(1967) 01 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No''s. 1878 and 1962 of 1964

Parvatibai APPELLANT

Vs

Shankar Mahadu Varkhade and Others RESPONDENT

Date of Decision : 28-01-1967

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 33A, 33B, 33C

Citation : AIR 1967 Bom 428 : (1967) 69 BOMLR 383 : (1967) MhLj 593

Hon'ble Judges : Tarkunde, J;K.K. Desai, J

Bench : Division Bench

Advocate : R.G. Samant and G.R. Rege, for the Appellant; C.J. Sawant, Government Pleader and H.D. Gole, for the Respondent

Judgement

Tarkunde, J.

(1) These two writ petitions involve a common question of law and can be conveniently decided by a common judgment. The question involved is whether the right of a certificated landlord to apply u/s 33B of the Bombay Tenancy and Agricultural Lands Act, 1948, for possession of land from an excluded tenant is personal to the certificated landlord and lapses on his death or whether it can be exercised by his successor in interest.

(2) The facts involved are very simple. In Special Civil Application No. 1878 of 1964 one Ramchandra obtained a certificate u/s 88C of the said Act. After his death his widow, who is the petitioner before us, gave notice terminating the tenancy of the excluded tenant and applied for possession of the leased land u/s 33B on 27th March 1962. Her application was allowed by the Tenancy Aval Karkun and the decision was confirmed in appeal by the Assistant Collector. The Maharashtra Revenue Tribunal set aside these decisions and dismissed the petitioner''s application on the ground that she was not entitled to apply for possession u/s 33B as she was not herself a certificated landlord. The petitioner has challenged the validity of this decision of the Revenue Tribunal.

(3) In Special Civil Application No. 1962 of 1964 a certificate u/s 88C was obtained by a widow Vithabai. On the death of Vithabai in September 1961 the title to the excluded land passed under Vithabai''s will to her husband''s sister Kamalabai, who is the petitioner before us The petitioner gave a notice to the excluded tenant terminating his tenancy of the leased land and filed an application for possession u/s 33B on 19th March 1962. The application was allowed by the Tenancy Aval Karkun and the decision was confirmed in appeal by the Deputy Collector. The Maharashtra Revenue Tribunal set aside these decisions and dismissed the petitioner''s application for possession on the ground that she was not entitled to apply u/s 33B as she was not herself a certificated landlord. The validity of this decision of the Revenue Tribunal has been challenged before us by the petitioner.

(4) The Revenue Tribunal delivered a common judgment in these two cases. Under the terms of section 88C a landlord can get a certificate exempting the land leased by him from the provisions contained in sections 32 to 32R if the leased land does not exceed an economic holding and if the total annual income of the landlord including the rent of such land does not exceed Rs. 1,500. The Tribunal emphasised in its judgment that the condition about the total annual income not exceeding Rs. 1,500 is personal to the landlord and would cease to exist on his death. The Tribunal also referred to the definition of the term "certificated landlord" given in section 33A (i) of the Act. According to that definition "Certificated landlord" means "a person who holds a certificate issued to him under sub-section (4) of section 88C but does not include a landlord within the meaning of Chapter III-AA holding a similar certificate. Section 33B provides that certificated landlord can give notice to the excluded tenant terminating the tenancy and can apply for possession of the leased land. The Tribunal referred to the observations of the Supreme Court in Kanai Lal Sur Vs. Paramnidhi Sadhukhan, , where their Lordships pointed out that if the words used in a Statue are capable of only one construction then it is not open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act and that it is only when the words are capable of two constructions that the question of giving effect to the policy and object of the Act can legitimately arise. According to the Tribunal the words employed by the Legislature are capable of only one construction, viz. That the right given to a small holder u/s 88C and made enforceable u/s 33B is personal and cannot inure for the benefit of heirs and successors after his death.

(5) Now, in the first place, the Tribunal appears, with respect, to have overlooked the fact that the word "person" which has been used by the Legislature in defining the term "certificated landlord" in section 33A has itself been defined in sections 2(11) and 2(7A) of the Act. Section 2(11) says that "person" includes " a joint family" and section 2(7A) provides that "the joint family" means " an undivided Hindu family and in the case of the other persons a group or unit the members of which are by custom joint in estate or residence." It follows that, in

the case of a joint family land, the joint family is a certificated landlord even if the certificate is issued in the name of one of its members. If on a partition of joint family properties the excluded land is assigned to the share of a member other than the person in whose name the certificate was issued, the former would be able to apply for possession u/s 33B although his name does not appear in the certificate. Such an eventuality in the case of a minor, a widow or a person subject to physical or mental disability was contemplated by the Legislature and this is clear from the proviso to sub-section (4) of section 33B. One of the results of that proviso is that if, for instance, a certificate is obtained in the name of a member of a joint family who is subject to any physical or mental disability, the last date of making an application for possession u/s 33B is not postponed if another member of the joint family is free from such disability. The proviso clearly implies that the other member of the joint family who is free from disability can maintain an application for possession u/s 33B although the exemption certificate was issued in the name of the disabled member.

(6) The main contention of the petitioners, however, goes much beyond the claim that the term "certificated landlord:" includes a joint family where a certificate is issued to a joint family member in respect of a joint family land. The petitioners contend that the term "certificated landlord" used in sections 33A, 33B and 33C was intended by the Legislature to include not only a person who holds a certificate issued to him under sub-section (4) of section 88C but also a successor in interest of such person. Now if as held by the Revenue Tribunal the words used by the Legislature were capable of only one construction, and if those words clearly meant that an application for possession u/s 33B can only be made by a person in whose name a certificate was issued and not by his successor in interest there would be no scope for any further inquiry regarding the policy and object of the Legislature. We are of the view, however, that the terms used by the Legislature in sections 33A 33B and 33C are not free from ambiguity and that those terms suggest that a successor-in-interest of the person to whom a certificate was issued is entitled within the specified time, to terminate the tenancy of the excluded tenant and to apply for possession u/s 33B.

(7) A reference may be made in this connection to clause (B) of sub-section (4) of section 33B. This clause appears, with respect, to have escaped the attention of the Revenue have escaped the attention of the Revenue Tribunal. The object of sub-section (4) of section 33B was to extend the time within which a notice of termination of tenancy might be given and an application for possession of the land might be made by three categories of certificated landlords who suffered from some kind of handicap, viz. A minor, a widow and a person subject to any physical or mental disability; It is provided in sub-section (4), that where a certificated landlord belongs to one of these categories a notice of termination may be given and an application for possession may be made within one year from the date on which the particular handicap came to an end. Now, in the case of a certificated landlord who is either a minor or a person subject to any physical or mental disability, it is provided that the notice may be given and the

application may be made within one year from the date on which the certificated landlord attains majority, or ceases to be subject to a physical or mental disability, as the case may be.

(8) In the case of a widow, however, her particular handicap arises from her being a widow, and it was obvious that her handicap would normally continue so long as she continued to be the owner of the exempted land. It was, therefore , provided in clause (B) of sub-section (4), that where the certificated landlord is a widow, the notice of termination may be given and an application for possession may be filed "by the successor-in-title within one year from the date on which the widow''s interest in the land ceases". Now, one of the petitioners before us (petitioner in Special Civil Application No. 1962 of 1964) is directly covered by Clause (B) of sub-s. (4), for she is the successor-in-title of the widow Vithabai who has obtained a certificate under S. 88C. It is, however, obvious that in enacting Clause (B) of sub-s. (4) the Legislature does not intend to place the successor-in-title of widows in a position of special advantage. The object of Clause (B) of sub-s.(4), was to specify the last date before which an application for possession may be made in cases where a widow was a certificated landlord, and the Legislature referred to the successor-in-title making such an application was to be subsequent to the widow ceasing to be the certificated landlord. Thus the terms of clause (B) of sub-section (4) show that the Legislature assumed that where a certificated landlord ceased to be the owner of the excluded land before the expiry of the date specified for giving notice of termination of tenancy and making an application for possession, his successor-in-interest could, before that date, give the requisite notice terminating the tenancy and make an application for possession of the leased land.

(9) Another indication that this was the assumption of the Legislature is provided by the terms of section 33C. Section 33C lays down in substance that an excluded tenant holding land from a certificated landlord shall be deemed to have purchased the land on 1st April 1962, unless the landlord has before that date applied for possession of the land, in which case the excluded tenant shall on the date on which the application is finally decided be deemed to have purchased the land which he is entitled to retain in possession after such decision. Section 33C does not provide that where a certificated landlord dies before 1st April 1962, the excluded tenant shall be deemed to have purchased the leased land on the date of the landlord''s death. The terms of section 33C assume that every certificated landlord (except the categories of landlords who are subject to certain handicaps as mentioned above) will be able to apply for possession of the leased land on or before 1st April 1962. This indicates that the term "certificated landlord" was intended by the Legislature to include his successor-in-interest where the landlord died before the expiry of the last date on which he could have applied for possession of the leased land.

(10) We have shown above that as against the provision of section 33A which defines a "certificated landlord" to mean a person "who holds a certificate issued

to him under sub-section (4) of sections 88C," the provisions of sections 33B and 33C indicate that the term "certificated landlord" includes his successor-in-title. Two constructions being thus possible, we must choose that construction which accords with the object of the Legislature and gives effect to its policy. It appears to us that out of the two interpretations the one which includes the successor-in-title in the definition of a certificated landlord is in greater consonance with legislative intention. This interpretation is borne out by the legislative history of the provisions contained in sections 33A to 33C. The interpretation is also in greater conformity with reason and justice.

(11) Considering first the legislative history of the relevant provisions, it will be noticed that section 88C was introduced in the Bombay Tenancy and Agricultural Lands Act, 1948, by Bombay Act XIII of 1956, which came into force on 1st August 1956. By the same amending Act sections 32 to 32R, which provide for the purchase of leased lands by tenants, were introduced in the parent Act Section 88C was one of the sections which exempted leased lands from the operation of sections 32 to 32R. Sections 33A to 33C were not in the statute at that time. Section 88C itself did not then require that the landlord whose land was to be exempted from the provisions of compulsory purchase by the tenants should obtain, any certificate from the Mamlatdar. The section provided that nothing in Ss. 32 to 32R shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500. The exemption granted by this section was not limited by time and it was not provided that the exemption would lapse on the death of the landlord. The exemption was to continue indefinitely.

(12) Section 88C, as it was initially framed, did not make any provision fro the initiation of proceedings for the determination of the lands which were entitled to exemption under that section. For implementing the scheme of section 32 to 32R, however, it was necessary that a mode should be provided for determining which lands were entitled to the exemption. Section 88C was, therefore, amended by Bombay Act XXXVIII of 1957, which came into force on 28th September 1957. The section as amended required that the landlord whose land was entitled to exemption should apply to the Mamlatdar for a certificate to that effect and that the application for a certificate should be filed before a prescribed date. Sections 33A to 33C were not in the Statute even at this stage. It was not provided by the amended section 88C also that the exemption granted by that section would cease to be operative on the death of the person who obtained a certificate of exemption from the Mamlatdar. The certificate was clearly to insure to the benefit of the person''s successors-in-interest.

(13) By the same amending Act (Bombay Act XXXVIII of 1957) section 88D of the parent Act was also amended. The object of the amended section 88D was to define the powers of the Government to withdraw the exemption granted to certain lands from the operation of the main provisions of the Tenancy Act.

Clause (iv) of sub-section (1) of the amended section 88D is relevant to the present discussion. It provides that in the case of lands referred to in section 88C the State Government may withdraw the exemption if it was satisfied "that the annual income of the person has exceeded Rs. 1,500 or that the total holding of such person exceeds an economic holding." Now, the "person" referred to in this quotation is the same person who obtains a certificate u/s 88C. But there can be no doubt that the "person" in section 88D (1) (ix) includes not only the landlord who obtains the requisite certificate but also the succeeding landlords of the exempted land. The Legislature could not have intended that after the person who obtains a certificate has ceased to be the owner of the exempted land by death or transfer the State Government should not be able to withdraw the exemption even if the annual income of the succeeding landlord exceeds Rs. 1,500 or his total holding exceeds an economic holding.

(14) Nearly four years after sections 88C and 88D were thus amended, sections 33A to 33C were introduced in the Tenancy Act by Maharashtra Act IX of 1961 which came into effect on 2nd September 1961 in these provisions the term "certificated landlord" was used by the Legislature to designate the person who obtains a certificate u/s 88C and who is also referred to in clause (iv) of sub-section (1) of section 88D. Prior to the enactment of sections 33A to 33C, the position was as explained above, that an exemption which was obtained by a landlord by securing a certificate u/s 88C continued after his death and inured for the benefit of his successor-in-interest. There is nothing in sections 33A to 33C which shows that the Legislature intended to alter this position. Sections 33A to 33C were designed to enable certificated landlords to obtain possession of a part of the leased lands and the tenants to become the purchasers of the remaining part. Steps for obtaining possession of the leased lands were to be taken by the certificated landlords within a specified time. Some certificated landlords, however, might have expired even before sections 33A to 33C were brought on the Statute book. That was in fact so in one of the petitions before us. In Special Civil Application No. 1878 of 1964 the certificated landlord Ramchandra died in August 1959, before sections 33A to 33C came on the Statute book, leaving his widow Parwatibai (the petitioner) as the succeeding landlord. Under the law as it stood prior to the enactment of sections 33A to 33C the land continued to be exempted even after Parwatibai became the landlord. She stood in the position of a certificated landlord after her husband''s death. In view of the fact that the rights acquired by certificated landlords prior to the enactment of sections 33A to 33C inured to the benefit of their successors-in-title, we must hold, in the absence of any express provision to the contrary, that the term "certificated landlord" in those sections includes the successors-in-interest of those landlords.

(15) This interpretation is also in conformity with reason and justice of the Legislature. The object of section 88C was to give some limited protection to small holders with limited incomes. Where small holder of limited income dies, his successor in interest in the majority of cases is also a small holder 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 section 33B if he is not himself a small holder with limited income. In the first place, clause (c) of sub-section (5) of section 33B 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 unless he shows that he requires the land bona fide for cultivating it personally. Thirdly, even where the successor-in-interest shows that he requires the land bona fide for personal cultivation, the mode of division of the land between the tenant and the landlord provided by clause (b) of sub-section (5) is such that the landlord who has substantial area of other land for personal cultivation would not be able to get any portion of the leased land from the excluded tenant. Finally, the exemption itself can be withdrawn by the Government under clause (iv) of sub-section (1) of Section 88D if the annual income of the successor-in-interest exceeds Rs. 1,500 or his total holding exceeds an economic holding. It is thus in conformity with reason and justice that if a certificated landlord dies before the expiry of the last date for filing an application for possession u/s 33B, his successor-in-title should be able to file such an application within the specified time.

(16) Mr. C. J. Sawant and Mr. Gole who appeared for the respondents excluded tenants in these petitions, besides supporting the reasoning of the Revenue Tribunal placed reliance on the terms of section 43-1A of the Tenancy Act. Section 43-1A falls in Chapter III-AA of the Act which was added to the Tenancy Act by Maharashtra Act XXXIX of 1964 and which was designated to make special provisions for the termination of tenancies by landlords who are or have been serving members of the armed forces. Section 43-1A provides: "In this Chapter, unless the context requires otherwise, ''landlord'' means a landlord (including a certificated landlord within the meaning of section 33A) who is, or has ceased to be, a serving member of the armed forces; and in relation to the land of a landlord who is dead, includes his widow, son, son''s son, unmarried daughter, father or mother. Then section 43-1B proceeds to define the right of such landlords to terminate the tenancies of their tenants. Mr. Sawant and Mr. Gole argued that when the terms of section 33A are compared that those of section 43-1A it will appear that the term "certificated landlord" in section 33A does not include any successor in interest of the landlord who obtains a certificate u/s 88C. According to Mr. Sawant and Mr. Gole, the Legislature obviously intended to give special protection to landlords who are or have been serving members of the armed forces and still in defining the term "landlord" in section 43-1A the Legislature confined the term to only some of the heirs of such landlords and did

not extend it to their successors-in-interest generally. The argument is much less cogent than it may appear on the surface. In the first place, S. 43-1A applies to all landlords who are or who have been serving members of the armed forces and is not confined to such of them as are certificated landlords. Secondly, it is clear from the terms of section 43-1B that these landlords are entitled to terminate the tenancies of their tenants without showing that they require the land bona fide for personal cultivation. Thirdly, they are entitled to get from their tenants an extent of land equal to the ceiling area an area much larger than an economic holding. It is while conferring these every substantial benefits to the landlords who are or who were serving members of the armed forces that the Legislature confined the term "landlord" on the death of the serving member to certain specified heirs of the landlord.

(17) We are accordingly of the view that the right of a certificated landlord to at u/s 33B 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.

(18) In that view of the matter, Special Civil Application No. 1878 of 1964 must be allowed. Rule in that petition is made absolute. The decision of the Revenue Tribunal is set aside and that of the Assistant Collector is confirmed. Respondents Nos. 1 to 1D will pay the costs of the petitioner.

(19) In Special Civil Application No. 1962 of 1964 Mr. Gole for the respondent-tenant pointed out that it is open to him to argue before the Revenue Tribunal that the petitioner being the legatee under the will executed by the widow Vithabai does not fulfil the requirement of clause (b) of sub-section (5) of section 33B and is not entitled to terminate the respondent''s tenancy. Mr. Gole also said that the respondent-tenant had applied to the Revenue Tribunal for leave to produce additional evidence to show that the will of Vithabai on which the petitioner relies was superseded by a subsequent will, and that the said application for leave to produce additional evidence was not disposed of by the Revenue Tribunal. On the other hand,. Mr. Samant for the petitioner wishes to urge that the petitioner, besides being the legatee under the will of Vithabai., is also her nearest heir. The parties desired that after setting aside the decision of the Revenue Tribunal, the case should be remanded to the Revenue Tribunal for the decision of these and such other questions as the Tribunal may grant leave to raise. Accordingly, the decision of the Tribunal is set aside and the case is remanded to the Tribunal for disposal in accordance with law. The first respondent will pay the petitioner''s cost

(20) Order accordingly.

