

**(1990) 03 BOM CK 0074**

**In the Bombay High Court**

**Case No : Writ Petition No. 3607 of 1982**

Shridhar Babaji Vibhute, (deceased) by heirs

APPELLANT

Vs

Ganpati Bayaji Patil and Another

RESPONDENT

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**Date of Decision : 05-03-1990**

**Acts Referred:**

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

**Citation : (1990) 3 BomCR 246**

**Hon'ble Judges : M.L. Dudhat, J**

**Bench : Single Bench**

**Advocate : Vijay Patil and C.J. Sawant, for the Appellant; A.N. Nadkarni and Bhimrao N. Naik, for the Respondent**

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## **Judgement**

M.L. Dudhat, J.—The present writ petition is filed against the order dated 19-8-1982 passed by the Maharashtra Revenue Tribunal at Kolhapur in Revision Application No. MRt. SS. 270 of 1981.

2. The present petitioners are the heirs and the legal representative of one Shridhar Babaji Vibhute. The said Sridhar Babaji Vibhute was admeasuring about two acres and 10 gunthas situated at Kasegoan in Taluka Walwa, District Sangli. The said Shridhar Vibhute filed an application u/s 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the B.T. & A.L. Act, for the sake of brevity) for the grant of certificate and obtained the said certificate on 14-4-1959. Against the said certificate respondent No.1 the tenant had not preferred any appeal and the said certificate became final thereafter. Thereafter the said Shridhar Vibhute, whom I will refer to hereinafter as "the original applicant" for the sake of brevity, filed application land, on the ground of bonafide personal use. The Special Tahsildar at Walwa rejected the said application on the ground that the said original applicant filed appeal before the Special Deputy Collector who, by his judgement dated 30th December, 1968, allowed the said appeal. Against the said decision, respondent No.1 filed revision before the Maharashtra Revenue Tribunal, Kolhapur. During the pendency of the

said revision application before the Tribunal, the said original applicant expired and the present petitioners were brought on record as the heirs and legal representative of the deceased original applicant. The Tribunal, by its judgment dated 27th March, 1972, remanded the matter for considering the bonafides of the present petitioners in view of the death of the original applicant. It may be noted that excepting remanding the matter on this point the Maharashtra Revenue Tribunal concluded and confirmed all the issues decided by the lower appellate authority.

3. After the remand the Tenancy Aval Karkun allowed the application filed by the present petitioners without going through the enquiry, relying on some decision of the High Court. Against the said decision respondent No.1 preferred appeal before the Sub-Divisional Officer, Walwa and the appellate Court again remanded the matter to the Tenancy Aval Karkun for deciding the matter on merits. After the said remand by the Sub-Divisional Officer, the Tenancy Aval Karkun enquired into the matter on merits and on merits held that the petitioners are entitled for the possession of the suit land as they require the suit land for their bonafide personal use.

4. Against the said decision of the Tenancy Aval Karkun dated 31-7-1979, respondent No.1 preferred appeal before the Deputy Collector and the same was dismissed.

5. Against the said decision of the Deputy Collector in appeal, respondent No.1 preferred revision before the Maharashtra Revenue Tribunal at Kolhapur and the Maharashtra Revenue Tribunal by its decision dated 19-8-1982 allowed the said revision application preferred by respondent No.1, on the ground that the original certificate granted u/s 88C of the B.T. and A.L. Act to Shridhar Babaji Vibhute itself being invalid, 33B proceedings are not maintainable.

6. Against the said decision of the Maharashtra Revenue Tribunal date 19-8-1982 the present petitioners have preferred the present writ petition.

7. Shri Vijay Patil, learned Counsel appearing on behalf of the petitioners, mainly argued that the decision of the Maharashtra Revenue Tribunal is bad in law as the Maharashtra Revenue Tribunal reopened the issue of the validity of the certificate u/s 88C which is in fact beyond the scope of section 33B of the B.T. & A.L. Act. For this he has relied on the decision of the Supreme Court in the case of Smt. Krishnabai Anaji Ghule and Others Vs. Nivrutti Ramchandra Raykar and Another, . According to Shri Patil, learned Counsel for the petitioners, admittedly when the said certificate u/s 88C was granted in favour of Shridhar Vibhute on 14-4-1959 on merits, respondent No. 1 tenant had not challenged the said decision further in appeal. That being so, the grant of certificate and the validity thereof was finally concluded and, therefore, the Tribunal acted without jurisdiction by reopening the said issue under 33B proceedings. Secondly it was also argued on behalf of the petitioners that the decision given by the Tribunal earlier dated 27-3-1972 at the time of remanding the matter concluded the said

decision of the Tribunal on the point of grant of shall operate as res judicata between the petitioners and respondent No. 1 and in fact respondent No. 1 was not entitled to reagitate the said issue afresh before the Tribunal.

8. As against the said argument, Shri Nadkarni, learned Counsel appearing on behalf of respondent No. 1, has argued that the decision of the Tribunal is a legal decision, as the same is based on the decision of this High Court in the case of Vasant R. Gosavi v. Bahiru N Pujari 1978 T.L.R. 91. Shri Nadkani contended that in that similar case this High Court held that if the certificate granted to the landlord u/s 88-C is a nullity, the said fact can be taken into consideration by the tenancy authority deciding the application of the landlord u/s 33-B of the B.T. & A.L. Act. According to him, the decision given by the Tribunal is legal and the High Court should not interfere against the said decision of the tribunal under Article 227 of the Constitution of India.

9. After hearing both the sides, I am of the opinion that the decision of the Tribunal is bad in law, both on the point of jurisdiction and also on the point of res-judicata. It is an admitted position that while deciding Tenancy Appeal No. 240 of 1968 the Special Deputy Collector for Tenancy Appeals at Sangli has in terms decided on the arguments made by respondent No.1 before the Tribunal when the matter was argued second time by the parties before the Tribunal and when respondent No. 1 argued the point of partition, which, according to him, was effected much after the tillers day. The learned Special Deputy Collector in his judgment in Tenancy Appeal No. 240 of 1968 in fact gave the finding that since after the grant of certificate, the said question arising out of the grant of certificate has become finally concluded between the parties at that stage only. Against the said decision given by the Special Deputy Collector in Tenancy Appeal No. 240 of 1968 respondent No. 1 preferred revision before the Tribunal and the Tribunal, by its judgment, confirmed all the findings of the Special Deputy Collector including the finding about the partition of the joint Hindu family after the tillers" day in its judgment dated 27-3-1972. The Tribunal remanded the matter only because the original applicant Shridhar Vibhute expired during the pendency of the revision before the Tribunal and, therefore, the Tribunal wanted to give opportunity to the heirs of the said Shridhar Vibhute to prove their bonafides u/s 33-B of the B.T. & A.L. Act. In view of this aforesaid position, it is crystal clear that after the remand the only question left to be decided before the revenue authorities was as to whether the legal representatives of Shridhar Vibhute bona fidely require the suit land for personal cultivation and since the said decision of the Tribunal dated 27-3-1972 was not challenged by respondent No. 1 had no authority to reagitate the said argument before the Tribunal in Revision Application No. MRT. SS. 270 of 1981 decided on 19-8-1982 which is the subject matter of the present writ petition, on the principles of res judicate. This being the position, the decision of the Maharashtra Revenue Tribunal of allowing the revision of respondent No. 1 on the ground of maintainability of the certificate granted u/s 88-C of the B.T. & A.L. Act is patently illegal. Admittedly there are decisions in favour of the present petitioners of all the revenue

authorities including the Maharashtra Revenue Tribunal that they have established their bonafide personal use of the suit land and the original applicant Shridhar Vibhute also established his bonafide personal use of the suit land. In view of the aforesaid clear position, the Maharashtra Revenue Tribunal ought to have dismissed the revision filed by respondent No. 1 is not entitled to agitate the issue of partition in the family of Shridhar Vibhute after the tillers' day i.e. 1st April, 1957.

9. As regards the legal position as to whether u/s 33-B proceedings under the B.T. & A.L. Act the revenue authorities can decide the validity of the certificate granted u/s 88-C of the B.T. & A.L. Act, I will first refer to the decision of Supreme Court in the case of Smt. Krishnabai Anaji Ghule and Others Vs. Nivrutti Ramchandra Raykar and Another, wherein the Supreme Court has held that once the landlord obtained certificate u/s 88-C, the tenancy authorities in the proceedings u/s 33-B of the B.T. Act. In fact section 88-C of the B.T. & A.L. Act was introduced in the year 1961 in order to thwart the far reaching changes and effects introduced by section 32 of the B.T. & A.L. Act by creating exception in favour of petty landlords having petty income not exceeding Rs. 1500/-. The Supreme Court in para 10 of its judgement. In the cited above, observed as follows:-

"Section 32 of the Tenancy Act ushered in an era of revolutionary change in the life of the tiller of the soil. It provided that every tenant of agricultural land shall be deemed to have purchased from his landlord on the Tillers' day, the land held by him as tenant free from all encumbrances subsisting on the said day subject to the various conditions therein provided which we consider unnecessary to refer here. The far-reaching change introduced by section 32 was noticed by a Constitution Bench of this Court in Sri Ram Ram Narain Medhi v. State of Bombay 1959 Suppl (1) S.C.R.489: AIR 1954 459 wherein it was held that the title of the landlord to the land passes immediately to the tenant on the Tillers' day and there is a complete purchase of sale thereby as between the landlord and the tenant. But the Legislature was aware that there was a class of landlord who if, by the operation of law, were deprived of the ownership of land would be worse off than the tillers for whose benefit the provision was made. With a view to saving such petty landlords Chapter II-A was introduced in the Tenancy Act in 1961. Simultaneously, section 88-C was amended by introducing a non obstante clause which would be covered by Chapter II-A from the operation of section 32 providing for compulsory purchase of land by the tenant. Section 88-C nothing in sections 32 to 32R (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/-. In other words, petty or small landlords whose holding does not exceed an economic holding as specified in section 6 and whose total annual income does not exceed Rs. 1,500/- were sought to be exempted from the operation of section 32. Such petty or small landlords in order to save their land from becoming subject matter of compulsory sale by the operation of law were required to obtain a certificate

from the Mamlatdar as envisaged in section 88-C. In order to obtain the exemption certificate the landlord had to make an application to the Mamlatdar and the Mamlatdar after holding an enquiry after giving notice to the tenant had to decide whether (1) the (2) his total annual income including the rent of such land did not exceed Rs. 1,500/-. If both the conditions were cumulatively satisfied, the Mamlatdar has to give a certificate in the prescribed form showing that the land of such landlord is exempt from the operation of section 32. The effect would be that a tenant of such landlord would not become a deemed purchaser on the Tillers" day. Section 33-A provided that such landlord is to be designated as certificated landlord and tenant of such land exempted from the operation of section 32 was to be designated as excluded tenant. Section 33-B conferred a special right on the certificated landlord to terminate the tenancy of the excluded tenant in respect of the exempted land and obtain possession if landlord bonafide required the possession of such land for cultivating it personally."

In view of the aforesaid clear position in law as decided by the Supreme Court, once u/s 88-C the landlord proves that his land does not exceed economic holding and the total income of the landlord including the rent of such land does not exceed Rs. 1,500/- per annum, then the effect of such declaration would be that the tenant of such landlord would not become the deemed purchaser on the Tillers, day. In view of the said decision given by the Supreme Court, the Tribunal had no jurisdiction to decide the question about the partition in the landlord's family by reopening the said question which was finally conceded earlier in the proceedings u/s 88-C of the B.T. & A.L. Act. It is true that certain observations made by this High Court in the decision in the case of Vasant R. Gosavi v. Bahiru N. Pujari 1978 T.L.R. 91 are somewhat favourable to respondent No. 1, but in view of the clear decision of the Supreme Court cited above which was not available to the High Court while deciding the abovementioned case in 1978 T.L.R. 91, I am not discussing on the said decision in the present judgment. 10. In view of the aforesaid position, since all the fact finding authorities have come to the conclusion that the petitioners have proved their bona fide personal qua the suit land, I allow the present writ petition filed by the petitioners and set aside the decision of the Maharashtra Revenue Tribunal, Kolhapur dated 19-8-1982 in Revision Application No. MRT. SS. 270 of 1981 and confirm the decision of the lower Courts. Rule made absolute with no order as to costs.

11. Shri Nadkarni, learned Counsel for respondent No. 1 has made application for grant of stay to this order of two months for approaching the Supreme Court. The present judgment is not to be given effect for the period of eight weeks from today. Respondent No. 1 who is admittedly in possession of the suit land who is tilling the suit land is entitled to harvest the crops in the suit land and take away the same within eight weeks from today.