

(1989) 03 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2976 of 1981

Sadashiv Dattatray Sonar alias Chandgadkar

APPELLANT

Vs

Laxman Gopal Takkekar and Others

RESPONDENT

Date of Decision : 28-03-1989

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 33B, 88C

Citation : (1990) 1 BomCR 200 : (1989) 91 BOMLR 421

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : S.G. Mandrekar, for the Appellant; Ashok P. Mundargi, for the Respondent

Judgement

Sharad Manohar, J.—This is a proceeding arising under the Bombay Tenancy and Agricultural Lands Act (hereafter, the Tenancy Act.).

2(a). The petition is filed by the petitioner landlord, who had obtained Exemption Certificate u/s 88-C of the Tenancy Act. This Certificate was granted to him after full hearing having been given to the two tenants who were parties to the section 88-C proceedings. He filed two applications u/s 33-B of the Tenancy Act for recovery of possession of the suit land from the respective tenants. Both the applications were decided in his favour. One of the two tenants, one Hiremath, did not file any Appeal against that order. That tenant was directed to make over the possession of only 8 Acres out of 14 Acres of the land which was veritably fallow. Neither the tenant nor the landlord filed Appeal against that order and, thus, the landlord got possession of that 8 Acres of land which was, as stated above, veritably fallow. So far the other land of which the present respondent had been a tenant was concerned, he filed an Appeal against that order directing him to hand over possession of the suit land, which admeasures 4 Acres 18 Gunthas, but which is very much valuable, the assessment being Rs. 15.37.

(b) The 1st land let out to Hiremath is at Chandgad and the other land let out to the present respondent is at Mandedurg. Admittedly, this land 4 Acres 18

Gunthas held by the respondent on lease is a very valuable piece of land. Its assessment is 15 Acres 37 Gunthas. The other land let out to Hiremath was quite an inferior piece of land. It admeasures 14 Acres 25 Gunthas; assessed only at Rs 4.56. This means that the land leased to Hiremath was assessed at about 30 paise per acre, whereas the land leased to the present respondent is assessed at almost Rs. 3/- per acre. This means that the land held by the present respondent is 10 times valuable as the total land let out to Hiremath.

(c) In Appeal filed by the present respondent against the order of the Tahsildar directing the respondent to hand over possession of the entire land admeasuring 4 Acres 18 Gunthas to the present petitioner, the Prant Officer took the view that the notice given by the landlord to the respondent-tenant before filing the 33-P proceeding was invalid. He, therefore, allowed the Appeal and dismissed the petitioner's applications u/s 33-B of the Tenancy Act.

(d) The present petitioner filed a Revision Application to the Maharashtra Revenue Tribunal (hereafter, the Tribunal).

The Tribunal set aside the judgment of the Prant Officer, but remanded the matter to the trial Court for deciding the question whether the notice given by the petitioner to the respondent before the institution of the 33-B proceedings was valid notice or not.

The respondent could have led evidence to show that the notice was invalid. But he did not. It was only during the course of the arguments that contention was urged on his behalf to the effect that the Certificate obtained by the petitioner u/s 33-B of the Tenancy Act was invalid because the two lands. Survey No. 422 admeasuring 14 Acres 25 Gunthas, situate at Chandgad, let out to Hiremath, and the other land Survey No. 299, admeasuring 4 Acres 18 Gunthas, situate at Maudedurg, let out to the present respondent, together, admeasure 19 Acres 3 Gunthas. Plea was that the economic holding was 16 Acres, whereas these two lands taken together admeasure 19 Acres 3 Gunthas, which meant, it was contended, that the land leased by the landlord exceeded economic holding. This contention went home to the Tahsildar though it was advanced at the time of the arguments and though no evidence was taken on record to verify whether the land Survey No. 422 let out to Hiremath or whether a substantial portion of the same was follow or not. The learned Tahsildar clubbed these lands together. Land Survey No. 422, at Chandgad let out to Hiremath is a worthless piece of land, assessed at 30 paise per acre only, whereas land Survey No. 299 admeasuring 4 Acres 18 Gunthas, at Mandedurg, let out to the respondent is a precious piece of land, assessed at almost Rs. 3/- per acre. An airy argument flourished before the Court was accepted by the Court of this Tahsildar and the Tahsildar held that the present petitioner/landlord held more than economic holding at the time when he obtained the 88-C Certificate. From this premise, the Tahsildar led himself to the further conclusion that if the two lands taken together exceeded economic holding, then the Certificate obtained by the present petitioner u/s 88-C from a Court of competent jurisdiction was invalid. It was on this ground that the

Tahsildar non-suited the present petitioner so far as the precious piece of land Survey No. 299, at Mandedurg, was concerned.

(e) The Appeal filed by the present petitioner to the Deputy Collector as also the Revision Application filed by him to the Tribunal met with the same fate.

Hence, this present petition to this Court.

3. These are the skeleton facts required for the purpose of considering 3 important questions which arise in this petition :---

(a) Whether the Courts in its jurisdictions u/s 33-B of the Tenancy Act can go behind the Certificate issued by the Court of competent jurisdiction u/s 88-C of the Tenancy Act ?

(b) Assuming it can go behind such Certificate, whether there was any justification for the Courts exercising its jurisdiction u/s 33-B in the context of the facts of the instant case, to go behind that Certificate and to hold that the Certificate was invalid?

(c) Can it be said that u/s 88-C of the Tenancy Act the Tahsildar is required to consolidate the lands let out by one landlord to various tenants before ordering the grant of 88-C Certificate vis-a-vis the land held by a particular tenant or whether the Court is required to consider the economic holding tenant-wise ?

4. Before discussing the above question, it would be useful setting out certain additional facts which have bearing upon the equities of the case.

This is not a case where the petitioner is an affluent landlord. The petitioner is a joint family consisting of three brothers and others as the members. The two lands, Survey Nos. 422 admeasuring 14 Acres 25 Gunthas, assessed at Rs. 4.56 situate at Chandgad and let out to above mentioned Hiremath, and Survey No. 299, admeasuring 4 Acres 18 Gunthas, assessed at Rs. 15.37 situate at Mandedurg, let out to the present respondent, are the Be All and End All of the petitioner's landed property. They do not have any other land. Both the lands have been let out by them to these two tenants. Their income does not exceed Rs. 1500/-. This was the reason why the present petitioner filed an application u/s 88-C for Exemption Certificate. The application was filed in 1959 by the present petitioner in his representative capacity, that is to say on behalf of the joint family. When the proceedings u/s 88-C started, the respondent-tenant stopped paying rent and the position at present today is that right from the 1959 till this date no rent has been paid by the respondent to the petitioner, although he has been enjoying priceless piece of land admeasuring 4 Acres 18 Gunthas all these years. Mr. Mundargi stated that in 1969 in pursuance of the order passed in proceedings u/s 32-G of the Tenancy Act, the respondent was held to have become owner of the land. Mr. Mundargi contended that he has even deposited the purchase price in the Court. He has, however, no answer to the question as to how it is that in spite of the pendency of 88-C proceedings, the 32-G proceedings continued and the price came to be fixed. Mr. Mundargi did not

dispute that as per the provisions of the Tenancy Act the moment the application for exemption Certificate is filed u/s 88-C of the Tenancy Act, the proceedings instituted u/s 32-G of the Tenancy Act for fixation of the price of the land have got to be stayed. In spite of this position, the A.L.T. (Agricultural Lands Tribunal) proceeded to decide the price. At least that is the plea of Mr. Mundargi. The plea is on the face of it anomalous, because the proceedings u/s 32-G of the Tenancy Act are continuance thereof are misconceived after the proceedings u/s 88-C of the Act are set in motion.

5. Firstly, I have to consider the question whether the trial Court, the Tahsildar, was entitled to sit in Appeal over the earlier judgment of the tenancy Court granting the exemption certificate to the tenant.

Now, in this case, a landlord not earning any income beyond Rs. 1500/- per year can apply for an exemption certificate. The notice in respect of the proceedings is given to the various tenants of the landlord and in those proceedings, the landlord has to satisfy the Court that whatever he may be suffering from, he does not suffer from affluence. He has to satisfy the Court that the landlord's income from all the source does not exceed Rs. 1500/- per year. Further, he has to satisfy that the land leased out by him, that is to say a particular holding of land leased by him to a particular tenant does not exceed the economic holding. It is common ground that the economic holding is equivalent to 16 Acres of land. The question is whether the total holding of lands let out by him to the various tenants have exceeded 16 Acres in order to non-suit the landlord or whether the landlord will be entitled to pursue the application for exemption in respect of the land let out to each of the tenants, which does not exceed 16 Acres. This question will be better understood by an illustration :--

Landlord "A" let out his lands to the two tenants : "B" & "C". To tenant "B" are let out say, 9 acres and to tenant "C" he has let out, say 5 Acres. Obviously, the holding of the land let out to the tenants by him does not exceed economic holding. But there may be a case where landlord "A" has let out land to tenant "B" to the extent of, say 11 Acres and to tenant "C", say, to the extent of 8 Acres. In this case, lands let out to individual tenants, B & C, do not exceed economic holding if considered separately. But if both the lands let out to B & C together are clubbed and consolidated together, the total will exceed economic holding.

I am assuming that there is no doubt as regards the totality of lands leased by the landlord to the various tenants. Having regard to the evidence led before itself, the Court u/s 88-C comes to the conclusion that the lands do not exceed economic holding, viz. 16 Acres.

Question is whether the Court in its jurisdiction u/s 33-B of the Act can sit in Appeal over the judgment of the earlier Court which has held that the total holding of the lands let out by the landlord did not exceed 16 Acres.

6. Prima facie, I see no justification for holding that the Court exercising its

jurisdiction u/s 33-B of the Tenancy Act can sit in Appeal over the decision arrived at by the Court issuing the Exemption Certificate u/s 88-C. The scheme of the Act shows that the question whether the landlord has made out a case and has made good his case of Exemption Certificate or not is to be decided by the Court contemplated by section 88-C only. There is an elaborate procedure let out for adjudicating upon the question whether the landlord is entitled to the relevant Exemption Certificate. The Tahsildar is required to hold inquiries after giving notices to all the tenants of the landlord who have filed the application for Exemption Certificate u/s 88-C of the Act. The say of all the tenants is required to be taken into account. Parties are at liberty to lead evidence on all the relevant issues and it is only thereafter that the Tahsildar can record his finding whether the land let out by the landlord to the tenants exceeds economic holding or not. If the tenant of the landlord is aggrieved by the decision of the Tahsildar on this point, he is entitled to file an Appeal to the Dy. Collector, a Revision Application to the Revenue Tribunal and, as is well-known, even an appropriate writ petition to this Court and a SLP to the Supreme Court. Evidently, therefore, once the question whether the landlord is entitled to Exemption Certificate or not is decided, that Chapter of the question is closed. The landlord has thereafter to file an application u/s 33-B for possession of the lands in respect of which he holds the Exemption Certificate. The Exemption Certificate is the basis upon which he invokes the jurisdiction of the Court sitting u/s 33-B of the Act. Normally, therefore, no other view is possible but the view that the Court sitting u/s 33-B of the Act cannot give to the tenant a 2nd inning. The Court u/s 33-B of the Act must take the Certificate as it stands. If the tenant is aggrieved by the Certificate, he has all the remedies open for him by way of Appeal, by Revision, by way of writ petition as also by SLP to the Supreme Court. But as per the normal canons of interpretation of procedural law, the Court sitting u/s 33-B must take the Certificate as it stands.

7. There can be one conceivable exception and it is that when the Certificate is obtained by fraud even the courts sitting u/s 33-B of the Act can have a second look at the tenable character of the certificate. This is so because anything which is the result of fraud is a nullity. This is the principle of law which has been deeply entrenched in corpus juris. Anything which is obtained by fraud can be of no legal consequence and can be just ignored by the Court. It is well settled that even the Executing Court, under the Civil Procedure Code, which is required to take decree as it stands, can go behind the decree if it is established even before the Executing Court that the decree was obtained by fraud or that it was a nullity on some other ground. Anything which makes a decree a nullity casts an obligation upon the Court to ignore it.

8. But just as a decree or an order is a nullity, which has got to be ignored by the Court, likewise the Court must realise, and the Courts have been astute in doing so that Courts, are presided over by human beings and are subjected to human failings and peccadillos. They have to decide everything according to their understanding and ability. While doing so, they might sometime come to a wrong

conclusion; but if there is any rule of law deeply entrenched in our legal system, it is that every Court has got jurisdiction to decide rightly or wrongly. An error of judgment does not make the judgment a nullity. If that was not so, every judgment by any Court would be made a target of attack in a subsequent suit and the entire institution of Appeal Courts would be otiose. Appeal Courts exist for the purpose of correcting the errors of the trial Courts of lower Appellate Courts. That is because it is recognised that the Courts are prone to commit mistakes. But mistakes do not result in denuding the Court of their jurisdiction to decide the question which was in issue. A wrong decision is not necessarily a decision without jurisdiction.

9. In the instant case, we do not find anything no record which shows that the Judge of the earlier courts, granting Exemption Certificate u/s 88-C had no jurisdiction to decide the question in favour of the present petitioner. A simple arithmetic no doubt makes it appear that 11 Acres 25 Gunthas added to 4 Acres 18 Gunthas resulted in 19 Acres 3 Gunthas. But the plea urged before that Court was that a large portion of Survey No. 422 was fallow land. That fallow land has not to be taken into consideration while calculating the acreage. No evidence was led in the instant case before the Tahsildar that this decision was wrong. In fact even that opportunity was kept open for the tenants to satisfy the Court that the earlier judgment granting the Exemption Certificate was obtained by fraud or by suppression of facts. No evidence was led by either of the tenants in that behalf. The plea that the holding exceeded economic holding was set up just airily at the time of the arguments; the Tahsildar made mental addition of Survey No. 422 (14 Acres 25 Gunthas) and Survey No. 299 (4 Acres 18 Gunthas) and came to the conclusion that the acreage exceeded economic holding, forgetting that this question was already considered by the earlier Court, whose decision has acquired finality. It would be a patent anomaly if the entire decision of the Appellate institution is set at naught by the Tahsildar by such a pedestrian approach to the question.

10. My attention was not invited to any judgment taking the view that the Court sitting u/s 33-B could function as an Appellate authority from the judgment even of the Tribunal, say, of this Court, or for the matter of that even the Supreme Court, holding that the landlord was entitled to that Exemption Certificate. My attention was invited to this Court's own Judgment reported in 1981 MLJ 383, Laxman Siddu Pote. v. Shri Govindrao Korgaonkar Dharmadaya Sanstha, where this Court has held that even though a Certificate u/s 33-B and u/s 32-M of the Tenancy Act acquired finality under the Act, that finally does not oust the jurisdiction of the Civil Court to see whether the Certificate was issued by a Court of Competent jurisdiction. In my opinion, the proposition laid down by the authority is a far cry from the question arising in the present case. The question of jurisdiction does not arise in this case at all. At the most it can be said (though I am extremely chary holding so) that the order granting the certificate was a wrong order. I am not holding this; I am assuming this. That does not make the order one without jurisdiction. In fact, therefore, the order passed by the

Tahsildar and confirmed by the higher authorities trying to go behind that earlier order granting the Exemption Certificate is itself without jurisdiction.

The petition is likely to succeed on this narrow ground itself.

11. This answers the 2nd question as well. Even assuming that there existed a jurisdiction with the Court to go behind the Exemption Certificate, no facts are made out and proved in this case to justify this exercise. As stated above, no evidence was led by the tenant to prove that no part of the land, Survey No. 422, was fallow. The assessment it self shows that it is a worthless piece of land. The assessment is just about 30 paise per acre.

In the earlier case evidence must have been led to show that the land or a major chunk of it was fallow. No evidence was led in the present case that no portion of it was fallow. As stated above, this plea was just thrown in the air; glibly spoken and smugly accepted, as one may call it.

12. The 3rd question, however, is of some complexity. Question is as to whether while deciding the extent of the area let out by the landlord to the tenant in the context of the question whether it exceeds economic holding or not, the lands leased by the landlord to the various tenants have to be clubbed together; in other word whether the various land let out to the various tenants have got to be consolidated and the economic holding of the lands let out to the tenant is to be arrived at after such consolidation. I have given indication of this question in the earlier part of this judgment. But while deciding the 1st and 2nd question I have assumed that such a clubbing or consolidation is required by law or permissible by law. Here I have to consider whether such assumption is justified by the *litera legis* of section 88-C of the Act.

13. For ascertaining the *litera legis* of section 88-C, it is necessary setting out the said section itself, which runs as follows :-

"88C. (1) Save as otherwise provided by section 33-A, 33-B and 33-C, nothing in sections 32 to 32-R (both inclusive) 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 :

Provided that the provision of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption.

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of section 32 to

32 R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a Certificate in the prescribed form to such person.

(5) The decision of the Mamlatdar under sub-section (3), subject to appeal to the Collector, shall be final."

The 1st thing to be noticed about this section 88-C is that it does not either expressly or by implication require that when the landlord, whose income does not exceed Rs. 1500/- per annum and who has let out various pieces of land of various tenants, will be under an obligation to club these lands together for the purpose of ascertaining whether his total holding exceeds the economic holding (of 16 Acres in this case). In this connection, a studied distinction is made by the statute between the words "lands" (used in plural) and "land" (used in singular). This distinction is found in sub-section (1) of section 88-C, sub-section (3) is most significant. It states that on receipt of the application from the landlord, whose income does not exceed Rs. 1500/-, the Mamlatdar shall hold inquiry and decide whether the "land" leased by such person is exempt under sub-section (1) from the provisions of sections 32 to 32-R. An indication, therefore, is received from the statute that the Mamlatdar is required to consider whether a particular "land" leased to a tenant exceeds economic holding or not. One will safely assume that all pieces of lands let out to a particular tenant will be considered as "land" let out to the tenant, because in the "Khate Utara" of that tenant all these pieces of lands will be clubbed together and there shall be one particular holding of that tenant. But when the landlord lets out different pieces of land to different tenants, he has not let out "land" to the tenants but he has let out "lands" to the tenants. Therefore, there is no indication found intrinsically in the section itself that there is no contemplation of clubbing or consolidating these lands let out to various tenants by the same landlord for the purpose of verifying whether the total acreage of land belonging to the landlord let out by him to different tenants exceeds the economic holding or not. In fact there is no warrant whatsoever for the proposition that this clubbing or consolidating process will be required to be undergone. As we all of us know that there are sections in the Acts which direct that various proceedings should be consolidated and should be treated as one proceeding. But this is not the section which follows that pattern. The clubbing together of all the lands let out to various tenants, consolidating all those holdings had by the various tenants as lessees from the landlord and to decide thereafter the total land let out by the landlord to the tenants for the purpose of ascertaining whether the lands let out by him exceed economic holding or not is something which the procedure prescribed by section 88-C does not contemplate.

14. My attention was not invited by Mr. Mundargi to any provision of law or to any judgment or to any authority to prove such a clubbing together or consolidation is a necessary concomitant of the inquiry contemplated by section 88-C of the Tenancy Act.

It, therefore, follows that the Tahsildar has to see whether the land leased to any particular tenant exceeds economic holding or not. If the land let out to the tenant exceeds the economic holding, 88-C. Certificate will not be granted vis-a-vis that land. But such a Certificate will be granted vis-a-vis another tenant the land that is leased to whom does not exceed economic holding.

15. If this was not correct legal position it would lead to results of great anomaly and injustice. A landlord in thoroughly impecunious circumstances would be required to starve even though he has several lands which unfortunately came to be let out in the past to several tenants, none of which tenants got more than the economic holding of the land from this landlord. Each of the tenants may be having various other lands with him. That has happened in the instant case. The respondents have their own other land, precious ones at that. In addition to that they have the present priceless land, the area of which does not exceed the economic holding. Merely because the landlord has let out some other land to other tenants, which, taken together with the present land, exceeds 16 Acres, the tenant will be allowed to enrich himself at the cost of the landlord and the landlord will be required to starve, in the garret. If any construction is to be chosen by the courts in such a situation, the construction which avoids such a result must be accepted rather than the one which creates and perpetuates such results.

In my opinion, therefore, having regard to the plain reading of section 88-C, it is an error to hold that the 88-C. Certificate has any fault attached to it on account of the above mentioned arithmetical logic.

16. Coming to the question of equity, I find that, at least in the context of the facts of the case, justice overwhelmingly requires the petition to be allowed. All that the landlord has got is 8 Acres of worthless piece of land, assessed at only about Rs. 2.40. As against this, the tenant is having his own lands which are far better and far more in extent. I am fully satisfied that this is a case of a poor landlord knocking the door of justice and that his poverty is not skin-deep. Both law and equity demand that the petition be allowed.

17. The petition, therefore, succeeds. The Rule is made absolute. The petitioner's application u/s 33-B of the Tenancy Act is allowed and the respondents are ordered to hand over possession of land Survey No. 299, at Mandedurg, Taluka Chandgad, District : Kolhapur.

The petitioner shall be entitled to costs of the petition.

18. Mr. Mundargi asks for time to move higher Court against the above mentioned final order.

He is given time till 31st May, 1989 to obtain the necessary orders of stay from the Supreme Court in that behalf, provided he files an Affidavit making the declaration that there is no other person in possession of the suit land as at present and that he gives an undertaking to the Court to vacate the suit land and

hand over possession of the same to the petitioner immediately on 1st June, 1989, unless he obtains a suitable order of stay from the Supreme Court before that day.

Liberty to apply.