

CASE NO.:
Appeal (civil) 2564 of 2005

PETITIONER:
Dinkar Maruti Jadhav

RESPONDENT:
Nivrutti Gangaram Pawar (dead) by Lrs. And Ors.

DATE OF JUDGMENT: 18/01/2008

BENCH:
Dr. ARIJIT PASAYAT, TARUN CHATTERJEE & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. A two judge Bench doubted the correctness of some of the observations made in *Moreshwar Balkrishna Pandare & Ors. v. Vithal Vyanku Chavan and Ors.* [2001(5) SCC 551] and therefore referred the matter to a larger Bench and that is how the matter was posted before us. The essence of the judgment in *Moreshwar* case (supra) was that once an action in Section 31-B is taken, Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short the Act) has no relevance.

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 *Moreshwar* 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. *Moreshwar* 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 *Moreshwar* 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.

5. The appeal is allowed to the aforesaid extent without any order as to costs.

JUDIS