

(1988) 07 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 1659 of 1983

Mahadu Bala Garade, since deceased, by his heirs and
Another

APPELLANT

Vs

Vijay Shridhar Mahajani and Another

RESPONDENT

Date of Decision : 27-07-1988

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1958 — Section 33B, 33B(3), 88C

Citation : (1988) 3 BomCR 658 : (1989) MhLj 883

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Sujata Mogre and V.R. Bhonsale, for the Appellant; R.M. Agarwal, for the Respondent

Judgement

Sharad Manohar, J.—This is another illustration how the Court's process is being made a mockery.

2. The present petitioner has not an infinitesimal justification for holding fast to the land as regards which order for possession has been passed in favour of the respondent -landlord as early as on 7th March, 1975 in an application filed as early as on 3rd January, 1963 by the certificated landlord in whose favour the order for Exemption Certificate u/s 88 was passed on 31st August, 1962. For a full period of 16 years, the landlord is being driven from pillar to post to get the certificated land. He does not know till this date the fate of the proceeding instituted by him on 3-1-1963. The delay of the last 5 years is the result of pendency of this writ petition for that period of 5 years in this Court.

3. The facts are very simple. The suit land admittedly belongs to the respondent - landlord, which was held by the deceased-present petitioner as a tenant. The landlord made application to the tenancy Court u/s 88-C of the Tenancy Act for exemption from the provisions of sections 32 to 32-R of the Act on the ground that his annual income was less than Rs. 1,500/-. The order issuing the certificate in his favour was passed by the tenancy Court, after duly hearing the

petitioner, as early as on 31st August, 1962. It is the case of Mr. Mogre the learned Advocate appearing for the petitioner, that although the order issuing certificate was passed on 31st August, 1962, the certificate was actually not received by the said certificated landlord. This particular contention has got some bearing upon one of the questions involved in his petition.

On 28th December, 1962, notice was given by the certificated landlord to the petitioner u/s 33-B of the Tenancy Act terminating his tenancy in respect of the suit land on the ground that he required the same bona fide for his personal cultivation. The application was stoutly resisted by the present petitioner so much so that it remained pending in the tenancy Court for more than 12 years. It was ultimately decided on 7th March, 1975 when the trial Court upheld the landlord's plea of his bona fide requirement and passed an order for possession of the suit land in his favour.

An appeal was preferred against that order. As appears to be the usual procedure of all the Deputy Collectors the Deputy Collector who heard the appeal remanded the matter went before the Tahsildar, he passed the order of possession in favour of the landlord, once again. The usual rounds of such litigation started all over again. Appeal was filed by the tenant to the Deputy Collector, who dismissed the same. A revision application was filed against that order to the Revenue Tribunal which also dismissed the same. The present writ petition is filed against the said order of the Revenue Tribunal, confirming in effect the orders passed by the trial Court and the Appeal Court.

4. Only three questions have been urged before me by Mrs. Mogre. Her first contention is that although an order was passed by the tenancy Court issuing the requisite Exemption Certificate to the landlord u/s 88-C of the Tenancy Act, the Certificate was actually not received by the landlord at any time. According to her, therefore, the application u/s 33-B was not maintainable.

The proposition is required just to be stated to be rejected. Section 33-A, no doubt, provides that the certificated landlord is one who holds certificate issued to him under Sub-section (4) of section 88. But the point is that the landlord cannot be penalised, for the fault of the office of Court which has failed to issue the certificate to the tenant in spite of the Court's order granting the certificate. The provision has got to be construed equitably and it is a well-known principle of equity regards that as done which ought to be done. Substantive right of the parties cannot be allowed to be defeated for technicalities which have no bearing upon the substance of the matter.

5. The second point urged by Mrs. Mogre is that though the order issuing certificate was passed as early as on 31st August, 1962, the actual notice terminating the tenancy was given by the landlord to the tenant on 28th December, 1962, after the expiry of the period of three months from the date of the order granting the certificate. According to her, therefore, the application u/s 33-B was barred by limitation.

Again, here, the contention that must fail on the plain reading of the question. Section 33-B(3) provides that the cases in which the proceeding u/s 88-C is pending on 1st January, 1962, the application u/s 33-B has to be filed within three months from the date when the certificate is actually received by the landlord. In the present case, it is Mrs. Mogre's own contention that the landlord never received the certificate at all, although the order issuing certificate was passed in his favour. If this is the position, it follows that limitation has not even started, let apart its having expired. The plea of limitation must therefore, fail.

6. The third point urged was that the 88-C certificate was received by the landlord by fraud and that, hence, the proceeding u/s 33-B was vitiated.

Here, again, the point must be rejected. In the first place, the question whether the certificate was obtained by fraud or not is a question of fact and on that point none of the courts below has been persuaded to hold that the certificate was obtained by fraud. That apart, the point is that the mere remedy for a tenant to contend that the certificate was obtained by fraud is a suit in Civil Court. There is no provision u/s 33-B empowering the Tenancy Court to adjudicate upon the question whether any particular order was obtained by any party by fraud. As is always held by this Court, the forum for agitating the question of fraud is the Civil Court: not the tenancy Court. A suit should have been filed by the tenant within the requisite period of limitation after he got the knowledge of the fraud, if any, for a declaration that the order obtained by the landlord dated 7th March, 1975 was a nullity on the ground that it was obtained by fraud. That plea would not be open for the present petitioner any more even in a suit, because the suit will be hopelessly barred by limitation by now. That plea cannot be allowed to be agitated in this writ petition.

7. The petition, therefore fails. The Rule earlier issued stands discharged with costs. The stay stands vacated.

8. These 5 years delay in the matter of enforcement of the respondent's right to get possession was exclusively on account of this Court's inability to take up the writ petition for hearing immediately. The rightful claim of the respondent has been delayed for no fault on his part but by virtue of the process of this Court. In its inherent jurisdiction, therefore, this Court must do everything in its hand to put the respondent in the position to as such extent as possible, whereby further loss will be avoided. In my jurisdiction u/s 151 of the CPC coupled with my jurisdiction under Article 227 of the Constitution, therefore, I direct the Tahsildar to execute the order of the tenancy Court, including that of the Tribunal, within two months from the date of receipt of this writ by the Tribunal, and the Tahsildar is directed to report compliance of this order of the Court on or before 1st November, 1988.

9. The Officer is directed to send the writ of the order to the Tahsildar immediately and report compliance to this Court before 4.45 p.m. on Thursday, the 28th instant. It is further ordered that even though by this order, the petition

stands disposed of, the same shall be placed before this Court once again on 2nd November, 1988 for hearing of the report of compliance from the Tahsildar and for orders.