

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2810 OF 1998

Smt. Maryambibi Abdul Gafoor Motalekar
(since deceased by her heirs)

1. Mohammed Isak Abdul Gafoor Motalekar
Since deceased by his heirs.

1-A Hanifa Isak Abdul Gafoor Motalekar

1-B Gani Isak Motalekar

1-C Farida Isak Motalekar

1-D Sugara Isak Motalekar

1-E Naima Isak Motalekar

No. 1-A, 1-B, 1-D residing at and post
Khed, Tal. Khed, Dist. Ratnagiri.

No.1-C residing at and post Phopolone,
Tal. Khed, Dist. Ratnagiri.

No. 1-E residing at and Post Koltar, Tal.
Khed, Dist. Ratnagiri.

2. Mohamed Abdul Gafoor Motalekar

3. Shamsuddin Abdul Gafoor Motalekar

4. Ismail Abdul Gafoor Motalekar

5. Smt. Sharabi Abdul Karim Bharde

6. Smt. Jainabi Umar Bharde

All residing at & post Khed, Tal. Khed,
District Ratnagiri.

Through their power of Attorney Holder
Shamsuddin Abdul Gafoor Motalekar.

.... PETITIONERS

V E R S U S

Pandurang Babaji Savant
(since deceased by his heirs)

1. Gurunath Pandurang Savant
2. Raghunath Ramchandra Savant
3. Eknath Pandurang Savant
4. Smt. Drupadi Pandurang Savant

All residing at Alsure, Tal. Khed, District
Ratnagiri.

Represented through their Mukhtyar
Balkrishna Babaji Savant, Residing At & Post
Alsure, Tal. Khed, Dist. Ratnagiri.

.... RESPONDENTS

APPEARANCE :

Mr. P. N. Joshi for Petitioners.

Mr. S. G. Karandikar for Respondent Nos.1 to 4.

CORAM : K. K. TATED, J.

DATE : JULY 27, 2017.

JUDGMENT

. Heard learned Counsel for parties.

2. By this Petition under Article 227 of the Constitution of India Petitioners/Original Applicants are challenging the Judgment

dated 29th July, 1997 passed by the learned Member, Maharashtra Revenue Tribunal, Mumbai in Ten. A. 94 of 1996 allowing Respondents' Revision Application by setting aside the order dated 16th January, 1996 passed by the learned Sub Divisional Officer, Dapoli Division, Dapoli in TNC/A.8/94. The Tribunal by the impugned order restored the order of Tahsildar, Khed dated 31st March, 1994 in Tenancy Case No. SR/2/92.

The brief facts of the matter are as under :

3. The deceased land-lady by name Smt. Maryambibi Abdul Gafoor Motalekar obtained Exemption Certificate under Section 88-C of The Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the said Act') in respect of the land bearing Survey No. 109, H. No.17 admeasuring 41 R. of village Alsure, Taluka Khed, District Ratnagiri. The said land was leased out to the Respondent – Tenant. She terminated the tenancy of the land Survey No. 109 H. No. 17 by instituting the proceeding under Section 33-B of the said Act on the ground that the land-lady is required the land for the personal cultivation.

4. The land-lady filed Application on 15th June, 1962 under Section 33-B being Tenancy Application No. 127 of 1962 claiming possession of Survey No. 109 H. No. 17 (hereinafter referred to as 'the suit property') on the ground that her income was less than Rs.1500/- per annum and she requires the land for cultivation to support her family. Initially, the application was allowed by Tenancy Avval Karkoon by order dated 18th February, 1966. The same was challenged by Respondents before the Special Deputy Collector by Appeal No. 165 of

1966. The learned Special Deputy Collector allowed the Appeal. Being aggrieved by the said order Petitioner preferred Revision Application No. 67 of 1967 before the Maharashtra Revenue Tribunal at Mumbai. The learned Member of Maharashtra Revenue Tribunal at Mumbai by order dated 10th October, 1967 remanded the matter to the Tahsildar for deciding on its own merits holding that the legal heirs of original landlady can proceed the matter on the basis of Certificate under Section 88-C of the said Act.

5. After remand, the learned Tahsildar, Khed by its order dated 31st March, 1994 held that Petitioner failed to make out the case under Section 33-B of the said Act and rejected the Petitioners' Application.

6. Thereafter the Petitioners preferred Tenancy Appeal No. 8 of 1994 before Sub Divisional Officer, Dapoli. That Appeal was allowed by the Sub Divisional Officer by order dated 16th January, 1996 holding that Petitioners have made out the case under Section 33-B of the said Act and directed the Respondents to implement the earlier order dated 18th February, 1966 in Tenancy Case No. 127 of 1962 by which the Authority held that Petitioners have made out case under Section 33-B of the said Act.

7. Being aggrieved by the order dated 16th January, 1996 passed by the Sub Divisional Officer, Dapoli Division, Dapoli Respondents preferred Revision Application No. 94 of 1996 under Section 76 of the said Act. The Maharashtra Revenue Tribunal after considering the evidence on record and submission made by both the parties including their written submission held that order passed by the

Sub Divisional Officer, Dapoli dated 16th January, 1996 in Tenancy Appeal No. 8 of 1994 is required to be set aside and upheld/restored the order dated 31st March, 1994 passed by the Tahsildar in Case No. TNC/SR/2/1992, by which Petitioner's Application under Section 33B of the said Act stands rejected. Hence, the Petitioner has preferred the present Writ Petition.

8. The learned Counsel Mr. Joshi appearing on behalf of Petitioners submit that the Tribunal erred in coming to the conclusion that Petitioners failed to make out the case under Section 33-B of the said Act. He submits that the Tribunal failed to consider the fact that the Petitioners' holding of land was reduced by 40 R. because of acquisition for school and Konkan Railway during the pendency of the proceeding. He submits that on the date of passing of the impugned order by the Maharashtra Revenue Tribunal, Petitioners were holding only 2 H. 6.2 R. of land. He submits that in all 18 members are their in the Petitioners' family. He submits that the Tribunal failed to consider the fact that land at Kondivali village admeasuring 1 H. 68 R. was not in possession of the Petitioners and as these facts were not properly considered by the Tribunal. The Tribunal erred in coming to the conclusion that Petitioners have not made out the case under Section 33-B of the said Act.

9. The learned Counsel for Petitioners submit that Section 33-B of the said Act gives right to the landlord who obtained Certificate under Section 88-C of the said Act to terminate the tenancy for personal cultivation. He submits that Section 33-B of the said Act clearly makes provision that in case the landlord is unable to maintain his family and if he gets a Certificate under Section 88-C of the said Act, he can apply for

termination of tenancy and ask for possession of the land. He submits that in the present proceeding, Respondents are cultivating Petitioners' land at village Alsure admeasuring 1 H. 19.9 R. He submits that considering the holding of Petitioners, the Revenue Tribunal ought to have dismissed the Respondent's Revision Application.

10. The learned Counsel for Petitioners submit that the Authority below at the time of calculating the holding of Petitioners' land erred in coming to the conclusion that the land which is not in possession and/or cultivation of the Petitioners also considered at the time of holding how much land the Petitioners are holding just because Petitioner is owner of that land. He submits that the Tribunal ought to have considered the fact that Petitioners have to maintain 18 members of their family, and therefore, they require the suit property for their personal cultivation.

11. The learned Counsel for Petitioners submit that the Maharashtra Revenue Tribunal failed to appreciate the fact that the land owned by the Petitioners at village Kondivali is not in their actual possession. Mutation No. 1379 of the 7/12 extract clearly shows that one Mr. Usman Gulam Hussain Rumani was in actual possession. He further submit that even the Tribunal failed to consider the evidence of Shamshuddin Mohammed Gaffoor and Mohammed Isaq who were specifically deposed that the Petitioners are in need of land admeasuring 41 R. from Survey No. 109 H. No. 17 which is in possession of the Respondents for their personal cultivation. He submits that the Tribunal failed to consider the fact that the Petitioners' holding of the land is such that it is impossible for them to maintain their family from that income.

12. The learned Counsel for Petitioners submit that the Tribunal failed to consider the fact that the Certificate under Section 88-C of the said Act issued in favour of Petitioner shows, the said land is required by Petitioners' family members for personal cultivation. He submits that Certificate under Section 88-C is issued only to those persons, whose holding of agricultural land is not sufficient for his family member and same is within the prescribed limit and his annual income not exceeds Rs. 1500/-. He relies on Section 88-C of the said Act which read thus :

“88C. - Exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs. 1,500

(1) [Save as otherwise provided by sections 33-A, 33-B and 33-C, nothing in sections] 32 to 32-R (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 :

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

[(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certificate that he is entitled to such exemption.

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under sub-section (1) from the provisions of section 32 to 32-R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

(5) The decision of the Mamlatdar under sub-section (3), subject to appeal to the Collector, shall be final.]”

13. The learned Counsel for Petitioners further submit that Section 33-B of the said Act gives the special right to certificate holder to terminate the tenancy and take possession of land for his cultivation. He submits that Petitioners have specifically made averments in the Application dated 15th June, 1962 that they require the suit land for their personal cultivation. He relies on Section 33-B of the said Act which read thus :

“33B. Special right to certificated landlord to terminate tenancy for personal cultivation.

(1) Notwithstanding anything contained in sections 31, 31A or 31B a certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord bona fide requires such land for cultivating it personally.

(2) The notice may be given and an application made by a

certificated landlord under sub-section (3), notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with sub-section (2) of section 31 -

(i) is pending before the Mamlatdar or in appeal before the Collector, or in revision before the Maharashtra Revenue Tribunal, on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (hereinafter referred to in this section as “the commencement date”), or

(ii) has been rejected by any authority before the commencement date.

(3) the notice required to be given under sub-section (1) shall be in writing and shall be served on the tenant -

(a) before the first day of January, 1962, but

(b) if an application under section 88C is undisposed of and pending on that date then within three months of his receiving such certificate.

and a copy of the notice shall, at the same time, be sent to the Mamlatdar. An application for possession of the land shall be made thereafter under section 29 to the Mamlatdar before the 1st day of April, 1962, in the case falling under (a) and within three months of his receiving the certificate in the case falling under (b).

(4) Where the certificated landlord belongs to any of the following categories, namely :-

(a) a minor,

(b) a widow,

(c) [* * *]

(d) a person subject to any physical or mental disability, then, if he has not given notice and not made an application as required by sub-sections (1) and (3), such notice may be given and such application made -

(A) by the landlord within one year from the date on which he, -

(i) in the case of category (a) attains majority;

(ii) [* * *]

(iii) in the case of category (d), ceases to be subject to such physical or mental disability; and

(B) in the case of a widow, by the successor-in-title within one year from the date on which widow's interest in the land ceases :

Provided that, where a person belonging to any category is a member of a joint family, the provisions of this sub-section shall not apply if any one member of the joint family does not belong to any of the categories mentioned in this sub-section, unless the share on such person in the joint family has been separated by metes and bounds before the 31st day of March, 1958 and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated (having regard to the area, assessment, classification and value of the land) in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say -

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on the ground that other land was required for cultivating it personally under section 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation – the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in section 31 of the Bombay Presentation of Fragmentation and Consolidation of Holdings Act, 1947.

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January, 1952 and thereafter until the commencement date in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family.

(6) The tenancy of any land left with the tenant after the termination of the tenancy under this section shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

(7) If, in consequence of the termination of the tenancy under this section, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land so left with the tenant.”

14. The learned Counsel for Petitioners submit that Petitioners placed on record the written submission filed by them. The same were not considered by the Tribunal at the time of passing the impugned order. He submits that the Maharashtra Revenue Tribunal failed to consider the fact that the learned Tahsildar incorrectly recorded in its order that the Petitioners' holding is 2 H. 46.2 R. cultivable land. He submits that Petitioners placed on record the Revenue Record to show that the land situated at Kondivali is in possession of third party. In spite of these facts, the Tribunal passed the impugned order rejecting Petitioners' application under Section 33-B of the said Act.

15. The learned Counsel for Petitioners submit that the property situated at Kondivali admeasuring 1 H. 68 R. is in possession of Shamsuddin Mohammed Gaffoor for last several years. He submits that even his name was mutated in the Revenue Record as cultivator. He submits that it is specifically stated in the Revenue Record that Mr. Usman Gulam Hussain Rumani is occupying and cultivating the said land for last more than 30 to 40 years. He submits that the Petitioners

placed on record the Revenue Records. Those are on Page Nos. 201 to 207 of the Record and Proceedings. He submits that the said Revenue Record clearly shows that though the land at Kondivali is owned by the Petitioners, but actually the same is in possession of third party for last more than 30 to 40 years. Therefore, that should not have been considered at the time of calculating the holding of the Petitioners for giving effect to the Section 33-B of the said Act. He submits that the word “holding” referred in Section 33-B of the said Act shows the land which is in actual possession and cultivation of the landlord.

16. In support of this contention, he relies on the Judgment in the matter of ***Rambhau Ganpat Sutar ..Vs.. Bhau Tatyaba Patole, reported in 1963 (Vol-LXVI), Bombay Law Reporter, 1***. He submits that in this Judgment, the Division Bench of this Court held that for calculating the land in possession of the landlord under Section 33-B of the said Act, the area is required to be considered which is actually in his possession and under cultivation. He relies on following portion of the said Judgment which read thus :

“ In our opinion, therefore, in determining the extent of the leased land, of which a landlord can be awarded possession under s. 33B, the area of all the other lands, if any, personally cultivated by the landlord and the area of all the other lands, if any, held by the tenant for personal cultivation should be taken into consideration and the landlord should be awarded possession of so much area of the land leased as would result in each of them holding thereafter, so far as possible, equal areas of lands for personal cultivation. We

agree with the view taken by the Full Bench of the Bombay Revenue Tribunal in its judgment delivered on July 9, 1963.”

17. The learned Counsel for Petitioners also relies on the Judgment of Full Bench in the matter of ***Devidas Narayan More ..Vs.. Chunilal Bhailal Wani, reported in 1972 Bombay Law Reporter (Vol-LXXIV) 606***. He submits that in this authority three questions of law were referred by the Full Bench for its decision. Those are as under :

“ (1) *If the application under s. 33B is made by more than one landlord which, of course, of necessity, must be landlords jointly holding the same piece of land, are the other lands in the personal cultivation of all the landlords, jointly or even individually, to be taken into consideration for the purposes of cl. (b) of sub-s. (5) of s. 33B when applying its provision and particularly the one contained in the words “in the total” ?*

(2) *When the application under s. 33B has been made against a single tenant, are the lands in the personal cultivation of that tenant other than those in respect of which the application has been made to be taken into consideration for the purposes of cl. (b) of sub-s. (3) of s. 33B when applying its provision and particularly the one contained in the words “in the total” ?*

(3) (a) *In the case of an application made under s. 33B, if the same landlord or the same joint landlords have let out their lands to more than one tenant and each of the said tenants is personally cultivating the lands respectively let out*

to him, are the lands of all such tenants other than the lands in respect of which the application has been made to be taken into consideration for the purpose of cl. (b) of sub-s. (5) of s. 33B when applying its provision and particularly the one contained in the words “in the total” ?

(b) Would any difference have to be made if the application is made only against one tenant or if the application is made either at the same time or jointly against more than one of such tenants of the same landlord or landlords ?”

He submits that Full Bench of this Court held that at the time of calculating the holding of tenant under Section 33-B of the said Act following three points are required to be considered :-

- “(a) land which he himself owns;*
- (b) land which is let out to him; and*
- (c) land which is let out to him by another landlord or another certificated landlord.”*

He relies on the following portion of the said Judgment which read thus :

“ Now a tenant may hold land for personal cultivation from three sources, (a) land which he himself owns; (b) land which is let out to him by the landlord or (c) land which is let out to him by another landlord or another certificated landlord. But all these would necessarily be included in the words “area for personal cultivation”. The same applies to the landlord. He may have his own lands in addition to the land which he has leased out and in addition he may himself be either cultivating the land held from another ordinary

landlord or from another certificated landlord. The word “thereof” in the above clause refers back to the words “land leased”. Therefore the landlord can get back only the land leased at the most. Now the resultant equality which has to be achieved is governed by the words “both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation” (the italics are ours). What is the meaning of the words “in the total” ? It seems to us that in the context they mean “on the whole” or “in the aggregate” as we held in Rambhau's case i.e. after taking into account all the land held by the landlord for personal cultivation and all the land held by the tenant for personal cultivation. It was so held by the Division Bench in Rambhau Ganpat V. Bhau Tatyaba when they observed that the words “in the total” clearly indicate that the Legislature intended that the entire holding of the landlord and the tenant should be taken into consideration. There is nothing in cl. (b) of sub-s. (5) of s. 33B to suggest that any land held either by a landlord or a tenant for personal cultivation from any source should be excluded from computation in arriving at “equal area for personal cultivation” for both the landlord and the tenant.”

18. On the basis of this submission, the learned Counsel for Petitioners submit that the Authorities below failed to consider these facts at the time of calculating the Petitioners' holding of land. He submits that the authorities below erred in coming to the conclusion that at the time of calculating the Petitioners' holding under Section 33-B of

the said Act, the land at Kondivali which was in possession of third party required to be considered. Hence, the finding given by the Maharashtra Revenue Tribunal as well as the learned Tahsildar in Tenancy Case No. SR/2/92 is required to be set aside.

19. The learned Counsel for the Petitioners submit that in the interest of justice this Hon'ble Court be pleased to set aside the impugned order dated 29th July, 1997 passed by the learned Member, Maharashtra Revenue Tribunal, Mumbai in Revision Application No. 94 of 1996. He submits that if the said order is not set aside, an irreparable loss will be caused to them.

20. The learned Counsel Mr. Karandikar appearing on behalf of Respondents vehemently opposed this Writ Petition. He submits that considering the facts on record and a concurrent finding of facts recorded by the Authorities below, there is no substance in the present Writ Petition and the same is required to be dismissed with costs. He submits that as per the Petitioners' own Application, Petitioners are in possession of 2 H. 46.2 R. of land from village Alsure and Kondivali, whereas the Respondents' holding is only 1 H. 19.9 R. of land at village Alsure.

21. The learned Counsel for Respondents submit that the authorities relied by the Petitioners in support of his contention for calculating the holding of the landlord as required under Section 33-B of the said Act is not applicable in the facts and circumstances of the present case. He further submits that issue raised by the Petitioners in the present petition was not the issue in both these authorities. He

submits that bare reading of Section 33-B of the said Act shows that one have to consider the holding of landlord and tenant only. The word “to hold land” as referred in Section 33-B of the said Act is not defined in the said Act. Therefore, in view of Section 2 (21) of the said Act we have to consider the definition of “to hold land” from the other Act i.e. The Maharashtra Land Revenue Code. Section 2 (12) of the said Act read thus :

“to hold land” or “to be a landholder or holder of land” means to be lawfully in possession of land, whether such possession is actual or not.”

22. The learned Counsel for Respondent submit that bare reading of the definition of “to hold land” under Section 2 (12) of the Maharashtra Land Revenue Code clearly shows the finding given by both the authorities below is according to law. He submits that in a case in hand, the Petitioners are owners of 78 R. of land from village Alsure and 1 H. 68 R. of land from village Kondivali. This shows that they are holding 2 H. 46 R. of land, out of that, 40 R. of land was acquired by the Government for school and Railway. Therefore, on the date of filing of the Application under Section 33-B of the said Act, admittedly the Petitioners were holding 2 H. 6 R. of land whereas on that date the Respondent No.1 was holding only 1 H. 19.9 R. of land. These facts were not considered by the learned Tahsildar at the time of deciding Petitioners' Application under Section 33-B of the said Act.

23. Bare reading of the definition of “to hold land” under Section 2 (12) of the Maharashtra Land Revenue Code shows that the Petitioners/landlord were holding more than 90 R. of land than the

Respondents. Therefore, there is no question of entertaining the present Writ Petition filed by the Petitioners challenging the findings of two Authorities i.e. Tahsildar and Maharashtra Revenue Tribunal. He submits that in any case there being a concurrent finding of facts recorded by two Authorities below, the Court should not interfere the same under Article 227 of the Constitution of India. Hence, the Writ Petition is required to be dismissed with costs.

24. I have heard both the Counsel at length.

25. After considering the Record and Proceedings and submissions made by both the Counsel at length, in my opinion, the issue involved in the writ petition is whether the Application under Section 33-B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 is required to be allowed. Bare reading of Section 33-B of the said Act shows that at the time of calculating the holding of landlord and tenant, one have to consider the entire holding of the party. The word “to hold land” is not defined in the said Section. In that case, one have to consider the definition from Maharashtra Land Revenue Code. As per Section 2 (12) of the Maharashtra Land Revenue Code it is crystal clear that whether a person is in possession or not his own property, but at the time of considering the holding same is required to be considered. Same thing is done by the Authorities below in the case in hand.

26. The contention of the Petitioners that though they are the owners of the land admeasuring 1 H. 68 R. situated at Kondivali, the same is in possession of third party for last more than 30 to 40 years. Not only that, even in Revenue Record the name of third party is shown

as encroacher. But that cannot come within the purview of Section 33-B of the said Act. As per Section 33-B of the said Act, the Tahsildar as well as Maharashtra Revenue Tribunal specifically held that the Petitioners are holding near about 2 H. 6 R. of land. If the Petitioners' Application is allowed, the holding of the Respondents goes much much lesser than the Petitioners' holding and it is not permitted by Section 33-B of the said Act.

27. Bare reading of the Judgment passed by the Tahsildar as well as the Maharashtra Revenue Tribunal clearly shows that after considering the Section 33-B of the said Act they held that Petitioners are not entitled for any relief or direction against the Respondents to handover the excess land to them to the Petitioner.

28. Hence, the writ petition stand dismissed.

29. Considering the facts of the case, no order as to costs.

(K.K.TATED, J.)