

Baban Krishnarao Misal Vs. Narayan Yeshwant Godse and ors.

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Court : Mumbai

Decided On : Aug-28-1971

Reported in : AIR1972Bom375; (1972)74BOMLR310; ILR1972Bom1284; 1972MhLJ560

Judge : Wagle, J.

Acts : [Bombay Tenancy and Agricultural Lands Act, 1948](#) - Sections 33-A and 33-B(4)

Appeal No. : Special Civil Appln. No. 2076 of 1967

Appellant : Baban Krishnarao Misal

Respondent : Narayan Yeshwant Godse and ors.

Advocate for Def. : A.V. Datar, Adv.

Advocate for Pet/Ap. : M.G. Chaudhary, Adv.

Judgement :

ORDER

1. The short point that arises in this petition is whether the petition for possession under Section 33 - B of the Tenancy Act made by the petitioner was barred by limitation. The petitioner was a minor when the application under Section 88 - C for exemption was made by him on September 31, 1961. The order that he was

entitled to a certificate was made on July 31, 1963. The birth - date of the petitioner was June 12, 1945 and he attained majority on June 12, 1963. The certificate was in fact issued on August 30, 1963.

2. In pursuance of the certificate the petitioner served a notice based upon Respondents 1 to 8 as required under Section 33 - B (3) of the Tenancy Act. Thereafter on May 15, 1964 the instant proceeding under Section 33 - B was initiated. On February 23, 1965 this application was dismissed on the ground that it was barred by limitation. This decision of the Tenancy Aval Karkun was confirmed in appeal by the Deputy Collector and in revision by the M. R. T. The instant petition is filed for quashing the three decisions of revenue forums.

3 Mr. Choudhary appearing for the petitioner contended that the starting period of limitation under Section 33 - B for minors as provided for in Section 33 - B (4) is within one year from the date on which the minor attains majority. the minor attained majority on June 12, 1963 and the notice was served and the application under Section 33 - B were both made within one year from the date the minor attained majority. The fact that the petitioner was a minor when the proceedings under Section 88 - C were instituted, cannot be disputed.

4 Mr. Choudhary's contention was that since the application under S. 88 - C was made by the present petitioner when he was a minor, he becomes a minor certificate holder when ultimately the certificate is granted. This conclusion is irrespective of the fact whether the order passed in the application under S. 88 - C for the grant of the certificate has been passed after the minor attains majority. According to Mr. Choudhary the final order passed in the proceedings under S. 88 - C relates back to the date when the application is made. The application under Section 88 - C was made by the petitioner on September 11, 1961 when he was a minor. If, therefore, this argument is accepted that the last order relates back to the initial making of the application, then certainly it could be contended that the person who made an application, since he was a minor at the date, becomes a minor certificate holder. He would then be governed by sub - section (4) of Section 33 - C and any application made by him within one year of his attaining majority, would be within time.

5. However, there is no support for the contention advanced by Mr. Choudhary that the document relates back to the date of the application under Section 88 - C in case of a minor and although the certificate in fact may have been granted after he attains majority, still he belongs to the category of a minor certificate holder .

6. A certificate landlord has been described in Section 33 - A (I) as 'a person who holds a certificate issued to him under sub - section (4) of Section 88 - C'. The relevant date, therefore, is the grant of the certificate and not the making of an application for obtaining the certificate. Unless the certificate comes into existence no person can be a holder thereof. The point of time, therefore, for considering whether sub - section 33 - B applies is the date on which the certificate is granted. In the instant case the certificate was granted on August 30, 1963. On that date the landlord was a major. Even if the date of the order for grant of a certificate is taken to be relevant date, then landlord cannot come within the category of a minor certificate holder for the simple reason that before the grant of the certificate he had attained majority.

7. In a litigation it is the duty of the party who applies as a minor to get the record corrected immediately upon his attaining majority. Because the petitioner failed in his duty in not getting his name on the record as a major, no advantage can be obtained by the said person. Since a certificate must be held, a certificate must be in existence and the category, therefore, has got to be decided on the date when the certificate could come into existence. In the instant case the certificate could have come into existence on or after July 31, 1963. On that date obviously the Petitioner was a major. He was, therefore, not a minor certificate holder, but he was a major certificate holder. He would, therefore, not be governed by Section 33 - B (4) of the Tenancy Act.

8. An argument was further advanced by Mr. Chaudhary that there is a decision of this Court which has extended the meaning of the expression 'certificated landlord'. In *Parvatibai Ramchandra v. Mahadu Tukaram*, : AIR1967 Bom428 a Division Bench of this Court held that the right of a certificated landlord to apply under Section 33 - B does not lapse upon the death of the holder and that the same can be exercised within the specified time by his successor in interest. This

judgment only shows that the right which the landlord obtains under the certificate granted under Section 88 - C is a heritable right. The judgment has no bearing on any other point. It does not deal with the point as to from what time a person should be taken as a certificated landlord; whether from the date the certificate comes into existence or from an earlier date. Since I have held that existence there cannot be a certificated holder, the argument based upon the decision in : AIR1967 Bom428 has no application.

9.A further argument was advanced by Mr. Chaudhary that in any case as regards Narayan Yeshwant Godse (Respondent No. 1) the petitioner's claim should have been allowed. This argument was based upon a statement given by Respondent No. 1 on February 23, 1965 as follows :

'If the possession of the said half area in the land which I am doing as a tenant is given to the applicant plaintiff, I will have no objection whatsoever. I have no grievance remaining about this.' Mr. Chaudhary's contention on this point was that in respect of the property held by Respondent No. 1 as a tenant of S. No. 204 there should have been an order in favour of the petitioner in spite of the fact that his application was held to be barred by time. What was urged was that when the tenant admitted the claim and expressed his willingness to the passing of an order for possession in respect of the land which he held, it should have been held that the tenant has waived the right which he had obtained by rules of limitation. Mr. Chaudhary's contention , therefore, was that although the petitioner might not have been given any relief in respect of the property held by other tenants, a relief in respect of the land held by Narayan yeshwant should not have been denied to him. The point, however, is whether this point was taken by him before the Deputy Collector. I do not find from the judgment of the Deputy Collector that this point was at all pressed before him or even before the Tenancy Aval Karkun. Had this point been pressed before the Tenancy Aval Karkun and the Deputy Collector, those two authorities might have applied their mind to it and either upheld or rejected it. But the point cannot be raised for the first time in this Court acting under Art. 227. I, therefore, hold that the decisions of the revenue forms were correct and no interference is necessary.

10 Rule discharged. No order as to costs.

11. Order accordingly.

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