

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.9362 OF 2014  
WITH  
CIVIL APPLICATION NO. 11248 OF 2017**

1. Omkar Chavdas Bhortakke  
Deceased Through Lrs.
- 1-A. Smt. Nalini Pundlik Choudhary  
Age: Major, Occu: Household  
R/o. Kothali, Taluka Muktainagar,  
District: Jalgaon.
- 1-B. Smt. Sarala Shankar Bade  
Age: Major, Occu: Household,  
Ruikheda, Taluka Muktainagar,  
District: Jalgaon
- 1-C. Sau. Mandabai Vasant Zope  
Age: Major, Occupation: Household,  
R/o. Salbardi, Taluka Muktainagar,  
District: Jalgaon.
2. Vasant Hari Bhortakke
3. Ashok Hari Bhortakke  
Both : Major, Occupation: Agriculture,  
R/o: Changdeo, Taluka Muktainagar,  
District : Jalgaon.
4. Anusaya Hari Bhortakke, Deceased ... PETITIONERS

***Versus***

1. Smt. Papilabai Baburao Patil  
Age: Major, Occupation: Agriculturist,  
R/o. Karki, Post Karki,  
Taluka Muktainagar,  
District: Jalgaon.

2. Smt. Chamelibai Tukaram Choudhary  
**Deceased**

2-A. Bhaskar Tukaram Chaudhary

2-B. Liladhar Tukaram Chaudhary

2-C. Manohar Tukaram Chaudhary

2-D. Omprakash Tukaram Chaudhary

2-E. Indubai Atmaram Thombre,

All above R/o: Jagnade Colony, Faizpur,  
Taluka: Yawal, District: Jalgaon

2-F. Anupama Vasant Chaudhary, )  
C/o: V.N. Chaudhary, )  
20, "Vanita", Next to Golden Automobiles, )  
Malharnagar, Nashik, Dist: Nashik. )

) Dismissed as per  
) Court's order  
) dated 5/10/2016.

2-G. Vijaya Dilip Bonde )  
C/o: D. D. Bonde, )  
9, Mukund Apartment, 2<sup>nd</sup> Floor, )  
Near Rajnagar Church, Dombivali (West), )  
Taluka Kalyan, District Thane )

2-H. Rekha Subhash Choudhary,  
C/o: S.M. Chaudhary,  
R/o: Dattanagar Vanjoda Road,  
Bhusawal, District: Jalgaon

3. Smt. Sushilabai Tukaram Rane,  
R/o: Near Ramdaswadi, Rajendra Press,  
Khadak Road, Bhusawal,  
District: Jalgaon.

4. Smt. Mirabai Bhagwat Bhoge  
Nilgiri Building, Hari Vitthal Nagar,  
New Bus Stand, District: Jalgaon

5. Vatsalabai Janardan Chaudhary  
R/o: Khiroda, Post: Khiroda,  
Taluka Raver, District: Jalgaon

... RESPONDENTS

....  
Mr. Sanket S. Kulkarni, Advocate for petitioners.  
Mr. A. G. Talhar, Advocate for respondent No.1.  
Respondent Nos.2-A to 2-E, 2-H, 3 to 5 served.  
....

**CORAM : R. G. AVACHAT, J.**

**RESERVED ON : 09<sup>th</sup> SEPTEMBER, 2019**  
**PRONOUNCED ON : 27<sup>th</sup> JANUARY, 2020**

**JUDGMENT :-**

. Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The challenge in this writ petition is to the order passed by the Tahsildar, Muktainagar, in TNC Case No.117/1985 dated 15.06.2006, affirmed by the Sub Divisional Officer, Bhusawal in Tenancy Appeal No.10/2006 dated 23.03.2010 and confirmed by the Member, Maharashtra Revenue Tribunal, Aurangabad, in Case No.29-B-2010-Jalgaon, on 15.09.2014.

By the impugned order, the Tahsildar allowed the application moved by the landlady – respondent No.1 under Section 33B read with Section 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'BT & AL Act, 1948'), directing the petitioners (respondents in TNC Case No.117/1985 before the Tahsildar) to handover possession of

the land i.e. Gat No.116 admeasuring 3 Hectare 52 R (for short 'writ land') to the respondent No.1 herein.

3. A question that falls for consideration in this petition is as to whether the proceedings initiated by respondent No.1 under Section 33B and 29 of the BT & AL Act, 1948, was well within limitation.

4. The facts averred in the writ petition are as under :

The writ land originally belonged to one Hari Vithoba Chaudhary. He mortgaged the said land to Dattatraya Nateshwar Kulkarni under a deed of mortgage by conditional sale dated 16.04.1941. Dattatraya (mortgagee) inducted Chavdas Totaram Bhortakke as tenant in the writ land. Mutation entry to that effect was made vide Mutation Entry No.736 dated 11.03.1950. Dattatraya (mortgagee) passed away in February-1957, leaving behind his widow – Durgabai.

Respondent No.1 filed a suit, being R.C.S. No.127 of 1977 for redemption of mortgage. The suit was compromised by the parties thereto. Respondent No.1, then made an application (No.117/1978) to the Tahsildar-cum-Agricultural Land Tribunal (ALT), Edlabad under Section 70(b) and Section 88C of the BT & AL Act, 1948, claiming therein relief of declaration that Chavdas was not a tenant of the writ land. In the alternative, it was prayed that if Chavdas was held to be a

tenant, then a certificate under Section 88C of the BT & AL Act, 1948, be granted to her. On 28.06.1980, respondent No.1 was granted a certificate under Section 88C. Being aggrieved by the said decision, L.Rs of Chavdas filed Tenancy Appeal No.19/1980 before the Sub Divisional Officer, Bhusawal. Respondent No.1 also preferred Tenancy Appeal No.26/1980 to the same authority challenging the tenancy of Chavdas. Both the appeals came to be dismissed by a common judgment dated 26.02.1985. This Court, in Writ Petition No.3045/1985 confirmed the decision, granting certificate under Section 88C.

The order of the Sub-Divisional Officer in Tencnay Appeal was challenged before the Maharashtra Revenue Tribunal, Bombay in Revision Application No.166/1985. On 30.10.1991, the Maharashtra Revenue Tribunal, allowed the revision and set aside the order passed by the Tahsildar/ALT and confirmed by the Sub Divisional Officer, Bhusawal. The Maharashtra Revenue Tribunal held that Chavdas or his L.Rs. are not tenants of the writ land. The petitioners therefore preferred Writ Petition No.184/1992 against the order of M.R.T. in Revision Application No.166/1985. The Writ Petition was allowed and order passed by the M.R.T. came to be set aside. The petitioners, thus, held to be tenants of the writ land. Civil Revision (No.329/1995) was also preferred by the petitioners against the possession warrant sought

to be executed by respondent No.1 on the basis of the execution proceedings initiated for execution of the compromise decree. The said Civil Revision Application was also allowed by this Court. Both the orders passed by this Court in Writ Petition No.184/1992 and Civil Revision No.329/1995 were unsuccessfully challenged before the Hon'ble Supreme Court of India by filing Civil Appeal No.800-804 of 2000.

5. In short, respondent No.1 preferred application (TNC Case No.117/1985 to Tahsildar-cum-ALT under Section 33B read with Section 29 of the BT & AL Act, 1948 for possession of the writ land. The ALT allowed the said application vide impugned order dated 15.06.2006. As stated above, the said order has first been affirmed by the Sub Divisional Officer and then confirmed by the Maharashtra Revenue Tribunal. The petitioners are therefore before this Court.

6. Shri Sanket S. Kulkarni, learned Advocate for the petitioners would submit that the BT & AL Act, 1948 is tenant favoring legislation. Application under Section 33B(1) of the Bombay Tenancy and Agricultural Lands Act should have been preferred within three months from the date of decision of Mamlatdar to issue certificate under Section 88C(4) of the BT & AL Act, 1948. In the present case, the

application came to be preferred five years after the date the Mamlatdar issued the certificate. He would further submit that no authority is expected to grant 88C certificate after 1962. The learned Advocate has relied on the following two authorities.

(i) *Vishnu Sadashiv Deshpande Vs. Rangnath Krishna Salunkhe – 1997(4) ALL MR 278.*

(ii) *Devidas Narayan More and Ors. Vs. Chunilal Bhailal Wani and Ors. - AIR 1973 Bom. 195.*

7. The Civil Application No.11248 of 2017 has also been moved, seeking permission to produce on record a mutation entry, being M.E.No.2264 dated 21.03.2017 to indicate the respondent No.1 to have sold her another land, Gat No.105 for consideration of Rs.17,55,000/-. The said mutation entry was sought to be produced on record with further submission that the requirement of respondent No.1 was not *bona-fide*. The petitioners did not have any other land to earn their leaving. An interpretation beneficial to the petitioners / tenant be therefore made.

8. Shri A. G. Talhar, learned Advocate would on the other hand submit that the three authorities below have given concurrent findings. This Court, in exercise of writ jurisdiction under Article 227 of the Constitution of India cannot reappreciate the evidence on record.

Learned Advocate read out provisions of Section 88C(5) of the BT & AL Act, 1948 to submit that if the interpretation of provisions of Section 33B(1) is made as suggested by learned Advocate for the petitioners, Section 88C(5) would be redundant. Turning to the authorities relied on behalf of the petitioners, learned Advocate would submit those are quite distinguishable on facts. Issues involved therein were altogether different. Learned Advocate would further submit that Civil Application has been filed with a view to delay the hearing of the writ petition. The mutation entry sought to be taken on record would not have bearing on the outcome of this writ petition, since the Court cannot travel beyond the issue of limitation that was involved in the proceedings before the ALT. He, therefore, urged for rejection of the writ petition and also the civil application therein.

9. The decision granting certificate under Section 88C in favour of respondent No.1 has attained finality.

Part II-A of the BT & AL Act, 1948 speaks as :

*“(II-A) Termination of tenancy by landlords, and purchase by tenants, of lands to which section 88C applies.”*

Sections 33A and 33B of the BT & AL Act, 1948, read thus:

**33.A.** *For the purpose of sections 33 B and 33C,*

*(i) “certificated landlord” means a person who holds a certificate issued to him under sub-section (4) of section 88C [but does not include a landlord within the meaning of*

*Chapter III-AA holding a similar certificate]; and*

*(ii) “excluded tenants” means a tenant of land to which sections 32 to 32R (both inclusive) do not apply by virtue of sub-section (1) of section 88C.*

**33B.** *(1) Notwithstanding anything contained in section 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 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 1<sup>st</sup> 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).....  
.....”*

Respondent No.1 - landlady filed application under Section 33B of the BT & AL Act, 1948 on 12.06.1985, whereas, the application preferred by her under Sections 70(b) and 88C of the BT & AL Act, 1948, was partly allowed by the Tahsildar/Mamlatdar on 28.06.1980, granting her certificate under Section 88C. In view of the learned Advocate for the petitioner, the application under Section 33B(1) ought to have been moved within three months from the date of 28.06.1980 i.e. on or before 27.09.1980.

10. Section 88C of the BT & AL Act, 1948 reads thus:

**88C.** (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 and 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.]”*

11. The procedure for grant of certificate under Section 88C has been prescribed in Sub-Section (3) of Section 88C. It requires the Mamlatdar to hold an inquiry and decide whether the land leased is exempt under Sub-Section (1) from the provisions of Section 32 to 32R. Sub-Section (4) mandates the Mamlatdar to issue certificate in a prescribed form, when he decides that the land is so exempt. By virtue of Sub-Section (5) of Section 88C, the decision of the Mamlatdar regarding whether the land is exempt from the provisions of Section 32 to 32R is final, subject to appeal to the Collector.

12. A certificated landlord (in whose favour a certificate is issued under Sub-Section 4 of Section 88C) who *bona-fide* required such land for cultivating it personally is required to give a notice terminating the tenancy of excluded tenant and make an application for possession either before the first day of January 1962, or if an application under Section 88C is undisposed and pending on that date, then within three months of his receiving such certificate.

Before the Mamlatdar, the petitioners raised an issue as regards limitation of not preferring an application within a period of three months of the respondent No.1 receiving such certificate. As has already been seen above, the certificate under Section 88C is required to be issued in a prescribed format after the Mamlatdar gives his decision under Section 88C(3). It means giving the decision and issuing the certificate are two different acts/duties to be performed separately. In the case in hand, the Mamlatdar gave decision on 28.06.1980. Record and proceedings of the case before the Mamlatdar, is not before this Court. The judgment passed by the Mamlatdar in TNC Case No.117/1985 indicate that the date of issue of certificate is stated to be 17.07.1980. Within 1½ months thereafter, the respondent preferred appeal there against on 25.08.1980. The said appeal was decided on 26.03.1985. Thereafter, application under Section 33B was filed on 12.06.1985. Before the Mamlatdar, it was combined proceeding since the respondent had prayed for declaration that Chavdas was not tenant and in the alternative, the prayer was made for grant of certificate under Section 88C. The respondent had challenged the decision granting the certificate and refusing the prayer of declaration. Chavdas also preferred appeal against the decision granting certificate under Section 88C. The petitioners appear to have consciously not brought on

record anything to show whether there was a stay of execution of the decision granting certificate under Section 88C. The issue of limitation was raised before the authorities below by the petitioners herein. Necessarily, burden of proof that the notice under Section 33B and application under Section 29 had not been moved within limitation lies on them.

13. True, such application is required to be made within three months of receipt of the certificate. If the decision granting certificate under Section 88C is stayed by the Collector, necessarily the period of three months would stand extended and that period will have to be counted from the date on which the Collector, in appeal, would affirm the decision of the Mamlatdar granting certificate under Section 88C. Here, the Collector (SDO) upheld the decision of the Mamlatdar on 26.03.1985. The respondent issued notice on 16.05.1985 terminating the tenancy. The notice was replied on 23.05.1985. An application for possession was moved on 12.06.1985 i.e. well within three months from the date of the Collector (SDO) confirmed the decision of the Mamlatdar granting certificate under Section 88C. It is reiterated that the petitioners did not discharge their burden to prove that the application for possession was not preferred within a period of three months from the date of issue of certificate under Section 88C.

14. Learned Advocate for the petitioners relied on a Full Bench Judgment of this Court in the case of *Devidas More (supra)*. The observations made in paragraph 19 of the said judgment were pressed into service. The observations are :

*19. Now Section 33-B applies only to the certificated landlord and to the excluded tenant. Section 33-B intended to give special rights. The whole of Part II-A of Chapter III deals with the termination of tenancy by the landlord and purchase by the tenant of lands to which Section 88-C applies. Therefore the provisions of Section 33-A, 33-B and 33-C will have to be read in conjunction with the provisions of Section 88-C. Section 33-B confers special rights on certificated landlord to terminate tenancy for personal cultivation and it begins with the non-obstante clause "Notwithstanding anything contained in Sections 31, 31-A or 31-B". In other words, the normal right of a normal landlord to terminate a tenancy for personal cultivation is excluded and special rights are conferred on the certificated landlord to terminate the tenancy of an excluded tenant. This right, however, is subject to giving notice to the excluded tenant and by sub-section (3) of Section 33-B that notice has to be served on the tenant before the first day of January, 1962, where a certificate under Section 88-C of Section 33-B that notice has to be served on the tenant before the first day of January, 1962, where a certificate under Section 88-C has been obtained but if an application under Section 88-C is undisposed of and pending on that date then within three months of his receiving such certificate. A further restriction is laid down that after giving the notice to the excluded tenant the certificated landlord must make an application for possession before the first day of April 1962. The only exception to the limitation thus laid down is provided by sub-section (4) in the case of a minor, a widow and a person subject to any physical or mental disability. In other words, today the certificated landlord not under disability cannot make an application under Section 33-B. All the possible applications which fall to be considered today were those*

*which have been made before the first day of April, 1962, and no fresh applications can lie except in a very few cases perhaps contemplated in sub-section(4) of Section 33-B.”*

15. There can be no two views about the aforesaid observations. The fact is that the point that the proceedings under challenge in this writ petition were incompetent on account of having been initiated post first April, 1962, had not been raised before the Mamlatdar at the first instance, and in appeal before the SDO as well. The said issue has been raised before this Court for the first time. Since the said issue being a mixed question of fact and law, cannot be looked into in this writ petition. It is reiterated that the order granting certificate under Section 88C attained finality by virtue of the decision of the Apex Court in Appeal No.800-804 of 2000.

16. Moreover, the cases covered under Section 33B(3) are stated to be an exception to the mandate that the proceedings for possession have to be initiated on or before 01.04.1962. When the petitioners raised issue of limitation in preferring the application, it necessarily implies that they admit it to be a case governed by Section 33B(3)(b) of the BT & AL Act, 1948.

17. Reliance on the decision in the case of *Vishnu Deshpande (supra)* is also of no avail, since the issue involved therein was – what was the

material date for comparing the holdings of the landlord and tenant in a proceeding under section 33-B(5)(b) of the BT & AL Act, 1948.

18. In my view, if the Collector in exercise of his appellate jurisdiction grants stay to the decision of the Mamlatdar to issue certificate under Section 88C, then the period of limitation of three months prescribed for filing of application for possession would necessarily get extended until the decision of Collector.

19. So far as Civil Application No. 11248/2017 is concerned, the same is allowed only to the extent of prayer for production of the copy of mutation entry. Respondent No.1 appears to have sold her some other land. The decision granting Section 88C certificate in her favour has attained finality, long back. This writ petition is arising out of the decision passed in a proceeding i.e. application filed for obtaining possession of the land pursuant to grant of certificate under Section 88C of the BT & AL Act, 1948. This Court, therefore cannot enlarge scope of the issue involved in this writ petition. In my view, the mutation entry would have no bearing on the decision in this writ petition. What is to be seen is *bona-fide* requirement of land for cultivating it personally as on the date of the application.

20. Since the issue of limitation is a mix question of fact and law and has been decided first by the Mamlatdar and his decision having been affirmed in appeal by the SDO and in revision by the M.R.T., this Court is not inclined to interfere with the impugned order. In the result, writ petition fails, the same is therefore dismissed. Rule discharged.

**[ R. G. AVACHAT, J. ]**

At the request of learned counsel for the petitioners, interim relief to continue for next 14 weeks.

**[ R. G. AVACHAT, J. ]**

SMS