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DINKAR MARUTI JADHAV

v.

NIVRUTTI GANGARAM PAWAR (D) BY LRS. & ORS.

MAY 9, 2007

B

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Rent Control and Eviction:

C

Bombay Tenancy and Agricultural Lands Act, 1948; Ss. 33B and 88C—Scope and ambit of—Held: Ss. 33-B and 88-C of 1948 Act operate in different fields—There are two separate stages—Tenant could oppose the application in terms of s. 33-B on two grounds that there is no bona fide requirement/ personal cultivation—However, bona fide requirement and personal cultivation concepts are applicable only under s. 88-C—Mere making an

D *application in terms of s. 33-B of the Act does not have the effect of terminating the relationship between the landlord and the tenant—No severance of relationship between them till Mamlatdar/authority passes an order to that effect—Even when the landlord applies for possession in terms of s. 33-B of the Act, it becomes conclusive so far as income and economic holding aspects*

E *are concerned—But bona fide requirement and personal cultivation are to be decided by the Mamlatdar/Authority—There is a need for clarifying this aspect further—Hence, the matter is referred to larger Bench of the Supreme Court.*

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The issues which arose for determination in this appeal are related to the scope and ambit of Sections 33-B and 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948.

Referring the matter to the larger Bench, the Court

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HELD: 1.1. Sections 33-B and 88-C of the Bombay Tenancy and Agricultural Lands Act operate in different fields. *Bona fide* requirement and personal cultivation concepts are applicable only under Section 88-C of the Act because it refers to Section 33-B. Section 33-B refers to *bona fide* requirement and personal cultivation. [Para 3] [322-E]

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1.2. Section 33-B and Section 88-D (iv) of the Act also operate in

different fields. The former refers to landlord's right and the other refers to tenant's right. [Para 4] [323-D] A

1.3. A tenant can, in a given case, oppose the application in terms of Section 33-B of the Act 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. In Section 33-B income and/or economic holding concept is not there. It is only there in Section 88-C. B

[Para 3] [322-F, G]

1.4. There is no dispute that once the tenancy is determined under Section 33-B of the Act, the question of action in terms of Section 88-D(iv) does not arise but making of an order would be necessary. Mere making an application in terms of Section 33-B of the Act does not have the effect of terminating the relationship between the landlord and the tenant. Therefore, till the Mamlatdar passes an order there is no severance of status. C

[Para 5] [323-E] D

Moreshwar Balakrishna Patil and Ors. v. Vithal Vyanku Chavan and Ors., [2001] 5 SCC 551, not applicable.

1.5. Even when the landlord applies for possession in terms of Section 33-B of the Act it may become conclusive so far as it relates to the income and economic holding concepts are concerned. But other requirements like *bona fide* requirement and personal cultivation are to be decided by the Mamlatdar. The certificate issued under Section 33-B is crystallized only in respect of the income and the economic holding concepts. Therefore, there is need for clarifying this aspect. Accordingly, the matter is referred to the larger Bench. [Para 5] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2564 of 2005.

From the Final Judgment and Order dated 11.09.2003 of the High Court of Judicature at Bombay in Writ Petition No. 1308 of 1990. G

A.S. Bhasme for the Appellant.

M.S. Nargolkar, Varun Thakur, Sanjay Dubey and D.M. Nargolkar for the Respondents. H

The Judgment of the Court was delivered by

A **DR. ARIJIT PASAYAT, J. 1.** The scope and ambit of Sections 33-B and 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short the 'Act') fall for determination in the present appeal.

B 2. During the course of hearing learned counsel for the appellant placed strong reliance on the observations made by this Court in *Moreshwar Balkrishna Pandare and Ors. v. Vithal Vyenku Chavan and Ors.*, [2001] 5 SCC 551 to the effect that the High Court's view is unsustainable. The essence of that judgment is that once action in terms of Section 33-B is taken Section 88-C has no relevance. In the instant case, the original owner had expired. Undoubtedly, the certificate had been issued to him under Section 88-C

C 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

D income or the extent of land of the legal heirs have to be reckoned.

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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. 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. It is only there in Section 88-C. In *Moreshwar's* case (supra) it was concluded as follows:

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H "15. A close reading of the section, quoted above, shows that sub-section (1) enables a certificated landlord who *bona fide* requires

the land, covered by the certificate for cultivating it personally, to terminate the tenancy of the possession, in the manner prescribed in sub-section (3). The said sub-section requires the certificated landlord to give notice in writing which shall be served on the excluded tenant on or before 1.1.1962; however, in a case where the application of such landlord under Section 88-C is not disposed of and is pending on that date, he can do so within three months of his receiving such certificate sending simultaneously a copy of the notice to the Mamlatdar. The application for possession of the land has to be made under Section 29 to the Mamlatdar before 1.4.1962 in the case where notice was served on him within three months of receiving a certificate under Section 88-C, the application can be made for possession under Section 29 within three months of his receiving the certificate. The right conferred on a certificated landlord to terminate the tenancy of an excluded tenant is an independent right and is not affected by the provisions of Sections 31, 31-A and 31-B.”

4. As noted above, Section 33-B and Section 88D (iv) operate in different fields. The former refers to landlord's right and the other refers to tenant's right and the *Moreshwar's* case (supra) did not deal with the case of the death of the landlord.

5. There is no dispute that once the tenancy is determined under Section 33-B, the question of action in terms of Section 88D(iv) does not arise but making of an order would be necessary. Mere making an application in terms of Section 33-B does not have the effect of terminating the relationship between the landlord and the tenant. Therefore, till the Mamlatdar passes an order there is no severance of status. The contrary view taken in *Moreshwar's* case (supra) prima facie does not appear to be correct. Even when the landlord applies for possession in terms of Section 33-B it may become conclusive so far as it relates to the income and economic holding concepts are concerned. But other requirements like *bona fide* requirement and personal cultivation are to be decided by the Mamlatdar. The certificate issued under Section 33-B is crystalized only in respect of the income and the economic holding concepts. Therefore, there is need for clarifying this aspect. Accordingly, we refer the matter to the larger bench. Let the matter be placed before Hon'ble the Chief Justice of India for necessary orders to place the matter before an appropriate bench.

S.K.S.

Referred to larger Bench.