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GANPATI BAYAJI PATIL

v.

SHRIDHAR BABAJI VIBHUTE (D) BY LRS. AND ORS.

AUGUST 22, 1996

B

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Bombay Tenancy and Agricultural Lands Act, 1948 : Sections 32G, 33B and 88 G.*

C

*Land Laws—Tenant in occupation on tillers' day—Scheme of Act—Tenant becoming deemed purchaser of land—Exemption under Section 88C to a small landlord—Criteria for exemption—On tillers day joint family landlord of the land in question—Subsequent partition in joint family—Land in question coming to the share of respondent—Respondent thereafter applying for certificate under section 88-C—Revenue Tribunal holding that the respondent who obtained these lands on partition of the joint family was not entitled to apply for a certificate under section 88C—The rights of the appellant-tenant could not be defeated by such a certificate—Appeal—Held in the present case a certificate under section 88-C was obtained behind the back of the tenant and without any notice to him—Held certificate was void ab initio.*

E

*Chanchalben v. Gujarat Revenue Tribunal, 12 Guj. Law Reporter 428 and Jainabai v. Bakeji Bhan, 63 Bom. Law Reporter 65, referred to.*

*Krishnabai Ghule v. Nivruthe Ramchandra, [1983] 3 SCR 822, held inapplicable.*

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1328 of 1991.

From the Judgment and Order dated 5.3.90 of the Bombay High Court in W.P. No. 3607 of 1982.

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A.M. Khanwilkar for the Appellant.

V.B. Joshi for the Respondents.

The following Order of the Court was delivered :

H

The appellant is the tenant of the land in dispute which is situated

in Taluka Walwa, district Sangli in the State of Maharashtra. On the Tillers' Day, i.e., 1.4.1957, the appellant was the tenant in occupation of the lands in question. The landlord as of 1.4.1957 was a joint family of which the original respondent was a member. On 31.3.1958 a partition took place of the joint family and the lands in question came to the share of the original respondent.

Thereafter, the original respondent applied for a certificate under Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act). It is the case of the appellant that no notice was given to him of this application under Section 88C nor was he aware of a certificate being granted under Section 88C in favour of the original respondent on 14.4.1959.

In 1962, the original respondent made an application under Sec. 33B for obtaining possession of the land. In these proceedings under Sec. 33B, the appellant challenged the bona fide requirements of the original respondent for cultivating these lands personally. During the pendency of these proceedings the original respondent died and his heirs were brought on record; as a result a fresh enquiry was required to be made about the bona fide requirements of the heirs of the respondent under Sec. 33B. Before the Maharashtra Revenue Tribunal, the appellant contended that there was no valid certificate under Sec. 88C on the basis of which the respondent(s) could make an application under sec. 33B because, on the relevant date, namely, 1.4.1957, the original respondent was not the landlord of the land in question. Only the joint family which was the landlord on the relevant date, could have applied for a certificate under Sec. 88C. In the absence of any such application by the joint family, the appellant's rights as on 1.4.1957 under Section 32-G cannot be now defeated by a subsequent certificate under Section 88C obtained by a person who was only a member of the joint family on the relevant date and who had subsequently acquired these lands under a partition which took place after the Tiller's day. The Revenue Tribunal has upheld this contention. The High Court, however, in a writ petition filed by the respondents to challenge the findings of the Revenue Tribunal, held that the certificate under Sec. 88C cannot be examined. On the basis of this certificate, the respondents are entitled to succeed in their application under Sec. 33-B in the light of the findings given by the revenue authorities in their favour.

A The High Court was not right in coming to this conclusion. Under the scheme of the Act, a tenant becomes the deemed purchaser of the land on 1.4.1957. Under Sec. 88C, however, an exemption is granted to the lands of a small landlord whose land does not exceed an economic holding as defined under the Act and whose total annual income does not exceed Rs. 1,500. The landlord must fulfil these criteria on the date (1.4.1957) when the tenant would have become the deemed owner of the land, under Section 32-G in order to save his lands from the operation of Section 32-G. Any subsequent change in ownership will not confer any right on the subsequent "owner" to get the benefit of Sec. 88C. Unless the person who is the landlord on 1.4.1957 makes an application under Sec. 88C, the rights of a tenant cannot be defeated. (See in this connection *Chanchalben v. Gujarat*, Revenue Tribunal 12 Gujarat Law Reporter 428).

D It is contended on behalf of the respondents that since the original respondent was a member of the joint family on 1.4.1957, he was entitled to apply for a certificate under Sec. 88C. The requirements of Sec. 88C, however, have to be complied with by the joint family looking to the holding of all the members of the joint family as also the income of the joint family, because it was the joint family which was the owner of the land on 1.4.1957. (See in this connection *Jainabai v. Bakeji Bhan*, 63 Bom. Law Reporter 65). The Revenue Tribunal was, therefore, right in coming to the conclusion that the original respondent who obtained these lands on partition of the joint family on 31.3.1958 was not entitled to apply for a certificate under Sec. 88C. The rights of the appellant could not be defeated by such a certificate.

F It is also submitted by the respondents that in proceeding under Sec. 33B, there cannot be any collateral challenge to a certificate under Sec. 88C. The respondents have relied upon a decision of this Court in *Krishnabai Ghule v. Nivruthe Ramchandra*, [1983] 3 SCR 822 in support of this Submission. In that case, however, there had been previous proceedings between the tenant and the landlord in connection with the certificate issued under Sec. 88C which had culminated against the tenant. In this context, this Court observed that the same challenge cannot be repeated collaterally in proceedings under Sec. 33-B. In the present case a certificate under Sec. 88-C was obtained behind the back of the tenant and without any notice to him. Moreover, in the present case, there is no certificate under Sec. 88-C in favour of the landlord who held the land on

1.4.1957 and this fact is not in dispute. It is, therefore, open to us in the light of undisputed facts to examine the validity of the certificate on the basis of which proceedings under Sec. 33B have taken place. Since the certificate is void ab initio, the appellant is entitled to succeed. The appeal is allowed, the order of the Maharashtra Revenue Tribunal dated 19.8.1992 is restored and the order of the High Court is set aside. A

There will, however, be no order as to costs. B

T.N.A.

Appeal allowed.