, if it is held that the provisions of Section 33C(3) and (4) would apply to the facts of the present case then the view taken by the Tribunal will have to be interfered.

2. Insofar as the purport of Section 33B and 33C are concerned, the same is no more res integra. At least two decisions have been relied upon by the learned Counsel for the respondents which would squarely answer the question against the petitioners. The said decisions are reported in :

a. 1974 Mh.LJ. 275 = 1973 (65) BLR 655 Kondiba Yeshwant Vidhate v. Gajanan Balwant Deshmukh

b. 1972 Mh.L.J. 560 = 1972 (65) BLR 310 Baban Krishnarao Misal v. Narayan Yeshwant Godase.

3. Briefly stated, the petitioner is the owner and landlord in respect of land bearing Survey No. 688/1 admeasuring 13 Acres and .24 gunthas at village Pimpalgaon, Baswant, Taluka Niphad, District Nasik. The said lands were leased to deceased Pandurang Watpade and the present Respondent nos. 1 to 5 are the legal heirs of the said deceased Pandurang Watpade. It is not in dispute that the suit lands are jointly owned by the petitioner No. 1 and petitioner No. 2. The petitioner No. 1 was born on 12-1-1950 and became major on 12-1-1968 whereas the petitioner No. 2 was born on 15-7-1953 and became major on 15-7-1971. Much before the petitioners became major, application u/s 88C was filed on their behalf by their father, acting as their guardian on 30-8-1961. The tenancy authority was pleased to allow the said application and granted exemption certificate on 12-4-1962. That order was no doubt challenged but the same was confirmed even by the Appellate Authority vide order dated 19-2-1970. In other words, certificate issued u/s 88C of the Act in favour of the petitioners became final. The actual certificate was issued in favour of the petitioners on 8-1-1969, though the same was pursuant to the order passed on 12-1-1962 in that behalf. By this date the petitioner No. 1 had become major. This is a relevant fact for deciding the present proceedings. Relying on the above said certificate u/s 88C the petitioners filed joint application for possession of the suit land u/s 33B of the Act setting up claim of requirement of the land for bona fide personal cultivation. That application was rejected by the Tahsildar on 10-1-1969. Against that decision the petitioners carried the matter in appeal being Appeal No. 61 of 1970. Even the said appeal was dismissed on 29-1-1971. The petitioners carried the matter in revision before the Tribunal which, however, was allowed and the matter stood remanded for re-examination vide Tribunal's order dated 28-10-1971. It is not necessary for us to advert to the reasons which had weighed with the authorities for deciding the case against the petitioners since the Tribunal has set aside that reasoning and remanded the matter for reconsideration in accordance with law. On remand, the Tahsildar examined the matter afresh and by order dated 30-11-1973 allowed the application in favour of the petitioners and ordered possession to the extent of 7 Acres and 26 gunthas in respect of half portion of the suit land. That order remained unchallenged and has therefore become final. Pursuant to that order the petitioners were actually put in possession to the extent of 7 Acres and 26 gunthas of land. However, insofar as the remaining 5 Acres and 38 gunthas of land out of the suit land, was concerned, according to the petitioners, since respondent tenant did not avail of the opportunity available in terms of subsection (3) and sub Section (4) of Section 33C of the Act, the tenant was not entitled to purchase the said land. On the other hand, according to the respondents tenants, there was no question of exercising option u/s 33C read with Section 33B(4). Because, in the present

case, admittedly the petitioner No. 1 had already become major on 12-1-1968 and on the application of proviso to Section 33B(4) of the Act, the tenant would be deemed to have purchased the suit land and therefore the provisions of Section 33B(4) will have no application to the fact situation of the present case. It is this limited controversy which will have to be addressed in the present proceedings. However, to complete the narration of events it needs to be pointed out that the petitioner No. 2 filed another application on 12-9-1980 after having become major, for possession of remaining 5 Acres and 38 gunthas of land. The Tahsildar by judgment dated 1-11-1981 has held that the tenant has failed to exercise choice in terms of Section 33C(3) read with 33C(4) of the Act and therefore the purchase has become ineffective. That decision was challenged by the respondents tenants which challenge was rejected even by the Appellate Authority. In the circumstances respondents carried the matter in revision application before the Tribunal. The Tribunal by the impugned order on the other hand has allowed the revision application and has in substance taken the view that the tenant had become deemed purchaser when the petitioner No. 1 had become major on 10-1-1968 by operation of Sub-section (1) of Section 33(C) of the Act.

4. The learned Counsel for the petitioners contends that the Tribunal has completely exceeded its jurisdiction in reversing the finding of fact recorded by two courts below while exercising revisional jurisdiction u/s 76 of the Act. He further contends that although the petitioner No. 1 had become major on 12-1-1968, however, that was not sufficient to attract provisions of Section 33C(1) of the Act as the petitioner No. 2 was minor and became major only on 15-7-1971 and that date will be the relevant date for considering the case especially because the certificate issued in favour of the petitioners was on 8-1-1969 pursuant to the order dated 12-1-1962. He therefore submits that, in such a situation, provisions of Section 33C(3) and (4) shall have application; and if this provisions were to apply coupled with the fact that the respondents tenants failed to exercise option in terms of the said provisions, the purchase would become ineffective. Therefore, proceedings u/s 32P would be inevitable in which case the petitioners would get back the possession of the suit land in its entirety. On the other hand, the learned Counsel for the respondents submits that once it is admitted position that one of the landlord has become major on 12-1-1968 then by operation of law, the tenant becomes deemed purchaser by virtue of Sub-section (1) of Section 33C of the Act and that right is an indefeasible right. In such a situation, according to him, the provisions of Section 33C(3) read with Sub-section (4) cannot be pressed into the service. In support of this contention reliance has been placed on the aforesaid two decisions referred earlier.

5. Having considered the rival submissions, I have no hesitation in accepting the argument canvassed on behalf of the respondents that once it is held that one of the landlord who was a joint owner had become major on 12-1- 1968, by virtue of Section 33C(1) of the Act, the tenant became the deemed purchaser and

cannot be disrobed of that right. This question, as rightly contended, has been answered against the landlords in the abovesaid two decisions. In my view, therefore, it will not be necessary to examine any other contention but the inescapable conclusion is that the respondents tenants have become deemed purchasers as held by the Tribunal. Once this conclusion is reached then no fault can be found either with the approach of the Tribunal or it can be held that the reasons recorded by the Tribunal are manifestly wrong. The Tribunal has rightly applied the correct legal position as it was obliged to do. The Tribunal has decided the case on the basis of admitted position relating to the relevant dates and in that sense not interfered with the finding of facts recorded by the two courts below as is sought to be canvassed before this Court. Understood thus, there is no infirmity in the view taken by the Tribunal. This petition, therefore, fails and is dismissed with costs.

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