

(1973) 08 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 794 of 1969

Hariba Keshav Barbole and Others

APPELLANT

Vs

Motibai Deepchand Singh and Others

RESPONDENT

Date of Decision : 08-08-1973

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33

Citation : AIR 1975 Bom 137 : (1974) 76 BOMLR 595 : (1974) MhLj 823

Hon'ble Judges : Shah, J;Deshmukh, J

Bench : Division Bench

Advocate : U.R. Lalit, for the Appellant; B.P. Apte, for K.J. Abhyankar, for the Respondent

Judgement

Shah, J.—This Special Civil Application under Article 227 of the Constitution of India raises a question of law as to the interpretation of Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act").

2. The question of law raised in this case relates to the rights of the heirs of the certificated landlord to get possession of the land u/s 33-B where the certificated landlord dies after he makes an application for possession of the land under S. 33-B.

3. To properly appreciate the points involved, it would be necessary to state a few undisputed facts. The land, Survey No. 81/2, admeasuring 13 acres situate at Darphal, Taluka Madha in Sholapur District belonged to one Deepchand and was in possession of one Keshav as a tenant. Deepchand obtained a certificate u/s 88 - C of the Act and after serving the tenant with a notice made an application for possession of the land against Keshav on 9-1-1962 u/s 33-B of the Act before the Tenancy Awal Karkun. Keshav died during the pendency of the application before the Tenancy Awal Karkun. The petitioners were brought on record as heirs. The Tenancy Ayal Karkun rejected the application of Deepchand on the ground that he did not bona fide require the suit land for personal cultivation.

This decision of the Tenancy Aval Karkun was challenged by Deepchand by an appeal before the Special Deputy Collector for Tenancy Appeals, Sholapur. During the pendency of the appeal, on December 1, 1964, Deepchand also died, and the respondents 1 to 5 were brought on record as his heirs. The appellate authority reappraised the evidence led by the parties and passed an order for delivery of possession on the basis that the deceased landlord had proved that he required the land bona fide for his personal cultivation. The bona fides or otherwise of the heirs of Deepchand were not considered presumably on the ground that the original application was made by Deepchand. In this view of the matter, the appellate authority allowed the appeal and passed an order for delivery of possession of the entire land to the respondents. The petitioners preferred a revisional application before the Maharashtra Revenue Tribunal. It was contended before the Tribunal that in view of the death of the original landlord during the pendency of the proceedings, it was necessary to consider the bona fides of his heirs, and for that purpose the matter requires to be remanded. Since, however, the Tribunal was of the view that when the landlord dies at the appellate stage, the question of his successors; bona fides cannot be taken into consideration, he negates the submissions on behalf of the petitioners, and confirmed the finding of the appellate court. In the result, the revision application was dismissed, and hence the petitioners have filed this Special Civil Application.

4. When the petition came up for final hearing before Hajarnavis, J., on behalf of the petitioners, two contentions were raised. Firstly, it was contended that in view of the death of the original landlord, the bona fide requirements of the heirs of the landlord alone ought to be considered and secondly, on merits, it was contended that the landlord did not require the land bona fide for his personal cultivation. On the question of law, his attention was drawn to two decisions of single Judges of this Court which have taken contrary views on the point in question. The first one was in the case of *Shankar Gopal Jagdale v. Prabhakar Kulkarni*, 72 Bom LR 695, wherein Vaidya, J. took the view that although the heirs of the deceased landlord are entitled to continue proceedings u/s 33-B started by their predecessors, still it is necessary for them to establish that they bona fide require the land for personal cultivation. The other decision pointed out to him was an unreported decision in Special Civil Appln, No. 2365 of 1967 decided by Wagle, J. on 17-8-1971 (Bom). Relying on certain observations in *Madhav Vithoba Wani Vs. Dhondudas Bhaudas Bairagi and Another*, Wagle, J. took the view that the circumstances should be considered as available at the date when the application was made, and the death of the original landlord during the pendency of the proceedings would be of no consequence on the question as to whether the bona fides of the original landlord or that of the heirs are to be considered. The learned Judge was of the opinion that the bona fides of the heirs need not be considered, and it is the bona fides of the original landlord that would be relevant. On account of this apparent conflict in the views expressed by the two Single Judges of this Court as aforesaid, this matter has been referred to a Division Bench. However, as the reference has not been made

merely on the point of law involved but the whole petition has been referred to us, we shall dispose of the petition itself.

5. Mr. Lalit, the learned Counsel for the petitioners, firstly contended that the order of the Revenue Tribunal was bad as it did not consider the most glaring facts as are evidence on perusal of the evidence on record. He also contended that in view of the death of the original landlord during the pendency of the appeal, it is incumbent on the heirs to establish that they bona fide required the land for personal cultivation. as we are disposed to accept Mr. lalit's contention on the point of law raised by him, we do not think it necessary to give a finding relating to the merits of the case.

6. The provisions of the Tenancy Act have always presented some difficulties in the matter of interpretation. However, since the law is on the statute book for over 25 years, the legal points and the conflicts involved have to a large extent been settled down by decisions of this court and the Supreme Court. The problem raised before us for our decision is one of such cases as it presents some difficulty of interpretation, because normally it is the right of the original certificate landlord to get possession which requires to be considered by the authorities under the Tenancy Act. However, we are now required to deal with a case relating to the rights of the heirs of the original landlord, who died during the pendency of the proceedings u/s 33-B, to get possession of the land.

7. It would be worthwhile at this stage to broadly consider the scheme of the Act relevant for the purposes of the interpretation of section 33-B. The main Object and Policy underlying the enactment of the Tenancy act is the make the tiller of the soil its owner. For this purpose all tenants in possession of the land are deemed to have become owners as on 1-4-1957. This is, however, subject to the rights of certain landlords ever, subject to the rights of certain landlords to get possession on establishment of certain relevant facts, such as bona fide requirement for personal cultivation. The rights of landholders who happened to be minors an who are subject to mental or physical disabilities as well as those of widows have been protected, and they too have been given rights to claim back possession of the land for bona fide personal cultivation. The Legislature has even postponed the Date of these tenant becoming the owner to enable these persons to take steps to get possession of the and from the tenant. Even postponed the date of the tenant becoming the owner to enable these persons to take steps to get possession of the land from the tenant . Even if such a landlord establishes the bona fide requirement for personal cultivation, he cannot claim the entire land but can get only half of the land These provisions, which made the tenant the owners of the land, were brought into force by Amending Act. No. 13 of 1956 which came into force on 1-8-1956. With a view to protect the small landholders whose lands were being cultivated by tenants, Section

88-C as it is originally stood disabled the tenant from becoming the owner of the land if the landlords income did not exceed Rs. 1,500/- and the land leased by him did not exceed an economic holding. The original Section 88-C did not make

any provision enabling the landlord to make an application to get a certificate from the Mamlatdar. Hence by Bombay Act No. 38 of 1957 Section 88-C was amended . By this amendment, a landlord who wanted to claim exemption u/s 88-C was required to make an application before the Mamlatdar within a prescribed period for a certificate that he is entitled to exemption., On proof of the said two requisite facts, the landlord was entitled to get the exemption certificate from the Mamlatdar. By this Amending Act, Section 88-D was also introduced which inter alia gave powers to the State Government to cancel the exemption certificate granted to such a landlord if it is found that his annual income has exceeded Rs.1,500/- or that his total holdings exceeded the economic holding. The result of getting such a certificate u/s 88-C was that the landlord tenant relationship between the parties was continued till the landlord otherwise lost interest in the land or the tenant surrendered his tenancy rights. In effect, so long as the certificate stood, the tenant could not become the owner of the land. By a further amendment by Maharashtra Act No.9 of 1961, Sections 33-A to 33-C were added, and they related to termination of tenancy by landlords and purchase by tenants of land to which Section 88-C applies. The obvious policy underlying these provisions is to give a chance to the certificated landlord to make an application for possession is to give a chance to the certificated landlord to make an application for possession of the land on the ground that he bona fide requires the same for his personal cultivation, and also to make the tenant the owner of the land in case no such application within the prescribed time is made by the landlord. Section 33-B incorporates elaborate provisions for termination of tenancy by a certificated landlord and also the adjustment of holding of lands by the landlord and tenant." According to the definition, "certificated landlord and also the adjustment of holding of lands by the landlord and tenant. Section 33-A only defines a "certificated landlord" and "excluded tenant." According to the definition, "certificated landlord" means a person who holds a certificate issued to him under sub-section (4) of S.88-C. The definition also makes it clear that it would not include a landlord within the meaning of Chapter III-AA holding a similar certificate, but we are not concerned with the latter part of this definition. "Excluded tenant" has been defined as a tenant of land to whom Ss. 30 to 31-R (do) not apply by virtue of sub-section (1) of S.88-C.

8. In this petition, we are concerned with the interpretation of Section 33-B. Subsection (1) of S.33-B gives a right to the certificated landlord of terminate the tenancy of an excluded tenant if he bona fide requires the land to cultivate it personally after giving notice and making an application for possession as provided in sub-section (3). Sub-section (3) firstly provides that the written notice must be served on the tenant within the prescribed period. A copy of the notice has also to be sent to the Mamlatdar. After the service of the notice on the tenants within the prescribed period, the certificated landlord is entitled to make an application for possession u/s 29 before the prescribed date, viz., first day of April 1962. It may be stated here that in the case of minors, widows and a

person subject to any physical or mental disability, the period for giving notice and making an application for possession u/s 29 before the prescribed date, viz., first day of April 1962. It may be stated here that in the case of minors, widows and a person subject to any physical or mental disability, the period for giving notice and making an application has been extended by the provisions in sub-section (4) of S.33-B in that behalf. Sub-section (4) of S.33-B in that behalf. Sub-section (5) lays down the conditions subject to which the certificated landlord is entitled to terminate the tenancy. The first condition is contained in clause (a) which provides that certificated landlord will not be entitled to terminate the tenancy of a tenant if he has already resumed a part of the land for personal cultivation by making an application u/s 31. In such a case, he will not be entitled to terminate the tenancy in respect of the remaining land in possession of the excluded tenant. Sub-clause (b) relates to the equalisation of holdings between the certificated landlord and the excluded tenant. It inter alia provides that the landlord shall be entitled to terminate tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation. The third condition is contained in sub-clause (c), which provides that the land leased stands in the Record of Rights on the 1st day of January, 1952 and thereafter until the commencement date in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise) or if the landlord is a member of such family. Sub-section (6) provides that the tenancy, of any land left with the tenant after the termination of the tenancy under this section shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation. Section 33-C makes provision for the excluded tenant becoming owner of the leased land under certain circumstances mentioned therein.

9. The question as to whether the heirs of the original landlord who dies before getting a certificate can make an application for obtaining an exemption certificate u/s 88-C as also the question as to whether the heirs of the successor-in-interests of a certificated landlord can make an application for possession u/s 33-B are now fairly well settled. A Division Bench of this Court in the case of Parvatibai Vs. Shankar Mahadu Varkhade and Others, has held that the right of a certificated landlord to apply u/s 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948 for possession of land from an excluded tenant does not lapse on his death and can be exercised, within the specified time, by his successor-in-interest. It would, therefore, appear that the right to terminate the tenancy by a notice and to make an application u/s 33-B is a heritable right and can be exercised by the successor-in-interest of a certificated landholder. However, the right of the successor-in-interest to terminate the tenancy u/s 33-B would also be subject to the same limitation which would otherwise be applicable to the case of a certificated landlord. Thus, he would not be able to secure the benefit conferred by S.33-B if he were not a small holder with a limited income. Just as

the certificated holder himself is not entitled to terminate the tenancy of the excluded tenant if his title is derived by the assignment or the court sale or otherwise the successor-in-interest would also be under the same disability. In Parvatibai's case referred to above, it is observed:

"The object of Section 88-C was to give some limited protection to small holders with limited incomes. Where a small holder of limited income dies, his successor in interest in the majority of cases is also small holders of equally limited income. He may, for instance, leave behind a widow or a minor son. It cannot be assumed in the absence of adequate reason that the Legislature did not intend to grant to the successor-in-interest the same limited protection which it granted to a small holder with limited income. There are, on the other hand, ample provisions in the Act to ensure that the successor in interest of a certificated landlord would not be able to secure the benefit conferred by S.33-B if he is not himself a small holder with limited income. In the first place, clause (c) of sub-section (5) of S.33-B provides that such a successor-in-interest would not be able to terminate the tenancy of the excluded tenant if his title is "derived by assignment or Court sale or otherwise". A donee or purchaser from a certificated landlord would be unable to terminate the tenancy unless he shows that he requires the land bona fide for cultivating it personally....."

It would, therefore, appear that if the original application has been filed by a successor-in-interest of the certificated landlord, it is necessary for him to establish his own bona fides and he cannot rely on the bona fide requirements of his predecessor-in-title. We can conceive of cases where a successor -in-interests of a certificated landlord can make an application for possession u/s 33-B are now fairly well settled. A Division Bench Parvatibai Vs. Shankar Mahadu Varkhade and Others, has held that the right of a Certificated Bombay Tenancy and Agricultural Lands Act, 1948, for possession of land from an excluded tenant does not lapse on his death and can be exercised, within the specified time, by his successor -in - interest of a certificated landholder. However, the right of the successor -in- interest of a certificated landholder. However, the right of the successor-in-interest to terminate the tenancy u/s 33-B would also be subject to the same limitation which would otherwise be applicable to the case of a certificated landlord. Thus, he would not be able to secure the benefit conferred by S.33-B if he were not a small holder with a limited income. Just as the certificated holder himself is not entitled to terminate the tenancy of the excluded tenant if his title is derived by assignment or the court sale or otherwise, the successor-in-interest would also be under the same disability. In Parvatibai's case referred to above, it is observed.

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grant to the successor-in-interest the same limited protection which it granted to a small holder with limited income. There are, on the other hand, ample provisions in the Act to ensure that the successor in interest of a certificated landlord would not be able to secure the benefit conferred by S.33-B if he is not himself a small holder with limited income. In the first place, clause (c) of sub-section (5) of S.33-B provides that such a successor-in-interest would not be able to terminate the tenancy of the excluded tenant if his title is "derived by assignment or Court sale or otherwise." A donee or purchaser from a certificated landlord would be unable to terminate the tenancy of the excluded tenant. Secondly, the successor-in-interest cannot terminate the tenancy of the excluded tenant. Secondly, the successor-in-interest cannot terminate the tenancy unless he shows that he requires the land bona fide for cultivating it personally"

It would, therefore, appear that if the original application has been filed by a successor in-interest of the certificated landlord, it is necessary for him to establish his own bonafides and he cannot rely on the bona fide and he cannot rely on the bona fide requirements of his predecessor -in-title. we can conceive of cases where a successor-in-interest or the heir of the deceased certificated landlord may be in service and may have other source of income and may not require the land for personal cultivation. In such a case, his application for possession may not be granted as he would not be able to prove that he requires the land bona fide for personal cultivation. If the successor -in- interest or the heir can make an application for possession u/s 33-B, there, is no reason why the heirs of certificated landlord brought on record on account of his death after making an application u/s 33-B should not be able to prosecute the application and exercise the same rights to prosecute the original application which the certificated landlord would otherwise have done; and this is not disputed before us.

10. The point for consideration is as to whose bona fide requirement of personal cultivation must be proved . If the circumstances prevailing on the date of the original application are alone relevant, it is the original landlords bona fide requirement is a relevant consideration, then naturally their requirement on the date of their naturally their requirement on the date of their being brought on record will be a material question to be decided by the Court. Considering the scheme of the Act and the legislative policy underlying it, it is quite clear that the intention is to make the tiller of the land its owner. But section 88-C and section 33-B were enacted with the object of giving a limited protection to the small holders having meager income. If it is to be held that the original landlord's bona fide requirement on the date of the application alone must be considered, it is possible that this heirs who may be having other lands and large income may be original landlord" s bona fide requirement on the date of the application and give possession of the land to the heirs of the original landholder, although he may to be a small holders and may not require or desire to cultivate the land personally ? No doubt, the right to make an application u/s 33-B is heritable.

However, the making an application alone is not enough to enable the landlord to possession of the land, for the law requires him to establish the relevant circumstances which would enable him to get possession of his lands. Besides proof of the bona fide requirement, the right of the landlord is subject to the conditions laid down in sub-section (5) of S. 33-B. If the landlord dies during the pendency of the proceedings, his heir who is brought on record gets the right to further prosecute the application. Just as in the case of the successor-in-interest, who himself makes an application on the basis of the certificate obtained by his predecessor-in-title. has to establish his own bona fide requirement for personal cultivations, similarly the heir of the landlord who is brought on record during the pendency of the proceedings will also have to establish his bona fide requirement on the date when he is brought on record. The intention of the Legislature would be frustrated if one is to take the view that the court has to consider the requirement of the original landlord on the date of the application. It would mean that the heir who does not bona fide require the land for personal cultivation must be given possession of the land on the basis of the original landlord's bona fide requirement. We do not think that such an interpretation would be consistent with the object of the Act.

11. Mr. Apte, appearing for the landlord, drew our attention to a judgment of a Division Bench of this Court in 68 Bom LR 524 : AIR 1967 250. In that case, the facts were these. The Tenancy Awal Karkun dismissed the landlord's application on the ground that he did not require the land bona fide for cultivating it personally. The appeal was filed before the Special Deputy Collector who held that the landlord bona fide required the land for personal cultivation and passed an order under sub-s. (5) (b) of S. 33-B for possession of the land to be given to the landlord. Both parties went to revision to the Revenue Tribunal. Before the Revenue Tribunal, it was pointed out on behalf of the landlord that the tenant had purchased other land admeasuring 5 acres 20 gunthas before the decision of the appellate authority. The Revenue Tribunal took into account the acquisition of land by the tenant during the pendency of the proceedings and on that basis modified the decision of the appellate authority increasing the area of the land to be given to the landlord. The result was that the tenant was dispossessed of a larger area of the land than he would have if the subsequent acquisition of the land by him was not to be taken into account. This decision of the Revenue Tribunal was challenged by the tenant in a writ petition under Article 227 of the Constitution of India. The question for consideration before the Division Bench was whether the acquisition of land by the tenant during the pendency of the proceedings u/s 33-B should be taken into account for the purpose of sub-section (5) (b) of S. 33-B . If the tenant's contention that this subsequent acquisition should be ignored was accepted, the result would have been that he would be able to retain more land with him. On the other hand, if the landlord's contention that this subsequent acquisition ought to be taken into account for the purpose of sub-s. (5) (b) of S. 33-B, (was accepted) he would be benefited by getting larger area of land from the tenant. It under these circumstances that

the Division bench formulated the question for its consideration viz. "whether, in deciding the area of the leased land to which a certificate landlord is entitled under sub-section (5) (b) of S. 33-B the legislature intended that the Court should be guided by the circumstances prevailing at the time of the certificated landlord's application for possession or by the circumstances prevailing at the time of the final order". The case before the Division Bench was a simple case where both the landlord and the tenant were alive. The landlord had to prove his bona fide requirement on the date of the application. Once he proves such a requirement his rights were governed by the provisions of sub-section (5) (b) of S. 33-B. It may be noted here that there is no prohibition for the tenant to purchase or acquire additional land and increase his holdings after the date of the application. It is equally true that a landlord may and can acquire additional land after the date of the application. Under the circumstances, the court must consider the relative position of the landlord and the tenant on the date of the application. On the facts of that case, therefore, the Division bench came to the conclusion that the acquisition of the tenant after the application was not relevant. Same would be the case where the application has been filed by the successor-in-interest of the certificated landlord. he will have to satisfy all the conditions including the bona fide requirement on the date of his application. His position would not be different than that of the deceased landlord.

12. However, we are faced with a different situation. In the instant case before us, the application has been filed by the original landlord, and he died during the pendency of the proceedings. The heir who is brought on record in place of the original landlord is certainly entitled to prosecute the application, but his position is materially different. He will have to establish his own bona fides. Otherwise, on that ground alone his application would be liable to be dismissed. It cannot be said in this case that he should establish the bona fides on the date of the original application. If one were to accept such a contention, it is likely to lead to absurd results. Take the case of a landlord who was unmarried on the date of the application and had no other heir, and he marries after the date of the application and thereafter dies leaving his widow as his sole heir. Can we say that the widow who is brought on record as the heir of her deceased husband should prove her bona fides on the date of the application? On the date of the application she was not a member of the family at all, and it cannot be conceived that she thought of cultivating the land personally on that date. If the argument that the position on the date of the application should be accepted with all these consequences, such an heir will have to be called upon to prove the bona fides on a date when she didn't even think of cultivating the land personally it would, therefore, be rational and proper to hold that the heir of the deceased landlord in such a case should be called upon to prove his bona fide requirement on the date of his being brought on record as an heir of the original applicant.

13. Now, the further question for consideration would be which is the relevant date for the applicability of sub-section (5) (b) of S. 33-B in the case of such an heir brought on record in place of the original applicant landlord? Here again, so

far as the heir of the landlord is concerned, it would be necessary to fix the same date, that is, the date when he is brought on record as the heir of the deceased. It cannot be said that the holding of the heir on the date of the original application should be considered for the purpose of equalisation between the tenant and the heir under sub-section (5) (b) of S. 33-B. It is true that in a majority of cases, the heirs of the deceased who may be the widow and the sons would not be financially in a better position than the original landlord, nor would they have any other land than the one which the original applicant had on the date of the application. In such cases, it would not make any practical difference if their holding on the date when they were brought on record is taken into account. In such cases, they almost stand in the shoes of the original landlord, and the facts necessary for equalisation of holdings between the landlord and the tenant u/s 33-B sub-section (5) (b) would not differ. However, the matter would stand on a different footing if the heirs have other land before they are brought on record as the heirs of the original applicant. As the heir gets the right to prosecute the original application and gets possession on establishment of certain facts, it is but proper and just to ask him to establish all the facts on the date when he comes on the scene, that is, when he was brought on record as the heir of the original applicant. Such an interpretation would be consistent. Such an interpretation would be consistent with the policy and object of the act, because this would not deprive the tenant of his rights any more if the original landlord was alive. It is only when the position is altered by reason of the fact that the heir has got other land or source of income that his rights are curtailed. Surely, the heir cannot claim any better position than the original applicant by not considering the total holding on the date of his being brought on record. We, therefore, hold that the legal heir who is brought on record during the pendency of the proceedings, must establish his own bona fide requirement as on the date he comes on record, as that would be the date for him for all practical purposes to establish his case to recover possession. We also hold that the holding of the heir on the date when he is brought on the record needs to be considered for the purposes of equalisation of holdings of the tenant and the legal heir of the landlord.

14. Now the next point for consideration is about the position of the tenant or his legal representative brought on record in case of his death during the pendency of the proceedings. There is no reason why the death of the original landlord should affect the right of the tenant for equalisation of the land u/s 33-B (5) (b). His holding for comparison should, therefore, be as on the date of institution of the original application. It would be equally logical to hold that the death of the tenant during the pendency of the proceedings should not have any effect on the date for the purpose of equalisation of holding, and the date of the original application by the certificated landlord or by his heir, where the certificated landlord died without making an application, would be the relevant date for consideration of the tenant's holding. This is particularly so, because once an application is filed against him, the date of filing the same automatically becomes

the date relevant for consideration of his holding to be taken into account for the purpose of equalisation under Clause (b) of S. 33-B (5) and this date does not appear to be varying with change in circumstances.

15. Coming to the facts of the instant case, since the bona fides of the legal representative have not been considered at all and the order for delivery of possession has been passed solely on the basis of the bona fides of the original deceased applicant, the order passed by the Appellate Authority as confirmed by the Revenue Tribunal will have to be quashed and set aside. The matter will, therefore, go back to the Tenancy Mamlatdar for disposal of the case in the light of our observations above. Needless to add that both the parties will have a right to lead further evidence.

16. Rule made absolute. No order as to costs.

18. Rule made absolute.