HIGH COURT OF GUJARAT

CHANCHALBEN WD/O DAHYABHAI DESAIBHAI
V/S
GUJARAT REVENUE TRIBUNAL

Date of Decision: 22 July 1970

Citation: 1970 LawSuit(Guj) 67

Levons Technologies Pvt. Ltd. Lawsuit® The Unique Case Finder Levons Technologies Pvt. Ltd.

Hon'ble Judges: J B Mehta

Eq. Citations: 1971 GLR 428

Case Type: Special Civil Application; Special Civil Application

Case No: 329 of 1967; 266 of 1967; 686 of 1967

Head Note:

Bombay Tenancy and Agricultural lands Act (LXVII of 1948) - S.88C Exemption dependent upon the fulfillment of the two relevant conditions covered in the section - land in question is exempt whose landlord satisfied - exemption can be availed of only by the landlord and not availed by the transferee or the successor. Bombay tenancy and Agricultural lands Act (LXVII of 1948)-S.15,88c - Under S.15 Tenant becomes a deemed purchaser. there was no question of any surrender of tenancy.

It is clear from sec. 88c of the Bombay Tenancy Act that although exemption is made dependent upon the landlords fulfilling the two conditions as to the land not exceeding the economic holding and the total annual income of the landlord including the rent not exceeding Rs. 1500/- the result of the fulfillment of the two conditions was that the land of the landlord became exempt from the provisions of the sections mentioned therein. In other words the exemption attaches to the land and not to the landlord although it is the landlord who in the ultimate analysis gets the benefit of exemption. Even though sec. 32(1) had introduced the

concept of postponed date the postponement of the date of ownership has no relevance on the question of the date on which the exemption is to be claimed by the landlord from the operation of sec. 32(1). Therefore it would be obvious that it is only that landlord who fulfils the relevant conditions on the tillers day and not on the postponed date or any other date would get the benefit. If that landlord expires or if that landlord transferred the property to others the successors or transferees could never claim benefit of this provision. The tenant is made deemed purchaser on this tillers day and the entire scheme would be frustrated if after the tenant became deemed purchaser the landlord would be assumed to have any heritable or transferable interest with him. (Para 1).In a normal case which is not governed by any special scheme of secs. 32F to 32 where a different consideration might prevail there would be no scope of applying any other date than the relevant date of tillers day for finding out whether the land in question attracts the exemption. If the landlord on that date did not fulfill the two conditions the tenant would automatically become a deemed purchaser without his right in any manner being divested by an application of the subsequent successor of the landlord or his transferee. In fact such a landlord would have no heritable or transferable interest once his tenant became a deemed purchaser because he could not fulfill the two relevant conditions and he had not applied for getting a certificate under sec. 88C. (Para 2).The position therefore clearly emerges that the landlord is not exempted but the land in question is exempt whose landlord satisfies the two conditions on the relevant date April 1 1957 The benefit of sec. 88C could be availed of only by the particular landlord whose tenant had become a deemed purchaser on April 1 1957 The benefit of this section could not be availed of by the subsequent transferee or the successor of the landlord who existed on April 1 1957 (Para 3).Bombay Tenancy and Agricultural Lands Act (LXVII of 1948)-Secs. 1588 tenant became deemed purchaser no question of surrender of tenancy arises under sec. 15.If the application under sec. 88C of the Bombay Tenancy Act was incompetent by the transferee landlord after the tenant had become a deemed purchaser there was no question of any surrender of tenancy under sec. 15 of the Act. (Para 5).The two conditions precedent for a valid surrender are that the surrender must be in writing and that the surrender must be verified by the competent Mamlatdar by going into the question whether the same was voluntary. That is why the relevant rules provide some time to be given to the concerned tenant so that it can be duly examined whether he had properly understood the effect of his action. When the whole order was passed in such hot haste within only two days the Prant Officer

rightly considered that as the order was not communicated to the petitioner-tenant the appeal against such order could be entertained. In any event after the Collector condoned the delay in view of the fact that the order was never communicated to the petitioner it could never be said that the Collector had not properly exercised his discretion at all. (Para 7).Madhaji v. Mashrubhai Anna Balkanda v. Vasant Vallabhbhai v. Bai Jivireferred to.

Acts Referred:

Bombay Tenancy And Agricultural Lands Act, 1948 Sec 88C, Sec 15

Advocates: M M Patel, M C Shah, K S Nanavati, M H Chhatrapati

Reference Cases:

Cases Referred in (+): **3**

Judgement Text:-

J B Mehta J

[1] These three petitions raise an important question as to the true interpertation and the scope of sec. 88C of the Tenancy Act as to whether the landlord's successor or assignee after 1-4-57 is entitled to get exemption certificate. Sec. 88C(1) provides that save as otherwise provided by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960, nothing in sec. 32 to 32R (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. 1500/-. Under sec. 88C(2) every person eligible to the exemption provided in sub-sec. (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. The proviso has been introduced by the Amendment Act 16 of 1960 on December 13, 1960, that where such person is a widow she may make such application before the 1st day of July 1961, notwithstanding that the period prescribed under this section has expired. Rule 53 provides for the period during which an application under sec. 88C(2) shall be made. The date prescribed was December 31, 1959, which in case of a widow-landlord was extended till the successor-in-title availed of this benefit within six months from the date

on which the widow's interest in the land ceased to exist. That is why this proviso has extended this time limit upto July 1, 1961 incase of a widow notwithstanding that the period had expired. Under sec. 88C(4) if the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person. This section has been interpreted by our Full Bench in Madhaji v. Mashrubhai, III G. L. R. 438 by K. T. Desai, C.J., Miabhoy J. and Mody J. At page 455 Their Lordships pointed out that reading sec. 8 8C as a whole it was clear that although exemption is made dependent upon the landlord's fulfilling the two conditions as to the land not exceeding the economic holding and the total annual income of the landlord including the rent not exceeding Rs. 1500/-, the result of the fulfilment of the two conditions was that the land of the landlord became exempt from the provisions of the section mentioned therein. In other words, the exemption attaches to the land and not to the landlord, although it is the landlord who, in the ultimate analysis, gets the benefit of exemption. Thereafter, the Full Bench considered at page 459 the material question as to the date on which these two relevant conditions for exemption must be fulfilled. Their Lordships held that even though sec. 32(1) had introduced the concept of postponed date, the postponement of the date of ownership has no relevance on the question of the date on which the exemption is to be claimed by the landlord from the operation of sec. 32(1). Their Lordships held that they would require strong reasons to construe sec. 88C in such a way as to putting a premium upon the fraud or refractoriness of the landlord. Any other view would be tantamount to putting a premium upon the course of action of a landlord and of permitting him to alter the rights of his tenant by resort to a proceeding which is ultimately found to be unjustified by a competent authority. During the pendency of a proceeding a landlord can devise means to alter his position in such a way as to fulfil the conditions laid down in sec. 88C, though he might not have fulfilled the same on the tiller's day. At page 461 their Lordships further considered the question as to whether the same date must be taken as the relevant date for the entire scheme of sec. 32 to 32R. On that question, their Loreships observed at page 462 that even though a different date is obtained as the relevant date when reading sec. 88C with other sec. 32A to 320, it does not offend any recognised cannon of interpretation. The disparity, if any, would be the result of the different language used in those other sections and arise out of different situations dealt with by those sections. That is why their Lordships did not think it fit to undertake the risk involved in construing sec. 88C in so far as the rights of the parties mentioned in sec. 32F and 320 are involved. Their Lordships merely pointed out that 320 and 32F dealt with entirely differnt situations and the concepts underlying these two sections are different from the concepts underlying sec. 32(1). Whereas under sec. 32(1) the tenant becomes the owner by fiction of law, under sec.

32F and 320, the tenant had the option to purchase. Therefore, the law has been clearly settled by the Full Bench of this Court that the exemption applies to the land in whose case the landlord fulfils the two relevant conditions on the relevant date viz. the tiller's day i.e. April 1, 1957, as provided in sec. 88C(1). The said relevant date may not apply in all cases of such purchase by the tenants and that question their Lordships had kept open as to what would be the relevant date when there is only a right to purchase as envisaged under sec. 32F and 320, as they then existed. This narrow construction or the strict construction was adopted by Their Lordships so that the landlord may not be able to alter the position to the detriment of the tenant who was intended to be the deemed purchaser on the tiller's day by this benevolent legislation. If we treat this exemption as relating to the land and not to the landlord, there would be no force in the contention raised by the learned advocates Mr. Patel and Mr. Chhatrapati that the successor should be included within the definition of the 'landlord' for the purposes of determination of the right of such successor to file an application under sec. 88C for exemption. Both the learned advocates rely upon the definition of term 'landlord' in sec. 2(18) which requires to be construed in the light of the tenant's definition. Tenancy means the relationship of landlord and tenant as given in sec. 2(17). Therefore, both the learned advocates argued that the normal rule of construction must apply that the landlord mustgtake within its ambit the successor of the landlord especially when the context is of property rights. Ordinary notions of Transfer of Property Act could not be departed from unless something to the contrary was provided under any of the provisions or there was something compelling in the context which justified departure from this normal principle of construction. Even in cases under sec. 31 and 32T where the landlord was given the right to terminate the tenancy and to evict the tenant after giving certain notice, the learned advocates argued, that the successor could always pursue the proceedings and could get benefit of that order which would be passed in favour of the deceased landlord who might have expired during the pendency of the proceeding. In such a case the right test which the learned advocates formulated was as to whether the relief could be availed of by the successor. The learned advocates also pointed out that the section would work greater hardship in particular cases. The landlord might die on April 2, 1957 and if his widow could not get the benefit of this statutory provision, the whole purpose of the said section for the benefit of small holders would be frustrated. The arguments of the learned advocates ignore the basic scheme of sec. 88C which clearly exempts the land even though the benefit of exemption ultimately goes to the particular landlord whose land satisfies these two conditions. Therefore, if this interpretation as put by the Full Bench is properly understood, it would

be obvious that it is only that landlord who fulfils the relevant conditions on the tiller's day and not on the postponed date or any other date who would get the benefit. If that landlord expires or if that landlord transferred the property to others, the successors or transferees could never claim benefit of this provision. The tenant is made deemed purchaser on this tiller's day and the entire scheme would be frustrated if after the tenant became deemed purchaser, the landlord would be assumed to have any heritable or transferable interest with him. Therefore, looking to the whole scheme of sec. 88C, the wider construction suggested by the learned advocates cannot be accepted.

[2] The learned Advocates next argued that even the proviso to sec. 88C(2) makes it clear that widows are contemplated by the Legislature as entitled to avail of this benefit for the extended period of limitation is provided in case of a widow landlord upto July 1, 1961. Under Rule 53 where the landlord is a widow, even the successor-in-title could avail of this benefit within six months when the interest of the widow ceased. Therefore, the learned advocates argued that the successor-in-title is envisaged by the rule making authority. While appreciating this argument we should keep in mind the provision of sec. 32F. Under the original scheme of sec. 32F(1), notwithstanding anything contained in the preceding section, where the landlord was a minor or a widow or a person subject to mental or physical disability or serving member of the armed forces, the tenant had a right to purchase this land under sec. 32 within one year from the expiry of the period during which such landlord was entitled to terminate the tenancy under sec. 37. Therefore, sec. 32F has slightly different scheme as was hinted at even by the Full Bench. What was initially provided was the right to purchase or option to purchase to the concerned tenant. There was a compulsory purchase only under the amendment which was made by introducing sec. 32F(IA) by Gujarat Act No. 16 of 1960 on December 13, 1960. That sec. 32F(1A) provides that on and after the date of the commencement of the Bombay Tenancy an Agricultural Lands (Gujarat Amendment Act No. 16 of 1960) hereinafter referred to in this sub-section as 'the said date', every tenant who has not exercised his right of purchase within the period of one year within which it may be exercised under sub-sec. (1), shall, if the said period has commenced be deemed to have purchased the land on the said date, whether the period has expired or not, and if the period has not commenced, he shall be deemed to have purchased the land on the date on which the period would have commenced but for the provisions of this sub-section. Therefore, the concept of deemed purchase was introduced even in case of such a disabled landlord and that is why this proviso was introduced in sec. 88C that a widow landlord in such a case could apply in the extended time up to July 1,

1961, notwithstanding that the period prescribed bv rule 53 had expired. The provisions of sec. 32F(1) would apply where the landlord is a minor or a widow or a disabled person on the tiller's day. In such a case the tenant had only a right to purchase as the section was initially enacted. There being no question of a deemed purchase but only an option to the tenant to purchase a different date may be relevant for that purpose as indicated even by the Full Bench, as the whole purchase was depending initially on the choice of the tenant. It is only when he sought to exercise the right that he would become deemed purchaser of the land. Therefore, the same consideration would not apply in case of sec. 32F. After the amended sec. 32F(1A) even in such a case the concept of a deemed purchase has now been introduced and at the same time in case of a widow landlord the extended period is provided in the proviso to sec. 88C. Therefore, this special scheme of sec. 32F would not justify any different interpretation even in those cases where sec. 32F does not apply because the original landlord was alive on the tiller's day i.e. April 1, 1957. Similarly, sec. 320 originally provided only a right of purchase, and as now amended, it provides compulsory purchase on the day of expiry of one year in case of new tenant whose tenancy has been created after the tiller's day. The context of this provision would require the different relevant date from April 1, 1957, because of the special scheme of that section. Therefore, this special provision would not justify a different construction being given than the one, which was accepted by the Full Bench, so far as those cases are concerned where the landlord was not n disabled landlord and the tenant was entitled to become a deemed purchaser on April 1, 1957. In such a normal case, which is not governed by any special scheme of sec. 32F or 320 where a different consideration might prevail, there would be no scope of applying any other date than the relevant date of tillers' day for finding out whether the land in question attracts the exemption. If the landlord on that day did not fulfil the two conditions, the tenant would automatically become a deemed purchaser without his rights in any manner being divested by an application of the subsequent successor of the landlord or his transferee. In fact, such a landlord would have no heritable or transferable interest once his tenant became a deemed purchaser because he could not fulfil the two relevant conditions and he had not applied for getting a certificate under sec. 88C.

[3] Mr. Patel and Mr. Chhatrapati relied upon my decision in Special C. A. No. 927 of 1961 decided on January 12, 1968. I need not dilate any more on that decision as it proceeds on the special provision in sec. 32F, The landlord was a widow in whose case the tenant had an option to purchase. Therefore, the tenant did not become a deemed purchaser on April 1, 1957, so that that would have to be treated as the relevant date as

laid down by the Full Bench decision. In that case, I considered the question as it was left open by the Full Bench. The learned Advocate relied upon the decision of the Maharashtra High Court Full Bench in Anna Balkanda v. Vasant, 64 Bom.L.R. 591. That decision has differed from the Gujarat Full Bench view only on the question as to whether in cases where the deemed purchase is postponed by the postponed date, whether the relevant date on which the conditions under sec. 88C must be satisfied must be a different date viz, the date of the application. Therefore, that decision would have no bearing on the present question. In view of this discussion, the position clearly emerges that if the landlord is not exempted but the land in question is exempt whose landlord satisfies the two conditions on the relevant date April 1, 1957, the benefit of sec. 88C could be availed of only by the particular landlord whose tenant had become a deemed purchaser on April 1, 1957. The benefit of this section could not be availed of by the subsequent transferee or the successor of the landlord who existed on April 1, 1957.

[4] Applying this legal position to the facts of the Sp.C.A. No. 329 of 1967, it is obvious that the order of the Tribunal dated August 8, 1966, must be upheld. In that case the landlord was alive on April 1, 1957, and he expired only on April 6, 1957. The original landlord had applied under sec. 31 read with sec. 29 and that application was continued by the widow who ultimately withdrew the same and that application stood rejected. Therefore, the tenant became the deemed purchaser on the tiller's day or on the postponed date March 25, 1959. The widow had applied for exemption on January 9, 1961, by claiming the benefit of the proviso to sec. 88C of the extended period of limitation upto July 1, 1961. As this was the widow who was the successor of original landlord, she could not get benefit of the exemption. Therefore, there was no question of the proviso being applicable. Therefore, there is no patent error of law disclosed in the order of the Revenue Tribunal which has held the application of this widow under sec. 88C to be incompetent. This petition, therefore, fails and the rule is discharged with no order as to costs.

[5] As far as the other group of Sp. C. A. Nos. 266 and 686 of 1967 is concerned, these two petitions are filed by the widow of the deceased tenant against the two orders in the proceeding under sec. 88C and under sec. 15 of the Tenancy Act. This land had been transferred to the transferee on December 29, 1959. The original tenant expired on January 24, 1962. In a pending civil litigation as a reference had been done to the revenue authorities by the final order of the Tribunal, this tenant was held to be a tenant of the land in question who was entitled to become a deamed purchaser as per the

order, dated January 10, 1962. The application under sec. 88C which was filed by the transferee was allowed by the Mamlatdar on May 25, 1962. On the very same day by the petitioner-widow purporting to surrender the tenancy, the surrender was verified by the Mamlatdar and order for possession in favour of the transferee landlord was made on May 27, 1962. Against these two orders the petitioner filed two revision applications before the Prant Officer on May 3, 1963. The Prant Officer treated them as appeals after condoning the delay. The Prant Officer held that the application under sec. 88C was incompetent by the transferee landlord and after the tenant had become a deemed purchaser, there was no question of any surrender of tenancy under sec. 15. Therefore, both the orders of the Mamlatdar were quashed. The Revenue Tribunal has, however, set aside both the orders of the Prant Officer by holding that the surrender was a valid one and that the transferee landlord was entitled to apply for exemption certificate. That is why these two petitions are filed against the two orders of the Revenue Tribunal by the petitioner widow of the deceased tenant. As per the aforesaid settled legal position, a transferee from the landlord would not be entitled to get benefit of this exemption clause under sec. 88C as the exemption is given to the land in question. Once the landlord of that land on the tiller's day i.e. April 1, 1957 transfers his property to the transferee, the transferee would not be entitled to invoke the section for the simple reason that the transferor had no transferable interest left after the tenant had become a deemed purchaser. In that view of the matter, even the other order of the Revenue Tribunal was obviously wrong. If the tenant became a deemed purchaser there was no question of surrender by the tenant of his tenancy under sec. 15. Therefore, both the orders of the Mamlatdar were completely without jurisdiction and the Prant Officer was right in setting aside the two orders. The orders of the Revenue Tribunal are, however, completely perverse and under a complete misconception of law and they must be quased.

[6] Mr. Chhatrapati, however, vehemently argued that the order of the Prant Officer was not a signed order and was no order at all. This contention he wanted to raise by filling an affidavit. I have already disallowed that new contention to be raised at such a late stage by springing a complete surprise at this stage. Therefore, that contention does not arise. Mr. Chhatrapati next argued that the Prant Officer had acted without jurisdiction or in any event had committed a patent error of law in treating the revision application as an appeal and in condoning the delay on such sympathetic grounds. The Revenue Tribunal had not gone into this question. The Revenue Tribunal had observed that the perusal of the Prant Officers order gave an impression that his view on both the counts was highly doubtful. However, as he had treated the revision as an appeal and had in

his discretion held the appeals to be in time, it was not necessary to go into the correctness of that order particularly as they were reversing the decision on merits. The proceedings have been sufficiently delayed and as this, is a pure question of law which can be disposed of in this petition, the petitioner insisted on this Court disposing of this question. Sec. 76A confers revisional jurisdiction on the Collector against the orders of the Mamlatdar if no appeal has been filed within the period provided. This levisiotv jurisdiction can be suo motu exercised at any time by calling for the record of any inquiry or proceeding of the Mamatdar for satisfying the Collector as to the legality of the order or the proceeding. The proviso to sec. 76A however enacts that no such record shall be called for after the expiry of one year from the date of the order. That is why Mr. Chhatrapati has argued that as the application for revision was filed on May 3,1963 and as the record was not called for within one year from the date of the order, the revision application was incompetent, and it could not be disposed of by the Prant Officer. The Prant Officer, however has considered all the relevant facts and has found as a fact that in the present proceeding the order was never communicated to the petitioner-tenant. The Prant Officer found that the whole order had been passed in hot haste so that even the relevant provisions of the rules had not been observed. Under Rule 9 the proceedure for this surrender application under sec. 15 was that the Mamlatdar should give 10 to 15 days time at least before verifying the surrender and notices should be given to see that the tenant properly understood the effect of the surrender.

[7] As pointed out by their Lordships of the Supreme Court in ValTbhbhai v. Bai Jivi, A.I.R. 1969 S.C. 1190-1163, the two conditions precedent for a valid surrender are that the surrender must be in writing and that the surrender must be verified by the competent Mamlatdar by going into the question whether the same was voluntary- That is why the relevant rules provide some time to be given to the concerned tenant so that it can be duly examined whether he had properly understood the effect of his action. When the whole order was passed in such hot haste within only two days the Prant Officer rightly considered that as the order was not communicated to the petitioner-tenant, the appeal could be entertained on May 3, 1963. Mr. Chhatrapati, however, argued that when possession was taken away in June, the tenant must have knowledge. If the order was not communicated, these ignorant tenants could hardly be blamed. Possession might have been taken but that is not equivalent to the order being communicated. In any event, after the Collector condoned the delay in view of the fact that the order was never communicated to the petitioner, it could never be said that the Collector had not properly exercised his discretion at all. That is why the Revenue Tribunal was right in holding that once the revision was converted into an appeal and

the delay was condoned by exercising discretion, it would not hold that the order was wrong so that it could be interfered with in revision. In any event, substantial justice has been done by quashing the two ultra vires orders and Mr. Chhatrapati can hardly expect this Court to interfere with the discretion exercised by the Prant Officer by quashing the two ultra vires orders. Therefore, no ground whatever has been made out by Mr. Chhatrapati which could support the two orders of the Revenue Tribunal.

[8] In the result, both the petitions Nos. 266 and 686 of 1967 must be allowed by quashing the order of the Revenue Tribunal and by restoring the two orders of the Prant Officer holding that the application of the transferee landlord under sec. 88C was incompetent and that the surrender by the petitioner-tenant was an invalid surrender.

[9] Rule accordingly made absolute in both these petitions with costs, while rule in Sp. C. A. No. 329/67 is discharged with no order as to costs.

Orders accordingly.

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