

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

WRIT PETITION NO.7723 OF 2022

Kondiba Dnyanu Dongale
(Since deceased through his heirs
and legal representatives)

...Petitioners/
Ori. Tenants

vs.

Kashibai Ramrao Nigade
(Since deceased through her heirs
and legal representatives)

...Respondents/
Ori. Landlords

Mr. Dilip Bodake, for the Petitioners.
Mr. Sandesh Patil a/w. Mr. Niranjana Bhavake i/b. Bhavake &
Associate, for Respondent Nos. 1 and 2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : APRIL 12, 2023
PRONOUNCED ON : JUNE 08, 2023

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally at the stage of admission.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 22nd February, 2022 passed by the learned Member, Maharashtra Revenue Tribunal at Pune in Revision Application bearing Nos. NS/X/1/2020, NS/X/2/2020, NS/X/3/2020 and NS/X/

4/2020 whereby the Revision Applications preferred by the petitioners came to be dismissed affirming the order dated 14th July, 2020 passed by the SDO, Karad, Dist. Satara in Tenancy Appeal No. 88 of 2018 which, in turn, had affirmed the order dated 5th May, 2018 passed by Tahsildar-ALT, Karad in Tenancy Case No. 222 of 2017 thereby allowing the application of the respondents/ landlords for delivery of the possession of the agricultural lands bearing Gut Nos.27/1, 29 and 30/3 (Survey No. 180, 181 and 182) situated at Mangwadi, Tal. Karad, Dist. Satara (the subject lands) under section 33B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (the Act, 1948).

3. Though the instant petition also presents a usual feature of multiple rounds of litigation before the authorities under the Act, 1948 yet, shorn of unnecessary details, the background facts can be stated as under:-

a) Smt. Kashibai Nigade, Muktabai Deshmukh, Ansuya Ghadge, the predecessor in title of the respondents, who claimed to be the owners of the subject land preferred applications being Tenancy Case Nos. 331, 332, 336 of 1961 under section 88C of the Act, 1948 for grant of certificate of exemption from the application of the provisions of the Act, 1948 in respect of the subject lands on the

ground that lands did not exceed economic holding and their total income, including the rent of the subject lands, did not exceed Rs. 1,500/- ALT by an order dated 7th December, 1963 granted exemption certificate to above named landlords in respect of the subject lands. Armed with the said certificate, the landlords filed Tenancy Case Nos. 44, 45 and 46 of 1964 under section 33B of the Act, 1948 seeking possession of the subject lands for personal cultivation asserting that the landlords' bonafide required the subject lands.

b} By judgment and order dated 5th February, 1964, the ALT allowed the applications and ordered the tenants to deliver the possession of the subject lands to the landlords. The tenants preferred an appeal being Tenancy Appeal Nos. 19 of 1967 and 68 of 1967 before the Sub Divisional Officer, Satara. By a judgment and order dated 31st January, 1991 the appeals came to be dismissed affirming the orders passed by ALT on 5th February, 1964.

c} A Revision Application being Application No. NS/IV/2/1991 was filed by the tenants before the Maharashtra Revenue Tribunal, Pune. By a judgment and order dated 2nd August, 2017 the learned Member, MRT, Pune was persuaded to allow the revision and remit the matter back to ALT to decide it afresh on the point of economic holding of the legal representatives of the landlords and income of

the respective legal representatives of the landlords in the light of the limit prescribed under section 88C of the Act, 1948. The learned Member was of the view that since all 3 certificated landlords died pending the lis and the applications for possession of the subject lands were being prosecuted by the legal representatives, in view of the judgment of the Supreme Court in the case of **Dinkar Maruti Jadhav vs. Nivrutti Gangaram Pawar**¹ an inquiry as to the economic holding and income of the legal representatives, who were prosecuting the application, was warranted.

d} Upon remand, ALT was again persuaded to allow the application and direct the tenants to deliver the possession of the subject lands under section 33B read with 29 of the Act, 1948. ALT was of the view that the certificate under section 88C came to be granted in the light of the then prevailing circumstances and income of the landlords and thus it was not permissible to delve into the legality and validity of the certificates after lapse of more than 56 years.

e} The tenants preferred an appeal, being Appeal No. 88 of 2018, before the SDO. In Appeal, the SDO found no reason to interfere with the order passed by the ALT and dismissed the appeal.

f} Being aggrieved, the tenants preferred the revisions before the MRT, Pune. By the impugned judgment and order the learned

¹ (2008) 5 SCC 489.

Member, MRT declined to interfere with the orders passed by the authorities below. The learned Member, concurred with the view of ALT that the certificate under section 88C came to be granted after requisite inquiry and satisfaction and thus it was not open to a fresh scrutiny. The learned Member, MRT distinguished the judgment in the case of **Dinkar Jadhav** (supra) on the ground that ALT had ordered the delivery of possession of the subject lands to the landlords on 7th October, 1965 during the life time of the landlords and, therefore, it was not warranted to again inquire into the aspect of the economic holding and the annual income of the legal representatives of the landlords, who were prosecuting the application for possession. Hence, this petition by the tenants.

4. I have heard Mr. Dilip Bodake, the learned counsel for the petitioners and Mr. Sandesh Patil, the learned counsel for the respondent Nos. 1 and 2. The learned counsel took the Court through the pleadings and orders passed by the authorities below and the documents pressed into service on behalf of the parties.

5. A core question that arises for consideration in this petition is whether the aspect of economic holding and annual income of the legal representatives of the certificated landlord (under section

88C) are required to be inquired into in the event the certificated landlord passes away during pendency of the proceedings and before delivery of possession under section 32B of the Act, 1948.

6. Mr. Bodke, learned counsel for the petitioners strenuously submitted that aforesaid question is required to be answered in the affirmative if the object of the Act, 1948 is to be advanced. Amplifying the submissions, Mr. Bodke would urge that the bonafide requirement of the landlords for personal cultivation of the land must subsist till the final adjudication. The provisions contained in section 88C of the Act 1948 are enacted with a definite object of protecting the interest of landlord, whose holding does not exceed the economic holding and annual income is less than the prescribed threshold. If this object is kept in view, according to Mr. Bodke, the legal representatives of the certificated landlord who pursue the claim for the possession of the land under section 32B must fulfill the aforesaid criteria, lest the ameliorative provisions of the Act, 1948 would become redundant.

7. Mr. Bodke urged, with a degree of vehemence, that the learned Member, MRT while remitting the matter back to ALT had correctly appreciated the import of the decision of the Supreme

Court in the case of **Dinkar Maruti Jadhav** (supra) and specifically directed the ALT to conduct an inquiry to ascertain both the aspects of economic holding and income. However, the ALT and Sub Divisional Officer did not advert to those aspects at all and proceeded to pass the order under section 32B without holding such inquiry afresh. In the impugned judgment and order the learned Member, MRT also failed to appreciate the import of the said judgment in the case of **Dinkar Maruti Jadhav** (supra) and correct the errors which the authorities below had fallen in.

8. Mr. Bodke would urge that the proposition that legal representatives of certificated landlords are required to establish their bonafide requirement on the date they were brought on record, has been well settled by a number of judgments of this Court even before the pronouncement in the case of **Dinkar Maruti Jadhav**(supra). Reliance was placed on the judgment of a learned single judge in the case of **Nivrutti Gangaram Pawar vs. Dinkar Maruti Jadhav**² (which culminated in the 3 judge Bench judgment of the Supreme Court in the case of **Dinkar Jadhav** (supra)) and a judgment of a learned single judge of this Court in the case of **Aba Krishna Lokare & Anr. vs. Gopal Kashinath Vategaonkar and Anr.**³

2 2004(2) Mh.L.J. 674.

3 2005(2) ALL Mr 534

9. In view of aforesaid position in law, according Mr. Bodke, the authorities under Act, 1948 have committed a grave error in law in dispensing with the statutory requirement on the premise that certificate under section 88C of the Act, 1948 came to be granted prior to 50 years and the said issue could not be opened again. Taking the Court through the copies of the record of the right of the petitioners/ tenants and respondents/landlords, Mr. Bodke would urge the holding of the legal heirs of the certificated landlords exceed the economic holding and their incomes are also far in excess of the threshold fixed under section 88C of the Act, 1948.

10. Per contra, Mr. Sandesh Patil, learned counsel for the respondents/ landlords, stoutly submitted that the tenants are making an undisguised attempt to assail the order granting certificate under section 88C, which was never challenged and attained finality. Since, the said order granting exemption certificate under section 88C attained finality, it was not open to the tenant to question the correctness thereof in a proceedings for delivery of possession under section 33B of the Act, 1948. Mr. Patil would urge that the submissions sought to be canvassed on behalf of the tenants that the economic holding and income below the threshold are required to be proved again are based on a complete

misreading of the provisions of the Act, 1948 and the judgment of the Supreme Court in the case of **Dinkar Maruti Jadhav** (supra). Mr. Patil made an earnest endeavour to draw home the point that the decision in the case of **Dinkar Maruti Jadhav** (supra) does not lay down in no uncertain terms that such an inquiry is warranted afresh whenever the legal representatives seek possession of the land on the strength of a certificate granted in favour of their predecessor in title, who has passed away. According to Mr. Patil, the observations in **Dinkar Maruti Jadhav** (supra) were in the context of the distinction between section 33B and 88C of the Act, 1948 and the different spheres in which they operate. This position, Mr. Sandesh Patil would urge, has been elucidated by a learned single judge of this Court in the very case of **Nivrutti Gangaram Pawar (since deceased) and Ors. vs. Dinkar Maruti Jadhav**⁴.

11. Mr. Patil submitted that the authorities below have properly appreciated the question in controversy and justifiably repelled the endeavour on the part of the tenants to reopen the legality and validity of the certificates issued under section 88C. Thus, no case is made out for interference with the concurrent finding throughout recorded by the authorities below, in exercise of extraordinary writ jurisdiction. Mr. Patil would further urge that the proceedings for

4 2012(1) ALL MR 850.

regaining the possession of the subject land which were commenced in the year 1962 deserves a quietus after a litigation span of 60 years.

12. To appreciate the rival submissions canvassed across the bar, it may be apposite to have a brief resume of the provisions of the Act, 1948 which bear upon the determination of the core controversy.

13. To start with, the import of the terms, “economic holding”, “certificated landlord” and “excluded tenant” deserves to be noted.

Section 6 of the Act defines an “economic holding” as under:-

Sec.6 – Economic holding -

(1) For the purposes of this Act, an economic holding shall be,-

- (a) 16 acres of jirayat land, or
- (b) 8 acres of seasonally irrigated land, or paddy or rice land, or
- (c) 4 acres of perennially irrigated land.

(2) Where the land held by a person consists of two or more kinds of land specified in sub-section (1), an economic holding shall be determined on the basis applicable to the ceiling area under sub-section (2) of section 5.

[Explanation - In calculating an economic holding, warkas land shall be excluded.]

14. Section 33A defines the term “Certified Landlord” and “Excluded Tenant” as under:-

Sec.33A. For the purposes of sections 33B 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 tenant” 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.

15. It is trite the Act, 1948 is beneficial legislation and has been enacted to confer the protective rights on the tenants of agricultural lands. A prime protection given by the Act, 1948 is the deemed purchase of the agricultural land held by a tenant from the landlord free from all encumbrances on the 1st April, 1957 (tiller’s day). Such deemed purchase is subject to the provisions of section 32 and the succeeding sections i.e. 32A to 32R. The right of the landlord to terminate the tenancy is regulated by section 31 of the Act, 1948. It enables a landlord to terminate the tenancy of his tenant of an agricultural land for personal cultivation or for non-agricultural purpose. Sec.31A and 31B incorporate the conditions subject to which the tenancy shall be terminated and enumerate the instances in which the tenancy cannot be terminated under section 31. Simultaneously the act preserves few rights of the landlords to terminate the tenancy, for instance sections 14, 31, 43-1B. A right to terminate tenancy is also embodied, under certain circumstances, in section 88C r/w. section 33B of the Act, 1948.

16. Section 88C of the Act, 1948 reads as under:-

88C. Exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs. 1500/-:-

(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 S 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].

17. Plain reading of the aforesaid provision would indicate that a landlord would be exempted from the operation of the provisions contained in section 32 to 32-R (I) if such land does not exceed an economic holding and the total annual income of the landlord, including the rent of such land, does not exceed Rs. 1500/-, (ii) the exemption is subject to the provisions of section 33A, 33B, 33C, and (iii) the exemption cannot be availed of by a person who holds such

land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

18. Thus the Tribunal under the Act, 1948 would be required to pose unto itself two questions, namely, whether the land does not exceed the economic holding and whether the total income of the landlord, including rent of such land, does not exceed Rs. 1500/-. If the ALT holds in the affirmative, sub section (4) of section 88C enjoins him to issue a certificate in the prescribed form to the landlord, who, thereupon, becomes a certificated landlord. An appeal is provided under sub section (5) to the Collector and, subject to such appeal, the decision of the ALT has been clothed with finality.

19. Section 33B confers a special right on the certificated landlord to terminate the tenancy for personal cultivation. Under sub section (1) of section 33B a certificated landlord who bonafide requires the land, in respect of which certificate has been granted, for personal cultivation has to terminate the tenancy of excluded tenant by giving him notice and making an application for possession. The period within which the notice envisaged by sub section (1) is to be served is indicated in sub section (3). Sub

section (5) of the section 33B incorporates the conditions subject to which the right of the certified landlord can be exercised. Sub sections (6) and (7) of section 33B essentially incorporate consequential provisions.

20. It would be contextually relevant to note that the section 33C envisages deemed purchase of land covered by the certificate under section 88C by the excluded tenant in the event of default on the part of the landlord to give notice under sub section (3) of section 33B or to make an application post notice, under section 29, for possession of the land.

21. A conjoint reading of the aforesaid provisions leads to a legitimate inference that these provisions have been enacted with the object of providing relief to a class of landlords who hold a relatively small tract of land and do not have adequate income so as to enable them to cultivate the land personally and supplement their income. The ameliorative provisions qua the landlord are in a sense an inroad into the otherwise protective umbrella of the provisions for the tenant contained in the Act, 1948 and deserve to be given due weight, wherever applicability of these provisions is unquestionably made out. In that event, an approach based on an

overriding beneficial nature of the provisions of the Act, 1948 qua the tenants may not advance the intendment of the legislature in enacting the special provisions.

22. Indisputably, in the case at hand, the conditions stipulated by sub section (1) of section 88C were fulfilled by the deceased landlords. In fact, the order granting the certificates dated 7th February, 1963 attained finality as it was not appealed against, as envisaged by sub section (5) of section 88C. What was challenged by the tenants was the order to deliver the possession under section 33B after the certificated landlord terminated the tenancy and applied for delivery of possession under section 29 of the Act, 1948 i.e. order dated 7th October, 1965. As noted above, the appeal came to be decided after more than 25 years on 31st January, 1991 and the revision there against again after 25 years of the decision in the appeal. In the meanwhile, the certificated landlord passed away and their legal representatives professed to prosecute the claim for possession. In this context, the question arises as to whether the test of economic holding and annual income are to be satisfied qua the legal representatives who seek the possession ?

23. In the case of **Moreswar Balkrishna Pandare vs. Vithal**

Vyanku Chavan and Others⁵ a two judge Bench of the Supreme Court was confronted with the question as to whether the application of the tenants under section 88-D(1)(iv) for revocation of certificate granted under section 88C(4) filed after termination of the tenancy by issuing notice and filing of an application for possession of the land by the landlord under section 33B, read with 29, was maintainable. While answering the aforesaid question to the effect that after a certificated landlord has complied with the provisions of section 33B, within the specified time, the application of the excluded tenant under section 88-D(1)(iv) for revocation of certificate cannot be entertained, the Supreme Court expounded the interplay between the provisions contained in sections 88C and 33B of the Act, 1948.

24. The observations in paragraph 25 to 27 are instructive. They read as under:-

25] From the examination of the provisions of Section 88C and Section 33B, it is incontrovertible that they are enacted to give relief to landlords having small parcel of land to enable them to cultivate the land personally and augment their meager income. These provisions have, therefore, to be so interpreted as to make them meaningful and not to render them illusory.

26] A combined reading of Sections 33B and 33C discloses that for purposes of terminating the tenancy of an excluded tenant both giving of notice and filing of an application for possession, are necessary. The

5 (2001) 5 Supreme Court Cases 551.

certificated landlord should take both the steps either within the dates specified therein or within three months from the grant of exemption certificate under Section 88C(4). In the event of the certificated landlord not taking the steps, as noted above, the deeming provisions of Section 33C will be attracted and the excluded tenant will be deemed to have purchased the land free from all encumbrances thereon if such land is cultivated by him personally. Be it noted that the provisions of Section 33C override the provisions of Section 88C.

27] From the above discussion, it appears to us that where the landlord has complied with the requirements of Section 33B, by giving notice and applying for possession within the statutory period of three months after receipt of certificate under Section 88C, the right of the landlord crystallises and the exemption certificate gets exhausted, therefore, thereafter the excluded tenant cannot seek revocation of exemption certificate granted under Section 88D(1)(iv). The contention that application for revocation of exemption certificate under Section 88D will be maintainable till the order is finally passed by the Mamlatdar on the application for possession of the land, cannot be accepted for reasons more than one. First, the provisions of Sections 88C, 33B and 88D(1) cannot be so construed as to lead to a situation where an excluded tenant by seeking revocation of the exemption certificate sets at naught the benefit conferred on the certificated landlord who has complied with the provisions of Sections 33B as it will frustrate the provisions of Sections 88C as well as 33B for no fault of the certificated landlord; where, however, the certificated landlord fails to give notice in writing within the prescribed time or having thus given notice, omits to make application for possession of the land under Section 29, within the specified period, the certificated landlord loses the benefit of the exemption certificate as the right of the excluded tenant to be a deemed purchaser will get revived under Section 33C. Secondly, when to realize the fruits of the certificate given under Section 88C(4) the certificated landlord has taken steps under Section 33B read with Section 29 and has done what all could be expected of him delay in disposal of such an application by the Mamlatdar, cannot be allowed to prejudice the interest of the certificated landlord. Thirdly, a valuable right of certificated landlord cannot be allowed to be defeated with reference to an

uncertain event i.e. the date of passing of order by the Mamlatdar on the application under Section 29, because the period for disposal of the application may vary from a day to a decade or even more. If two landlords similarly situated apply for possession before the Mamlatdars in two different areas under the said provisions or even before the same Mamlatdar and in one case the order is passed immediately, no application under Section 88D(1)(iv) of the Act could be entertained against him but in the other case if the proceedings are kept pending for some years, for no fault of the certificated landlord, his position would be vulnerable and the application for revocation of certificate under Section 88D(1)(iv) would be maintainable against him. It would not be just and reasonable to adopt such an uncertain criteria. And fourthly, it would not be in conformity with the scheme of the said provisions to prescribe a criteria which yields different consequences in similar cases depending upon the date of passing of the order by the Mamlatdar. In our view, it will, therefore, be just and reasonable to hold that after a certificated landlord has complied with the provisions of Section 33B within the specified time, the application of the excluded tenant under Section 88D(1)(iv) for revocation of certificate cannot be entertained.

25. In **Dinkar Maruti Jadhav** (supra) which arose out of the judgment of a learned single judge of this Court in the case of **Nivrutti Gangaram Pawar** (supra), a two judge bench of the Supreme Court doubted the correctness of some of the observations made in **Moreswar Balkrishna Pandare** (supra) and the matter came to be referred to a larger Bench. Thereupon in **Dinkar Maruti Jadhav** (supra), a three judge Bench of the Supreme Court observed that the essence of the judgment in **Moreswar Balkrishna Pandare** (supra) was that once the action under section 33B is taken, section 88C of the Act, 1948 has no relevance.

26. Explaining the import of the ratio of **Moreshwar Balkrishna**

Pandare (supra), the three judge Bench clarified as under:-

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

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.

4. The decision in Moreshwars 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.

27. After the matter came to be remitted to this Court, a learned single judge of this Court in the case of **Nivrutti Gangaram Pawar** (supra), decided on 13th December, 2011, after an analysis of the judgments of the Supreme Court in the cases of **Moreswar Pandare** (supra), the three judge Bench decision in **Dinkar Jadhav** (supra) and the judgments of this Court, including the Division Bench judgment in the case of **Maruti Namdeo Gade vs. Dattatraya Vishnu Maval**⁶, observed that though the judgment in the case of **Moreswar Balkrishna Pandare** (supra) was explained by the three judge Bench in the case of **Dinkar Jadhav** (supra), the ratio of the judgment in the case of **Moreswar Balkrishna Pandare** (supra) is not diluted.

28. The observations of the learned single Judge in paragraphs 17 and 18 read as under:-

17] In my opinion, right created by these sections is a peculiar rights given to the owners of very small pieces of lands and with limited income and this was a conscious inroad in the rights of the tenant to become a deemed purchaser. It is however not possible to accept the submission that the heir of certificated landlord who wants to be beneficiary of such inroad in the rights of the tenant must establish the strict requirement of section 88C and must also have income less than Rs. 1,500/-. If such a view is taken, that would be clearly contrary to the ratio of Judgment in Moreswar, 2001(3) ALL MR 499 (S.C.) (supra), which according to me, is not diluted by the Judgment in the case of Dinkar Jadhav, 2008 (2) ALL

6 1977 Mh.L.J.848

MR 331 (S.C.) (supra). As held by the Supreme Court in *Dinkar Jadhav*, 2008 (2) ALL MR 331 (S.C.) (supra) Section 33B and 88C operate in different fields. The tenant can oppose the proceedings under section 33 only by raising defences available in that section namely by contending that the landlords (it will include the heir of the landlord) requirement is not bona fide or that if an order of eviction is passed, the same would result in creation of a situation where holding of the landlord would be more than the holding of the tenant. The observations of the Supreme Court in paragraph-3 of the Judgment of *Dinkar Jadhav* (supra) to the effect that with the death of the original landlord, the question of economic holding and the income will also become relevant, will have to be construed in the context of the earlier statement of law in *Moreswar* (supra) as also in *Dinkar Jadhav* (supra) that section 33 B and 88 C operate in different fields. This is clear from the further sentence in the Judgment in the case of *Dinkar Jadhav* (supra) which states that in Section 33-B income and/or economic holding concept is not there.

18] It is therefore not possible to agree with Mr. Karandikar's submission that the real ratio of the Supreme Court Judgment would mean that the heir of the certificated landlord has to show that his income is less than Rs. 1,500/- per annum. Accepting this argument would completely nullify the legislative intent behind enacting a beneficial provision for a very small and poor land owner whose interests are sought to be protected vis- a - vis his tenant holding larger area of land than held by the landlord which is precisely the case in hand.

29. This Court has thus held that the observations of the Supreme Court in paragraph 3 of the judgment in the case of **Dinkar Jadhav** (supra) that with the death of the landlord the question of economic holding and the income would also become relevant will have to be construed in the context of earlier statement of law in **Moreswar**

Pandare (supra) and also in **Dinkar Jadhav** (supra) that section 33B and 88C operate in different fields. Support was sought to be drawn to this reasoning from the last sentence in paragraph 3 in the judgment of the Supreme Court in the case of **Dinkar Jadhav** (supra) that in section 33B income and/or economic holding concept is not there.

30. If the aforesaid enunciation of law is considered in the light of the scheme of the Act, 1948 which emerges from the combined reading of the provisions contained in sections 88C, 33B and 33C of the Act, 1948 the consideration which weigh in deciding the application for grant of certificate under section 88C and an application for delivery of possession under section 33B appear to be materially distinct. To entertain an application under section 33B of the Act, 1948 a certificate under section 88C is a jurisdictional condition. However, it does not imply that the conditions which a landlord is required to satisfy for grant of certificate under section 88C need to be complied with by the legal representatives of the certificated landlord as well, till the final delivery of the possession of the leased land. It is in this context, the Supreme Court has held that section 88C and 33B operate in different spheres.

31. The matter can be looked at from another perspective. Grant of certificate under section 88C would not entitle the certificated landlord to seek possession at any point of time. The recourse to section 33B could be made by a certificated landlord either before the first day of January, 1962 or within three months of the certificated landlord receiving certificate under section 88C, if the application for such certificate was pending before the Tribunal on 1st January, 1962. The necessary corollary is that an application for grant of certificate under section 88C could be made only before 1st January, 1962 and if pending and undecided by that date, the possession could be sought on the basis of subsequently granted certificate only within three months thereof by complying with the requirements of sub section (3) of section 33B. Thus, the income limit of Rs. 1500/- was required to be evaluated as the income at that point of time. The upper threshold of Rs. 1500/- was thus relative and time sensitive.

32. The submission on behalf of the petitioners that legal representatives of the deceased landlord must also satisfy the said income criteria on the day they are brought on record in proceedings under section 33B of the Act, 1948 loses sight of this crucial aspect. Bonafide of their claim thus cannot be legitimately

judged by applying the standards prescribed by the legislature as of 1st January, 1962, without completely ignoring the time value of money. I am, therefore, not persuaded to accede to the submission on behalf of the petitioners that the authorities below committed error in not embarking upon an inquiry afresh into the income of the legal representative of the landlord. The aforesaid analogy by and large may govern the challenge on the ground of the economic holding being exceeded on account of the land which the landlord or the legal representatives happen to hold on the date the authorities under the Act, 1948 are called upon to determine the aspect of delivery of possession.

33. Nonetheless, the aspect of the holding of the landlord as on the date the application for possession under section 33B is to be determined can not be said to be wholly irrelevant for determination of the application under section 33B of the Act, 1948. It is imperative to note that a landlord having a small holding and meager income has been extended the benefit of seeking the possession of the land for personal cultivation. Test that needs to be satisfied by a certificated landlord is that the landlord bonafide requires leased land for cultivating it personally. Bonafides are required to be proved so also requirement for personal cultivation.

34. Grant of certificate under section 88C, if properly construed, satisfies a prime jurisdictional condition for recovery of possession of the land under section 33B. However, that is not the only condition. The certificated landlord has to satisfy that he required the land bonafide for personal cultivation. The certificated landlord is further enjoined to satisfy the conditions as to terminating the tenancy by giving notice in writing and making an application to the ALT for possession within the time stipulated under sub section (3) of section 33B of the Act. Thirdly, under sub section (5) of section 33B the right of certificated landlord to terminate the tenancy is subject to further conditions. Clause (b) of sub section (5) of section 33B reads as under:-

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 Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

35. The aforesaid clause (b) of sub section (5) of section 33B thus brings in the element of equalization of the holding as between the landlord and the tenant. The aspect of the holding of the landlord as of the date the question of delivery of possession under section 33B arises thus has a significant bearing on the entitlement of the

certificated landlord to the possession of the land, especially the extent thereof. Though the inquiry need not necessarily be to ascertain as to whether the holding of the landlord or his legal representative exceeds the economic holding, which could be properly determined under section 88C of the Act, 1948, yet the aspect of the extent of the holding becomes significant from the point of view of satisfaction of the statutory conditions stipulated under section 33B(5)(b) of the Act.

36. It is imperative to note that in the case of **Nivrutti Pawar** (supra) this Court was not called upon to examine the challenge in the backdrop of the extent of the land held by the landlord. It was conceded on behalf of the tenant therein that the second requirement of economic holding could be fulfilled since leased land did not exceed the economic holding.

37. In fact, this Court in the case of **Nivrutti Pawar** (supra) had adverted to the question of equalization of holding and, in the light of the undisputed facts in the said case, it was found that even on the question of equalization of holding was required to be recorded in favour of the landlord therein. The observations in paragraph 21, make this position explicitly clear.

21] This leaves me to decide the next question regarding equalization of holding as mandated by sub-section 7 of section 33B. That exercise is quite easy in view of the admitted facts. The total holding of the Respondent including tenanted area of 2 Acres and 9 Gunthas is about 15 Acres. Even if an order of eviction is passed as was rightly passed by the Mamlatdar in this case, the Respondent tenant will still continue to hold 12 Acres 31 gunthas of land whereas even after resumption of the tenanted land, the total holding of the landlord will be only 3 Acres 14 gunthas. Hence, even on the question of equalization, the finding has to be in favour of the petitioner landlord.

38. This question of equalization of holding, however, squarely arose for consideration in the case of **Hariba Keshav Barbole vs. Motibai Deepchand**⁷. A Division Bench of this Court while interpreting the provisions of section 33B of the Act enunciated that sub section (5) lays down the conditions subject to which certificated landlord is entitled to terminate tenancy. Sub clause (b) (extracted above) relates to equalization of holding of certificated landlord and excluded tenants. It provides that the landlord shall be entitled to terminate 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 total an equal area for personal cultivation. The Division Bench considered the question as to which ought to be the relevant date for applicability of sub section (5) of section 33B in case of legal representatives

⁷ 1947 Mh.L.J. 823.

brought on record in place of original landlord. It was answered as under:-

13] Now, the further question for consideration would be which is the relevant date for the applicability of sub-section (5) (b) of S. 33-B in the case of such an heir brought on record in place of the original applicant landlord? Here again, so far as the heir of the landlord is concerned, it would be necessary to fix the same date, that is, the date when the is brought on record as the heir of the deceased. It cannot be said that the holding of the heir on the date of the original application should be considered for the purpose of equalisation between the tenant and the heir under sub-section (5) (b) of S. 33-B. It is true that in a majority of cases, the heirs of the deceased who may be the widow and the sons would not be financially in a better position than the original landlord, nor would they have any other land than the one which the original applicant had on the date of the application. In such cases, it would not make any practical difference if their holding on the date when they were brought on record is taken into account. In such cases, they almost stand in the shoes of the original landlord, and the facts necessary for equalisation of holdings between the landlord and the tenant under Section 33-B sub-section (5) (b) would not differ. However, the matter would stand on a different footing if the heirs have other land before they are brought on record as the heirs of the original applicant. As the heir gets the right to prosecute the original application and gets possession on establishment of certain facts, it is but proper and just to ask him to establish all the facts on the date when he comes on the scene, that is, when he was brought on record as the heir of the original applicant. Such an interpretation would be consistent. Such an interpretation would be consistent with the policy and object of the act, because this would not deprive the tenant of his rights any more if the original landlord was alive. It is only when the position is altered by reason of the fact that the heir has got other land or source of income that his rights are curtailed. Surely, the heir cannot claim any better position than the original applicant by not considering the total holding on the date of his being brought on record. We,

therefore, hold that the legal heir who is brought on record during the pendency of the proceedings, must establish his own bona fide requirement as on the date he comes on record, as that would be the date for him for all practical purposes to establish his case to recover possession. We also hold that the holding of the heir on the date when he is brought on the record needs to be considered for the purposes of equalization of holdings of the tenant and the legal heir of the landlord.

14] Now the next point for consideration is about the position of the tenant or his legal representative brought on record in case of his death during the pendency of the proceedings. There is no reason why the death of the original landlord should affect the right of the tenant for equalisation of the land under Section 33-B (5) (b). His holding for comparison should, therefore, be as on the date of institution of the original application. It would be equally logical to hold that the death of the tenant during the pendency of the proceedings should not have any effect on the date for the purpose of equalisation of holding, and the date of the original application by the certificated landlord or by his heir, where the certificated landlord died without making an application, would be the relevant date for consideration of the tenant's holding. This is particularly so, because once an application is filed against him, the date of filing the same automatically becomes the date relevant for consideration of his holding to be taken into account for the purpose of equalisation under Clause (b) of S. 33-B (5) and this date does not appear to be varying with change in circumstances.

39. In case at hand, the authorities below have proceeded on the premise that since the aspects of economic holding and income of the landlord have been conclusively determined while granting certificate under section 88C, it was not open to delve into those aspects again while considering the application for possession u/sec.33B. To the extent the authorities hold that the legality and

validity of the certificate under section 88C can not be examined afresh on the touchstone of the compliance of conditions of economic holding and income limit prescribed therein, the said view, in the light of the aforesaid enunciation of law, cannot be faulted at.

40. However, I find it difficult to accede to the broad proposition that the extent of the holding of the legal representatives is of no salience at all while deciding an application under section 33B. Such proposition has the propensity to render the conditions stipulated in section 33B wholly redundant. It would imply that once the certificate under section 88C is granted, the grant of possession under section 33B would be a matter of course. Such a view cannot be taken without doing violence to the plain language and conditions stipulated in section 33B of the Act.

41. The authorities have not at all adverted to the question as to whether the conditions stipulated under sub section (5) of section 33B of the Act have been fulfilled. Since the landlords have passed away and their legal representatives have been brought on record in view of the decision of the Division Bench in the case of **Hariba Keshav Barbole** (supra), the question of satisfaction of the

conditions under sub section (5) of section 33B is required to be determined in the light of the holding of the legal representative, as on the date they were brought on record.

42. Mr. Bodake, made an endeavour to persuade the Court to delve into the factual aspects of the holding of the legal representatives of the landlords and that of the tenants/petitioners, by inviting the attention of the Court to the copies of the record of right which evidence the holding. By its very nature, the determination of the extent of holding of the legal representatives of the landlords and that of the petitioners and the further aspect of equalization, if required to be resorted to, are rooted in facts. Therefore, it would be apposite to remit the matter to the authorities under the Act, 1948 to consider and determine the issue of compliance of the conditions stipulated under section 33B of the Act, 1948.

43. Since there have been, in effect, two rounds of litigation and more than 60 years have elapsed since the institution of the proceeding to grant certificate under section 88C of the Act, 1948, in my view, it may not be appropriate to remit the matter to ALT, with scope for further rounds of litigation. In the circumstances of the case, it may be expedient in the interest of justice to direct the

MRT to examine the issue of compliance of the conditions stipulated under section 33B of the Act, 1948 and pass an appropriate order. It is hereby made clear that the issue of economic holding and income of the legal representatives shall not be further examined and the matter is remitted to the MRT only for the purpose of determination of the compliance of the conditions stipulated in section 33B of the Act, 1948 and pass appropriate orders.

44. The conspectus of the aforesaid consideration is that the petition deserves to be partly allowed.

Hence, the following order.

ORDER

1] The petition stands partly allowed.

2] The impugned order dated 22nd February, 2022 passed by the learned Member, Maharashtra Revenue Tribunal at Pune in Revision Application bearing Nos. NS/X/1/2020, NS/X/2/2020, NS/X/3/2020 and NS/X/4/2020 stands quashed and set aside.

3] Revision Application Nos. NS/X/1/2020, NS/X/2/2020, NS/X/3/2020 and NS/X/4/2020 stand remitted to Maharashtra Revenue Tribunal at Pune, for afresh decision only on the point of

compliance of the conditions stipulated under section 33B of the Act, 1948 and to pass appropriate orders in accordance with law.

4] The learned Member, Maharashtra Revenue Tribunal at Pune is requested to decide the Revision Applications in the light of the observations contained in paragraph Nos. 41 to 43 of this judgment as expeditiously as possible and preferably within a period of three months from the date scheduled for the appearance of the parties.

5] The parties shall appear before the Maharashtra Revenue Tribunal at Pune on 26th June, 2023.

6] Rule made absolute to the aforesaid extent.

7] In the circumstances of the case, there shall be no order as to costs.

(N. J. JAMADAR, J.)