

(2019) 12 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 923 Of 2018

Akrur Raya Gaonkar And Anr

APPELLANT

Vs

Chandravati Chandrakant Naik And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Civil Procedure Code (Amendment) Act, 1999 — Section 115
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 12 BOM CK 0109

Hon'ble Judges : Nutan D. Sardessai, J

Bench : Single Bench

Advocate : G. Panandikar, Preetam Talaulikar

Final Decision : Dismissed

Judgement

1. Heard Shri G. Panandikar, learned Advocate for the petitioners and Shri Preetam Talaulikar, learned Advocate for the respondents.

2. Rule.

3. Shri Preetam Talaulikar, learned Advocate waives service on behalf of the respondents.

4. The petitioners are invoking the jurisdiction of this Court under Article 227 of the Constitution of India challenging the order dated 21/09/2017 passed by the Administrative Tribunal as also the judgment passed by the Deputy Collector dated 31/03/2016.

5. Heard Shri G. Panadikar, learned Advocate for the petitioners who contended that the house was constructed by the petitioners in the year 1979 i.e. after the appointed date and therefore the claim of mundkarship raised by the respondents would not survive. Although, it was the case of the respondents that they were the mundkars in respect of the house in question, all documents produced were subsequent to the appointed date, the earliest document being of

1986. He invited attention to the application for declaration filed by the respondents' predecessor before the Mamlatdar of Bicholim staking a claim to the house in question on the premise that it was erected more than 35 years back as on the date of the application in the year 1999 taking its existence to 1964. The Mamlatdar was seized of the fact that the petitioners had taken a clear case that the respondents were residing in the suit house as a caretaker which was constructed by the late father of the petitioners in 1979. The Mamlatdar was mainly carried away by the oral evidence brought on record and despite the discrepancies in a statement given by the respondents, held that the said did not go to the root of the case and they were required to be overlooked and declared the respondents to be a Mundkar of the suit dwelling house bearing no.128. This was despite the fact that the respondents had failed to produce any document on record to show that the house was in existence prior to 1979. The Appellate Court had also taken a similar view glossing over the discrepancies and contradictions in the case of the respondents, laid undue emphasis on the fact that the respondent was an illiterate person and upheld the order passed by the Mamlatdar while dismissing the appeal of the petitioners. The Administrative Tribunal in revision also gave concurrent finding and upheld the order of the Deputy Collector dismissing the revision filed by the petitioners giving rise to the present petition. It was a fit case to interfere with the judgment passed by the learned Administrative Tribunal and the Courts below and therefore the petition had to be allowed as the orders were grossly perverse, illegal and arbitrary.

6. Shri P. Talaulikar, learned Advocate for the respondent submitted that the respondent had raised the claim of mundkarship since 1964. He too invited attention to their application for declaration as a mundakar and submitted that there was ample material on record to show that they were residing in the suit house since 1964. The respondent being an illiterate person could not maintain any records and therefore their case could not be disbelieved on that count alone. He however conceded that all other documents were subsequent to 1976. He next referred to the written statement filed in defence by the petitioners herein and submitted that there was no basis in the petitioner's case. It was next his contention that there were concurrent findings of fact by the Mamlatdar, the Deputy Collector and the Administrative Tribunal and there was no perversity in the findings rendered by three Courts. No case for interference was made out under Article 227 of the Constitution of India and therefore, the petition to be dismissed. He placed reliance in *Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil* [(2010) 8 SCC 329] and pressed for the dismissal of the petition on the premise that the power under Article 227 of the Constitution of India which was discretionary in nature has to be exercised very sparingly on equitable principles. The power of interference under Article 227 of the Constitution of India was kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court

7. I would consider their submissions, the principles culled out in *Shalini Shyam Shetty*(supra) and decide the petition.

8. *Shalini Shyam Shetty*(supra), on a consideration of various judgments including that in *Surya Dev Rai vs Ram Chander Rai and others* [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other

words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar v/s. Union of India & others*, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

9. It was the petitioner's case that there was an ancestral house bearing house no.129 situated at Shirgao in the property surveyed under No.96/6 originally belonging to their late father/father-in-law. The husband of the respondent no.1 and father/father-in-law of the respondent nos.2,4 and 5 were permitted to reside in an outhouse bearing no.128 being the suit house as caretakers. The respondents through their predecessor had moved an application for declaration as a mundkar and the learned Mamlatdar by his judgment dated 20/01/2005 declared the late husband of the respondent no.1 as a mundkar in respect of the

dwelling house no.128 situated at Shirgao, Bicholim. The learned Mamlatdar had considered the case of the predecessor of the respondent no.1 that he was residing in the suit house for more than 35 years and thereafter had converted into a pucca structure within the same plinth area and had taken into account the plea raised by the petitioner that their status was simpliciter of a caretaker and not a mundkar in respect of the said house no.128.

10. The Mamlatdar for that matter had considered the statement of the respondent No.1 on oath, the fact that she had claimed her residence in the suit house for more than 40 years and earlier through her husband and also considered the evidence brought on record on behalf of the petitioner. The Mamlatdar had considered the documents produced on behalf of the respondents which were admittedly after the appointed date and at the same time held that the petitioner had not produced any document to show that he had constructed any dwelling house on the illegally converted land. The Mamlatdar ultimately held on the basis of the material before him that although there were minor discrepancies in the statement given by the respondent, the same did not go to the root of the case which could weaken or destroy the case of the respondent and on that basis considering also the illiteracy of the respondent no.1 proceeded to declare the predecessor of the respondent no.1 as a mundkar of the dwelling house in question.

11. The Deputy Collector before whom the judgment was challenged in appeal also considered the case of the petitioners and the then sole respondent and held that the respondent no.1 was an elderly layperson who was poor and weak, not conversant with the procedure of bringing the case of mundkar and considering the beneficial effect of the Mundkar Act did not find it appropriate to interfere with the order of Mamlatdar. The Administrative Tribunal for that matter before whom the petitioner challenged the judgment found favour with the case of the respondent concurring with the view taken by the Deputy Collector that any ordinary man or woman with reasonable prudence cannot be expected to retain old house tax receipts and concluded that the evidence adduced by the respondents before the Joint Mamlatdar was not sufficient to disprove the claim of mundkarship raised by their predecessor. Ultimately it held on a consideration of various judgments that no case whatsoever was made out for interference with the judgment passed by the Appellate Court and dismissed the revision application. Each of the Courts below have rendered concurrent findings of facts and no perversity can be spelt out as to invoke the extraordinary jurisdiction of this Court to interfere with the order under challenge. In view thereof and considering the principles laid down in that regard in *Shalini Shyam Shetty(supra)*, no case whatsoever is made out for interference with the impugned order. In view thereof, I pass the following:

ORDER

The impugned order is confirmed. Rule is discharged. The petition is dismissed with no order as to costs.