

A

DINKAR MARUTI JADHAV

v.

NIVRUTTI GANGARAM PAWAR (DEAD)

BY LRS. AND ORS.

(C.A. No. 2564 of 2005)

B

JANUARY 18, 2008

[DR. ARIJIT PASAYAT, TARUN CHATTERJEE AND
LOKESHWAR SINGH PANTA, JJ.]

C

Bombay Tenancy and Agricultural Lands Act, 1948 – ss. 33-B and 88-C – Certificate granting exemption from applicability of provisions of the Act – On the basis of income of landlord and extent of land leased – Initiation of proceedings by the certified landlord for termination of tenancy on the ground of bonafide requirement and personal cultivation –

D

Death of the landlord during pendency of the proceedings – Effect of – On termination of tenancy – Held: With the death of the original landlord, apart from the question of bonafide need and personal cultivation, question of extent of holding leased and the income of the legal heirs also becomes relevant –

E

Land Laws and Agricultural Tenancy.

F

A certificate was issued to the original owner under s. 88-C of Bombay tenancy and Agricultural Lands Act, 1948. He initiated proceedings u/s 33 B. Thereafter he died. In the litigation question for consideration was effect of death of the original owner on the certificate issued u/s 88 C. When the matter came in appeal to this court, Division Bench doubted correctness of some of the observations made in **Moreshwar's* case wherein it was held that once certificate u/s 88 C was issued and proceedings u/s 33 B were initiated, the relief u/s 88 C gets exhausted and hence referred the matter to larger Bench. Thus, the question to be clarified was that when death of the original owner has taken place whether the income or the extent of land of the legal heirs have to be reckoned.

H

Partly allowing the appeal, the Court

A

HELD: Sections 33-B and 88-C of Bombay Tenancy and Agricultural Lands Act, 1948 operate in different fields. Section 33-B refers to bona fide requirement and personal cultivation. Income and/or economic holding concept is not there. Bona fide requirement and personal cultivation concepts are applicable only under Section 88-C because it refers to Section 33-B. There are two separate stages. The tenant can, in a given case, oppose the application in terms of Section 33-B on the ground that there is no bona fide requirement and/or personal cultivation. It deals with enforcement of the certificate. With the death of the original landlord, the question of economic holding and the income also becomes relevant. [Para 3] [866-D, E, F]

B

C

Moreshwar Balkrishna Pandare and Ors. v. Vithal Vyanku Chavan and Ors. 2001 (5) SCC 551 – clarified.

D

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2564 of 2005.

From the final Judgment and Order dated 11.9.2003 of the High Court of Judicature at Bombay in Writ Petition No. 1308 of 1990.

E

Varun Thakur and A.S. Bhasme for the Appellant.

D.M. Nargolkar for the Respondents.

The Judgment of the Court was delivered by

F

DR. ARIJIT PASAYAT, J. 1. A two judge Bench doubted the correctness of some of the observations made in *Moreshwar Balkrishna Pandare & Ors. v. Vithal Vyanku Chavan and Ors.* [2001(5) SCC 551] and therefore referred the matter to a larger Bench and that is how the matter was posted before us. The essence of the judgment in *Moreshwar's* case (supra) was that once an action in Section 33-B is taken, Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short the 'Act') has no relevance.

G

2. In the instant case, the original owner had expired.

H

A Undoubtedly, the certificate had been issued to him under Section 88-C with reference to the qualification possessed by the landlord as on 1st April, 1957. The question which fell for consideration before the High Court was the effect of the death of the original landlord who had either applied for issuance of certificate under Section 88-C, which is pending, or was the certificate already granted in his favour. In Paragraph 27 of *Moreshwar's* case (supra) it is held that once certificate under Section 88-C is issued and the landlord has issued notice in exercise of the rights under Section 33-B of the Act and proceeds to file an application for possession under Section 33-B read with Section 29 of the Act, the relief under Section 88-C gets exhausted. *Moreshwar's* case (supra) related to rights under Section 88D of the Act. The question which may arise is that when death has taken place whether the income or the extent of land of the legal heirs have to be reckoned.

D 3. Sections 33-B and 88-C operate in different fields. Bona fide requirement and personal cultivation concepts are applicable only under Section 88-C because it refers to Section 33-B. Section 33-B refers to bona fide requirement and personal cultivation. Section 88D(iv) comes into operation when the annual income exceeds the limit fixed and/or economic holdings exceeded. There are two separate stages. The tenant can, in a given case, oppose the application in terms of Section 33-B on the ground that there is no bona fide requirement and/or personal cultivation. It deals with enforcement of the certificate. E With the death of the original landlord, the question of economic holding and the income also becomes relevant. In Section 33-B income and/or economic holding concept is not there. F

G 4. The decision in *Moreshwar's* case (supra) is accordingly clarified. We remit the matter to the High Court to hear the writ petitions afresh in the light of the position of law delineated above.

5. The appeal is allowed to the aforesaid extent without any order as to costs.

H K.K.T.

Appeal partly allowed.