
(1957) 11 BOM CK 0023

In the Bombay High Court

Case No : Special Civil Application No. 275 of 1956

Abdullamiyan Bavamiyan

APPELLANT

Vs

The Bombay State

RESPONDENT

Date of Decision : 29-11-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1958) 60 BOMLR 794

Hon'ble Judges : Vyas, J;Tarkunde, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vyas, J.—This is an application under Articles 226 and 227 of the Constitution of India, and it is filed by four petitioners. The relief, which the petitioners have claimed in this application, is that the Order No. RD/IV/Remand-112 dated October 15, 1956, passed by the Government of the State of Saurashtra in the Revenue Department, be quashed and an appropriate writ be issued to restrain the Government and the Taluka Mamlatdar, Dhoraji, from enforcing the above-mentioned order.

2. The petitioners contend that they are Barkhalidars within the meaning of Clause (1) of Section 2 of the Barkhali Abolition Act and are entitled to possession of land for their personal cultivation u/s 6 of the Act. They next contend that they had applied in the prescribed form for the allotment of land for personal cultivation. This application was made to the Special Mamlatdar. The Special Mamlatdar by an order made on April 12, 1952, allotted land to the petitioners u/s 8 of the Act. The above-mentioned allotment was made with the consent of opponent No. 4 Govind Ramji. The petitioners were not satisfied with the allotment of land which was made by the Special Mamlatdar. They presumably wanted more land to be allotted to them. So, feeling aggrieved by the Special Mamlatdar's order, the petitioners filed an appeal before the Deputy Collector. The petitioners' contention in appeal was that the Barkhali lands which

were in possession of their tenant should be taken into consideration for making up the aggregate total area of land in possession of the tenant for the purpose of allotment. The Deputy Collector rejected the appeal of the petitioners and confirmed the order of the Mamlatdar. It would appear that opponent No. 4, in the meantime, took proceedings for the restoration of possession of 9 acres 24 gunthas of the land from the petitioners, as the latter had sub-let those lands. The Mamlatdar rejected that application of opponent No. 4. Opponent No. 4 went in appeal from that order to the Deputy Collector, but the Deputy Collector dismissed that appeal. The petitioners contend that in the circumstances stated above they had enjoyed possession of the lands allotted to them for personal cultivation. After the allotment, say the petitioners, the relations between them and their landlord had assumed a different character. The relationship of landlord and tenant had come to an end. The petitioners say that their names were entered in the revenue records in respect of the land which was allotted to them.

3. The petitioners have next referred to an action taken by Government under the amended Section 40 of the Barkhali Abolition Act. Sub-section (2) of the amended Section 40 reads:

The Government may call for and examine the record of any inquiry or proceedings of the Mamlatdar or Collector acting under this Act, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer, and, if, in any case, it shall appear to the Government that any decision or order or proceedings so called for should be modified, annulled or reversed, it may pass such order thereon as it deems fit.

It would appear that on April 3, 1956, opponent No. 4 made an application to Government for a reconsideration of the order passed by the Mamlatdar. On April 17, 1956, the new Section 40 of the Act came into force. Thereafter the Revenue Commissioner issued a notice to the petitioners and heard both parties. The petitioners objected to the exercise of jurisdiction by Government under the new Section 40. The objection was overruled and the Government, on October 15, 1956, passed an order being Order No. RD/IV/Remand-112, directing that the barkhali cases of the parties be re-opened and re-heard in the light of the observations contained in their order. It is that order of the Government which is challenged in this writ petition.

4. Now, if we turn to the petition, the petitioners have raised a contention that it was ultra vires the powers of the State Legislature to enact Sub-section (2) of Section 40 of the Barkhali Abolition Act. For deciding this petition it is not necessary for us to examine the question of the vires. We shall proceed to decide this case upon the assumption, without deciding the question, that it was competent to the Legislature to enact Sub-section (2) of Section 40. Even so, we are of the opinion that in view of the facts of the present case, it was not competent to Government to pass the order which they did pass on October 15, 1956. It is necessary to note that there is a proviso at the foot of Sub-section (2)

and that proviso is important in this case. The proviso reads thus:

Provided that the Government shall not pass any order in the exercise of its powers under this Sub-section-

(i) in any case in which an application for revision against any decision or order of the Collector has been made under this Act to the Revenue Tribunal or until such application is barred by limitation.

It is clear from the plain language of the proviso that the jurisdiction conferred by Sub-section (2) of Section 40 of the Act upon the Government shall not be exercised by Government in any case in which an application for the revision of the Deputy Collector's order has been made to the Revenue Tribunal. The Government shall also not exercise the jurisdiction vested in them under Sub-section (2) of Section 40 so long as the right which a party has to apply in revision from an order of the Deputy Collector to the Revenue Tribunal does not become time-barred. It is clear, in our view, from the language of the proviso at the foot of Sub-section (2) that if an application has been made by an aggrieved party to the Revenue Tribunal, the jurisdiction vested by Sub-section (2) of Section 40 in the Government cannot be exercised by them. The power of calling for and examining the record of an enquiry or proceedings which is conferred upon Government by Sub-section (2) is conferred in respect of proceedings before the Mamlatdar or the Collector. Once an application in revision is made from an order of the Deputy Collector to the Revenue Tribunal, the proceedings before the Deputy Collector including the order passed by the Deputy Collector merge into the proceedings before the Revenue Tribunal and the Government has no power under Sub-section (2) of Section 40 to call for and examine those proceedings. Thus, upon a proper construction of the proviso to Sub-section (2) of Section 40 it is clear that in cases where a party has not applied in revision to the Revenue Tribunal and where his right to apply in revision has become time-barred, only in those cases the Government can exercise the power vested in them by Sub-section (2) of Section 40.

5. Mr. Shah, appearing for the opponents, has contended that in a case where a party applies in revision to the Revenue Tribunal, if the said application is made beyond time, the provisions of Sub-section (2) of Section 40 would be attracted and it would be competent to Government to interfere. This is not a case of that type and we do not feel called upon to express an opinion on that point. This is not a case where the application in revision which was made to the Revenue Tribunal had become time-barred. The fact of the matter would appear to be, as the Revenue Tribunal pointed out, that the appeal which was made by the opponent before the Deputy Collector was barred by time. Although the appeal which was made by the opponent before the Deputy Collector was barred by time, the Revenue Tribunal went into the merits of the case and decided the point in favour of the petitioners. That being so, so far as the present case is concerned, we are of the view that the powers conferred upon the Government by Sub-section (2) of Section 40 of the Act were not exercisable by them.

Accordingly the application must be allowed and the order passed by the Government in the Revenue Department on October 15, 1956, must be quashed, The application is allowed with costs.