

(1970) 12 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 2194 of 1966

Yadav Yeshwant Mali

APPELLANT

Vs

Pundlik Pandurang Patil

RESPONDENT

Date of Decision : 05-12-1970

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1971) 73 BOMLR 549 : (1971) MhLj 801

Hon'ble Judges : Palekar, J

Bench : Single Bench

Judgement

Palekar, J.—This is a petition under Article 227 of the Constitution arising out of proceedings u/s 29 read with Sections 14 and 25(2) of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner is the landlord and respondent No. 1 is the tenant. The lands in suit are Survey No. 694 measuring 11 acres 30 gunthas assessed at Rs. 37-3-0 and Survey No. 691/2 measuring 3 acres and 5 gunthas assessed at Rs. 11-8-0, both situated at Chopda.

2. The landlord filed the application for possession of these lands after terminating the tenancy by notice on the ground that the tenant had committed defaults in the payment of rent for the years 1955-56, 1956-57, 1958-59 and 1959-60. He claimed under Sub-section (2) of Section 25 that as there were defaults in the payment of rent due for three years and more, he was entitled to an order of possession against the tenant. That application was filed on September 28, 1960. It must be noted here that this application had been filed pending another application filed by the landlord for possession u/s 29 read with Section 31 of the Act. That application was finally disposed of against the landlord on October 11, 1960.

3. Both the Tenancy Awal Karkun and in appeal the District Deputy Collector held that the petitioner-landlord had shown that the tenant had committed defaults for more than three years in the payment of rent and allowed the application u/s 29 read with Section 25(2) of the Act. The order of the District Deputy Collector

in appeal was recorded on December 28, 1962.

4. From that order, the tenant went in. revision before the Maharashtra Revenue Tribunal. But, in the meantime, after his application u/s 29 read with Section 81 had been disposed of on October 11, 1960, the landlord applied to the Mamlatdar for an exemption-certificate u/s 88C of the Act. The application which was filed on July 10, 1961 was dismissed by the Mamlatdar on May 31, 1962. In appeal to the District Deputy Collector, there was a remand on January 12, 1968, and after rehearing, the Mamlatdar by his order dated May 25, 1963 issued the exemption-certificate as the landlord's case was held by him to fall within the requirements of Section 88C. The tenant went in appeal, but the Mamlatdar's order was confirmed by the District Deputy Collector on November 23, 1963.

5. Therefore, at the time the learned President of the Tribunal heard the revision application on July 5, 1966, the landlord had received the exemption-certificate and had become a certificated landlord as defined in Section 88A of the Act. The President of the Revenue Tribunal had to consider the impact of this certificate u/s 88C on the application by the landlord for possession on the ground of default in the payment of rent. It was urged before him that as the landlord's application had been filed after April 1, 1957, and at the time he filed the application on September 28, 1960, the landlord was not a certificated landlord, his application was not maintainable. It was also contended before him that after the disposal of the application u/s 29 read with Section 81 on October 11, 1960, the tenant had become a statutory purchaser u/s 32 and thereafter it was not open to the landlord to apply u/s 88C of the Act for an exemption certificate. Both these contentions were upheld by the learned President of the Tribunal, who, therefore, dismissed the landlord's application as not maintainable on July 7, 1966.

6. It is from that order that the present petition has been filed. It is contended by Mr. Samant on behalf of the landlord that the learned President of the Tribunal was in error in holding that the landlord's application dated September 28, 1960 for possession on the ground of default in the payment of rent was not maintainable. His contention was that as soon as he became a certificated landlord, the lands in respect of which the certificate had been granted became retrospectively exempted from the operation of Sections 32 to 32R, with the result that the relationship of landlord and tenant continued, and, therefore, if during the continuance of this relationship, there were defaults in the payment of rent, the landlord was entitled to ask for possession on the ground of default in the payment of rent.

7. The Bombay Tenancy and Agricultural Lands Act, 1948, has been amended from time to time. The most important and extensive amendments were carried out by Bombay Act No. XIII of 1956 which came into force on August 1, 1956. By this Act, a provision entitling the tenant to purchase the property of the landlord on April 1, 1957 was introduced in the main Act by Section 32. That section provided :

(1) On the first day of April 1957... every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of nil encumbrances subsisting thereon on the said day, the land held by him as tenant, if-...

i.e. under certain circumstances given in the section. There have been some minor amendments thereafter to Section 32, but they are not of significance for the arguments in the present case. By the same Act, viz., Act XIII of 1956, a new provision was made by introducing Section 88C. It was provided by this section that

(1) 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 ;...

8. By Section 32, the title in the land vested in the tenant either on April 1, 1957 or on some postponed date provided in the section. Section 88C, however, introduced an exception to it for the benefit of small holders. The intention was that the lands of these small holders should not vest in the tenant on April 1, 1957. But there were difficulties in recognizing this small holder—who was to decide the question, on whose application, and when such application should be filed. So the original Sub-section (2) of Section 88C was amended by the substitution of the present Sub-sections (2) to (5) by Bombay Act XXXVIII of 1957. By Sub-section (2), as it is now in the statute book, it was required that the person eligible to the exemption provided in Sub-section (1) shall make an application in the prescribed form to the Mamlatdar within a prescribed period for a certificate that he is entitled to such exemption. By Rule 53 under the Act, it was provided that such application should be made before June 30, 1958, but it appears that from time to time, this period was extended, the last date fixed being September 30, 1961. In other words, an application for a certificate for exemption u/s 88C could be made before September 30, 1961. If the landlord succeeded in his application, the exemption-certificate was liable to be issued to him after litigation in the revenue Courts, often a long time after September 30, 1961. But whenever the certificate might be issued, it was in recognition of his status as a small holder from April 1, 1957, and the certificated landlord was able to claim under Sections 88C(1) that nothing in Section 32 to 32R (both inclusive) shall apply to lands leased by him. He could say that so far as he was concerned, Sections 32 to 32R were not there in the statute book. But his lands were not made exempt from the application of the other sections of the Act, and, therefore, if the tenant made defaults in the payment of rent, he was entitled to apply for possession u/s 29 read with Sections 14 and 25. The position, therefore, was that while the tenants of ordinary landlords became owners of lands on April 1, 1957 or some postponed date u/s 32 of the Act, the tenants of the certificated landlords had no such chance of becoming the owners of the land in their possession. On the other hand, they were liable to be evicted u/s 29 read

with Section 14 of the Act.

9. Having regard to this disparity between these two classes of tenants, the Legislature again stepped in by inserting in Chapter III of the Act Part II-A with regard to the certificated landlords and their tenants by Act IX of 1961. Under this Part come Sections 33A to 33C. It was provided by means of these sections that even the excluded tenant u/s 88C would be deemed to have purchased the land from the certificated landlord on the first day of April 1962 unless the certificated landlord within the time provided applied to terminate the tenancy on the ground of bonafide requirement for personal cultivation after giving notice thereof to the tenant. Section 33B provided how and when such a notice should be given and how such applications were to be disposed of by the Mamlatdar, and Section 33C provided, as follows :

(1) Notwithstanding anything contained in Sub-section (1) of Section 88C, every excluded tenant holding land from a certificated landlord shall, except as otherwise provided in Sub-section (3), be deemed to have purchased from the landlord, on the first day of April 1962, free from all encumbrances subsisting thereon on the said day, the land held by him as tenant, if such land is cultivated by him personally, and

(i) the landlord has not given notice of termination of tenancy in accordance with Sub-section (3) of Section 33B, or

(ii) the landlord has given such notice, but has not made an application thereafter u/s 29 for possession as required by the said Sub-section (3), or

(iii) the landlord, not belonging to any of the categories specified in Sub-section (4) of Section 33B, has not terminated the tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar or before the 31st day of March 1962 u/s 29 for possession of the land:

Provided that where, the landlord has made such application for possession the 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,...

10. Mr. Samant for the petitioner-landlord takes his stand on Sub-clause (iii) above. Admittedly, he is not a landlord belonging to any of the categories specified in Sub-section (4) of Section 33B. That sub-section refers to landlords who are under certain disabilities. He contends that he has terminated the tenancy on one of the grounds specified in Section 14 and has also applied to the Mamlatdar or before March 33, 1962 u/s 29 for possession of the land, and, therefore, the tenants' purchase date was postponed till after April 1, 1962 when his application would be decided. He contends that his right to terminate the tenancy on any of the grounds specified in Section 14 has been specifically recognized by the provision referred to above, and, therefore, the contention

that his application made after April 1, 1957 was not maintainable is no longer tenable. Mr. Samant, therefore, puts his right to apply for the termination of the tenancy on two grounds. One is that being a certificated landlord to whose lands Sections 32 to 82R, did not apply, he had all the rights and was subject to all the liabilities which the other sections of the Tenancy Act imposed on him, and since the respondent continued to be his tenant all throughout, he was liable to be evicted on grounds specified in Section 14. Secondly, this right is specifically recognized by Section 33C(1)(iii) to which reference has already been made. He, therefore, contends that the learned President of the Tribunal was in error in holding that his application was not maintainable. He also contended that the learned President was wrong in holding that the certificate issued to the landlord was a nullity.

11. In my opinion, there is great force in the contention of Mr. Samant. Section 88C came into force as stated earlier on August 1, 1956. By an amendment made to that section in 1957 incorporating the present Sub-sections (2) to (5), the landlord became entitled to apply for the exemption certificate at any time before September 30, 1961. There is nothing in the law which prevented the landlord from making such an application at any time before September 30, 1961. The result of such an application may be known either before that date or after that date, depending upon the date of the application and the length of the litigation between the landlord and the tenant u/s 88C in the various Courts. But whensoever the result may be known, it is clear that once a certificate is granted to the landlord, the land becomes exempt from the operation of Sections 32 to 82R, that is to say, the land is free from the provision of Section 32 which vested the title in the tenant either on April 1, 1957 or any postponed date. So far as the land of the certificated landlord is concerned, Sections 82 to 82R may be deemed to be not there in the statute book, and if nothing in those sections affects these lands, it will be wrong to import the considerations of Section 32 in order to determine the rights of the parties. The learned President of the Tribunal seems to be of the view that an application made after April 1, 1957 was not maintainable. For that he purported to rely upon a Full Bench decision of this Court in Ramchandra Anant Joshi and Others Vs. Janardan Tulshiram Ghuge and Others, . It appears to me, that case instead of supporting him supports quite the contrary view. In that case, the question to be decided was whether an application for possession on grounds specified in Section 14 made after April 1, 1957 was maintainable in view of the fact that prior to April 1, 1957 an application had been made by the landlord u/s 81 in pursuance of the provisions of Section 32(1) read with its first proviso. The contention was that by reason of the fact that an application made u/s 31 was pending, the vesting of the title in the tenant was postponed till a later date, and, therefore, in the meantime, the relationship of landlord and tenant continued with the result that the landlord was entitled to apply for possession on the grounds specified in Section 14, It was held, no such application after April 1, 1957 was maintainable, because Section 32 itself provided that the application for possession on grounds specified

in Section 14 should be filed before March 31, 1957, thus, by necessary implication, barring a subsequent application. That view has been approved by the Supreme Court in *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, . But the Full Bench also considered the further point as to what was to happen if the landlord happened to be a certificated landlord. An application for a certificate could be made after April 1, 1957, and it may be decided at any time thereafter. With reference to that contingency, the Full Bench observed as follows (p. 644):

In the present case it does not appear that the landlords belonged to the categories mentioned in Sub-section (3) of Section 31. The reply to the second question will, therefore, depend upon whether the landlords had made an application u/s 88C of the Act and whether that application has been granted or rejected. If the landlords have been granted a certificate u/s 88C of the Act, Section 32 will not apply and the application made by the landlords for possession of the lands will be maintainable, even though it had been made after March 31, 1957. If, on the other hand, no application had been made by landlords u/s 88C of the Act or if such application had been made and has been rejected, the application for possession u/s 29 read with Section 14 would not be maintainable on the ground that it had been made after March 31, 1957.

This conclusion fully supports Mr, Samant. All that he has to show is that he is a certificated landlord, in which case, he would be entitled to apply for possession u/s 29 read with Section 14 even, after March 31, 1957.

12. Nor was the learned President of the Tribunal right in thinking that the exemption certificate actually issued to the landlord was a nullity. I do not see how one can say that it is a nullity when the landlord made his application to the Mamlatdar for the exemption certificate within the time prescribed therefore and the certificate has been issued by the tenancy authorities in due course of the law. It is not right to say that unless the landlord is armed with an exemption certificate he cannot make an application u/s 29 read with Section 14. That would imply that the relationship of landlord and tenant has come to an end at some time, and that it was revived only after the grant of the certificate. In short, it would mean that if no application has been filed for possession u/s 29 before April 1, 1957, the title would at once vest in the tenant on April 1, 1957, and, if at a later date, - and it must be at a later date, - an application is made by the landlord and he is given an exemption certificate u/s 88C, then his right would revive as against the tenant, and then alone he would be entitled to take such action as he was entitled to do under the Act. In other words, the title vests in the tenant on April 1, 1957, but it is divested after the certificate is granted. Therefore, if prior to the granting of the certificate an application is made by the landlord u/s 29 read with Section 14, that would be an application against a tenant in whom the title has already been vested, and, therefore, it is not maintainable. It appears to me that this is only arguing in a circle. The point to be borne in mind in the case of a small holder who is given the certificate is that

Sections 82 to 82R do not apply at all to his land. In the very nature of things, the certificate could be obtained only after April 1, 1957, and, therefore, when a certificate is granted on such an application recognizing his status on that day, the application of Sections 32 to 32R is completely barred from the very beginning. Therefore, there is no question of any vesting of the right of the owner in the tenant. And if there is no vesting, there cannot be any question of divesting or the revival of the relationship of the landlord and the tenant after the certificate is granted. The conclusion, in my opinion, is that the land belonging to a certificated landlord, whatever the date may be when the certificate is issued to him, is exempt from the operation of Sections 32 to 32R, in which case the question of vesting of title in the tenant u/s 32 can never arise. And if the title does not vest in the tenant, the old relationship of landlord and tenant continues unaffected by the provisions of Sections 32 to 32R, and the grant of the certificate at a later date can have no effect of reviving something which did not require to be revived. Mr. Bhokariker for the respondent-tenant sought to urge that the provisions of Section 33C (1)(iii) operated only in the case of a landlord who had become a certificated landlord. He contended that Sections 33 A to 33C which were inserted on September 6, 1961 contained a complete code with regard to the rights and liabilities of the landlord, and the other sections of the Act except to the extent that they are referred to in these new sections had no application. His contention was that a certificated landlord had only one right under these sections, and that was to terminate the tenancy within a specified period only on the ground of his bonafide requirement for personal cultivation. For no other reason could he terminate the tenancy. But this argument does not explain why, if it was so, the Legislature found it necessary to include a provision like Section 33(1)(iii). It would then mean that a certificated landlord after he obtained the certificate had two rights, one being a right to terminate the tenancy for his bonafide requirements for his Personal cultivation and the other being to terminate the tenancy u/s 14. It appears to me that this approach to these Sections 33A to 33C is historically not correct. I have already pointed out that Sections 32 to 32R, on the one hand, and Section 88C on the other, were inserted by way of amendment by Act XIII of 1956. The object was to give ownership to the tenants except in cases where the landlord was a small holder as described in. Section 88C (1). Later, the Legislature felt in 1961 that it was not right to have two classes of tenants, one class getting the rights of owners and the other class not getting such rights. Therefore, Sections 33A to 33C were inserted in the Act by Act IX of 1961, the object being to make the tenants of even small holders owners of the lands in their possession by a certain, specified date. At the same time, the small owners also were given an opportunity to terminate the tenancy if they required the land for bona fide cultivation. Therefore, by Section 88B certain conditions were imposed on the landlord before he could make an application. He had to give the notice and file an application before a certain date. Where he has failed to do it, Section 33C(.7) declared that the tenant of such a certificated landlord would be deemed to have purchased the land on April 1, 1962. Indeed, other provisions were also made in

Section 88B in order to keep a just balance between the small holder and the tenant, but the primary object with which these sections were introduced seems to be that the tenant of the small holder was also to get ownership, within a specified time, of the land in his possession. After protecting the small holder by Section 88C, the Legislature could not have intended to deny him the right to take possession after terminating the tenancy on the ground of default in payment of rent, which was one of the ordinary rights conferred on the landlord under Sections 14 and 25 of the Act. Indeed, even a certificated landlord after obtaining the certificate would be entitled to terminate the tenancy if he files the application before April 1, 1962 on grounds specified in Section 14, but that does not mean that a certificated landlord could not have applied before the obtaining of the certificate for the same reason. In my view, the learned President of the Tribunal was wrong in holding that the landlord's application filed on September 28, 1960 was not maintainable,

13. It was, however, contended by Mr. Bhokarikar, on behalf of the tenant, that even assuming the application was maintainable, the revenue Courts were wrong in holding that the landlord was entitled to possession under Sub-section (2) of Section 25 of the Act. He submitted that though it was alleged that there was default in the payment of rent for four years, the tenant had actually paid the rent due for the first three years before the filing of the application and the only amount due at the time of the filing of the application was the rent for the last year, viz., 1959-60. He referred in this connection to the decision of the Supreme Court in *Vithal Vasudeo v. Maruti* (1967) 70 Bom. L.R. 314, S.C., wherein it has been held, distinguishing the previous Supreme Court decision in *Raja Ram v. Aba Maruti* (1961) 64 Bom. L.R. 509., that an application u/s 25(2) of the Bombay Tenancy and Agricultural Lands Act, 1948, made by a landlord for eviction of his tenant who has failed to pay rent for three years within the period specified in Section 14 of the Act cannot lie if the tenant has paid up all the arrears due and the landlord has accepted these before the filing of the application. So far as the facts of the present application are concerned, there is no dispute. The landlord had claimed that there was a default in the payment of rent for the years 1955-56, 1956-57, 1958-59 and 1959-60. The revenue Courts placed a very narrow view on the word "default". According to them, the default would arise when the rent is not paid on the due date in the year, delay in payment, though before the filing of the application, being regarded as a default. The evidence shows that the rent payable was Rs. 243.44 every year. It further shows that the rents for the first three years was also paid, though not on the due date. Exhibit 5 is a receipt dated April 21, 1956 which shows that the rent for the year 1955-56 had been fully paid- Indeed, the rent had become due on February 25, 1956, but actually full payment was made on April 21, 1956. This was regarded as a default. The rent for 1956-57 was fully paid on November 1, 1957. The rent for the year 1958-59 had become due on May 81, 1959, but the whole of it was recovered by instalments by May 3, 1960 as shown in exh. 14. Undoubtedly, these were technical defaults in the sense that though the whole of

the rent was paid, the rent was not paid on the due date. So far as the 4th year's rent, viz, 1959-60 is concerned, the due date for payment was May 31, 1960, but admittedly no payment was made before the present application was filed on September 28, 1960. Apart from the technical defaults which were proved in the revenue Courts, it is clear that at the date of the filing of the application, only the rent for the last one year, that is, for the year 1959-60 was in arrears. The question is whether under these circumstances, the Mamlatdar was entitled to pass an order for possession under Sub-section (2) of Section 25. In the Supreme Court decision on which Mr. Bhokariker relied, the following are the observations made at the end of the judgment (p. 316) :

... A careful perusal of that decision (Raja Ram's case) shows that it rested on the footing that the tenant had committed defaults for more than two years and there were arrears of rent when the landlord's application for eviction was filed. The observation that the Act empowered the Mamlatdar to grant relief where the tenant was not in arrears for more than two years clearly pre-supposes that if the tenant were to be in arrears for more than two years Sub-section (2) took away the power of the Mamlatdar to give relief which he can give under Sub-section (1) viz., to call upon the tenant to pay the arrears and on such payment to direct that the tenancy had not been terminated. It is this power which is denied to the Mamlatdar by Sub-section (2), if the conditions there contemplated exist, that is, the tenant is in arrears of rent for more than two years on the date when the application for ejectment is filed.

The actual words of Sub-section (2) so far as we are concerned are-

Nothing in this section shall apply to any tenant whose tenancy is terminated for nonpayment of rent if he has failed for any three years to pay rent...

That wording makes no difference to the proposition laid down in the decision. The question then arises what is meant by the tenant being in arrears of rent for more than two years. Do the arrears mean the equivalent or sum-total of rent of not less than three years; or a short payment of the yearly rent for a series of not less than three years ? For instance, if the yearly rent is Rs. 100, should it mean that the arrears should not be less than Rs. 300, or does it mean that the amount that is paid in every one of these three years is less than Rs. 100? In a recent decision of a Bench of this Court in *Dhansing R. Choudhari v. Laxminarayan Ramkisan Jakhete* (1970) Special Civil Application No. 1430 of 1967, decided by K. K. Desai and Nain, JJ., on August 10, 1970, the latter view is taken about what is meant by arrears. But whichever interpretation is put in the present case, it seems to me that no order under Sub-section (2) could be passed. The amount in arrears is for the 4th year only, and it cannot be said that the tenant was in arrears for the previous three years, because at the date of the application, the whole of the rent due for those three years had been already paid; nor can the arrears for the 4th year amount in the aggregate, the sum total rent of three years. Therefore, Sub-section (2) has no application. The case would be entirely governed by Sub-section (1) of Section 25.

14. In the result, therefore, the order passed by the revenue authorities directing possession to be delivered to the landlord under Sub-section (2) of Section 25 will have to be set aside and the case remanded to the Mamlatdar for passing a proper order u/s 25(1). Since the petitioner-landlord has only partially succeeded, there shall be no order as to costs.