

(1958) 12 KAR CK 0005
In the Karnataka High Court
Case No : Civil Petition No. 14 of 1957

Appaji Krishnaji Kulkarni

APPELLANT

Vs

Bhimappa Tippanna Paramagouda and Others

RESPONDENT

Date of Decision : 19-12-1958

Acts Referred:

Bombay Tenancy and Agriculturual Lands Act, 1948 — Section 14 (1)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1959 Kar 108 : (1959) ILR (Kar) 150

Hon'ble Judges : M. Sadasivayya, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : H.B. Datar, for the Appellant; A.V. Albal, for the Respondent

Judgement

M. Sadasivayya, J.—The petitioner in this petition under Article 227 of the Constitution was the opponent-landlord in Revision Application No. TEN/B/3535 of 1936 on the file of the Bombay Revenue Tribunal. The present Respondent No. 1 was the applicant-tenant in the said revision application. In that revision application, the Bombay Revenue Tribunal by its order dated 10-9-1956 set aside the order which had been passed by the Prant Officer in favour of the landlord and dismissed the original application which had been filed by the landlord, for possession of the land of which the applicant in the revision application was the tenant. The present petition under Article 227 is directed against the said order passed in revision by the Bombay Revenue Tribunal.

2. On behalf of the tenant-respondent No. 1, it has been contended firstly, that this Court has no jurisdiction to interfere under Article 227, and secondly, that even if it is held that this Court has jurisdiction, there are no good grounds for interference. The first contention in regard to the question of jurisdiction is urged on the following lines: The order passed in revision by the Bombay Revenue Tribunal, was made on 10-9-1956, which was prior to 1-11-1956 the date on which the new State of Mysore came into existence under the provisions of the States Reorganisation Act.

On 10-9-1956, this High Court had no jurisdiction over the territory in which the land concerned in these proceedings, is situated. The Bombay Revenue Tribunal which made the said order, is not functioning within the territories of the State of Mysore, but is functioning within the State of Bombay, Under these circumstances, the jurisdiction exercisable under Article 227 being limited to the territories over which this High Court exercises jurisdiction, this High Court has no jurisdiction to interfere in respect of the said order.

3. We have heard the learned Advocates on both the sides, at length, about the objection in regard to the jurisdiction to interfere under Article 227. Before proceeding further to discuss this question, it is necessary to state that no prayer has been made in the petition, which involves the question of issuing any order or direction to the Bombay Revenue Tribunal which is functioning beyond the territories over which this High Court exercises jurisdiction.

We, therefore, consider it unnecessary to refer to the authorities cited by the learned Advocates in regard to the limitations on the powers of the High Court to issue writs, orders or directions to any authority which is functioning beyond the territory over which the High Court exercises jurisdiction. It may also be further stated that the entire records of the case out of which the revisional order of the Bombay Revenue Tribunal arose, are before this High Court.

4. The land in respect of which this dispute between the landlord and the tenant arose, is situated in Bijapur District. This District along with certain other territories of the former State of Bombay, became part of the new State of Mysore as from 1-11-1956, consequent on the reorganisation of the States. It is undisputed that as from 1-11-1956, the Bombay Revenue Tribunal had ceased to function in respect of the said territories which, as from that date, became part of the new State of Mysore.

By virtue of the provisions of Section 125 of the States Reorganisation Act, all the proceedings pending before that Tribunal on 1-11-1956 and relating exclusively to any part of the said territories, stood transferred to the corresponding Tribunal or authority in the new State of Mysore. So far as these territories which became part of the new States of Mysore are concerned, it was as if the Bombay Revenue Tribunal had ceased to exist as from 1-11-1956. The mere fact that the Bombay Revenue Tribunal continued to function in the new State of Bombay under some of the laws in force in that State, could not prevent the said Tribunal becoming defunct as from 1-11-1956 with respect to those territories which as from that date became part of the new State of Mysore.

The order passed in revision by the Bombay Revenue Tribunal is a judicial act, which is having effect or operation in the territories which became part of the new State of Mysore and over which the High Court of the new State of Mysore exercises jurisdiction. The question now is, as to whether in respect of such an act of the Bombay Revenue Tribunal which has ceased to exist so far as these territories are concerned, the jurisdiction of this High Court under Article 227 can

he exercised.

That the power of superintendence available to the High Court under Article 227 includes the power of judicial superintendence also, is now well established (Vide the decision of the Supreme Court in *Waryam Singh and Another Vs. Amarnath and Another*, , In our opinion, it would be taking an unduly narrow view of the scope of the superintendence available under Article 227, if it were to be accepted that an offending order executable within the territories over which the High Court has jurisdiction is not liable to be interfered with merely on the ground that the Tribunal has ceased to function or exist.

In the case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , the Supreme Court had occasion to consider whether in respect of an Election Tribunal which had become functus officio after pronouncing its decision, the High Court could exercise their powers under Articles 226 and 227. The Supreme Court held that when it was the record of the decision that had to be removed by certiorari, then the fact that the tribunal has become functus officio subsequent to the decision could have no effect on the jurisdiction of the Court to remove the record.

It also held that the intention of the Constitution was to vest in the High Court a power to supervise decisions of Tribunals by the issue of appropriate writs and directions and that the exercise of that power cannot be defeated by technical considerations of form and procedure; and the Supreme Court has stated as follows :

"It will be in consonance with these principles to hold that the High Courts have power under Article 226 to issue Writs of certiorari for quashing, the decisions of Election Tribunals, notwithstanding, that they become functus officio after pronouncing the decisions."

With reference to Article 227, the Supreme Court stated as follows :

"It may also be noted that while in a certiorari under Article 226 the High Court can only annul the "decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter."

Therefore, the power under Article 227 is wider than in the case of a certiorari under Article 226. In a decision reported in *Narayan Deju Puthrani Vs. Labour Appellate Tribunal of India at Bombay and Another*, , the High Court of Bombay held that though the Labour Appellate Tribunal had, by reason of an amendment in the law, ceased to exist in respect of certain proceedings, the power of the High Court under Article 227 to correct the order which had been passed by that Tribunal, was not affected by reason of the extinction of the Tribunal.

It may be that, in the circumstances of a particular case, it will be necessary to issue certain directions to a Tribunal which passed the offending order and that, on account of it having ceased to exist, it may not be possible to effectively exercise the powers of superintendence. But, that is not a difficulty which affects

the jurisdiction of the High Court to exercise powers under Article 227.

5. The learned Advocate for the first respondent has relied upon an unreported decision of a Division Bench of this Court in Writ Petn. No. 120/ 1957 to support his contention that this Court had no jurisdiction to interfere in this case. In that Writ Petition which was under Article 226, the petitioner prayed for a declaration that an order passed by the Bombay Revenue Tribunal on 25-10-1956 (before the reorganisation of States) was illegal, void, and unconstitutional and for the issue of a writ, direction or order to the Mysore Board of Revenue not to enforce, execute or give effect to the said order.

The respondent's plea to this prayer was that both at the time it passed the impugned order as well as when this Court's interference was sought the Bombay Revenue Tribunal was an authority functioning within the State of Bombay and hence beyond the reach of this Court's jurisdiction under Article 226 of the Constitution. It will be noticed that arguments in that case proceeded on the basis that the Bombay Revenue Tribunal was a Tribunal which existed and continued to exist at all relevant times for all purposes of the case on band, and the jurisdiction of this Court was invoked only on the basis that the order of the Bombay Revenue Tribunal must be regarded as an order made by the corresponding authority in this State, viz., the Mysore Revenue Appellate Tribunal.

The particular aspect of the matter now argued before us in this case, viz., that on and after 1-11-1956, the Bombay Revenue Tribunal ceased to exist or function in relation to matters relating exclusively to the territories transferred from the Bombay State to the New Mysore State was not placed before their Lordships in that case, nor were their Lordships invited to consider the nature and extent of judicial supervision vested in the High Court by Article 227 of the Constitution. The attention of their Lordships was not invited to the decision of the Supreme Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, .

If we may say so, with great respect, it is not known what view their Lordships would have taken if the contention had been advanced before them that the Bombay Revenue Tribunal was no more than in the position of a Tribunal which had become defunct so far as the territories which became part of the State of Mysore were concerned, and their Lordships' attention had been invited to the decision of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and that of the Bombay High Court in Narayan Deju Puthrani Vs. Labour Appellate Tribunal of India at Bombay and Another, , As these aspects of the case had not been put before their Lordships for their consideration and decision, we feel that it would be permissible for us to take the view that the decision in the said Writ Petn. No. 120 of 1957 (Mys) would not be applicable to the present case.

6. A somewhat feeble argument was put forward by the learned Advocate for the respondent that any judicial superintendence to be exercised in respect of this

order, could be only by the. High Court of Bombay. In support of this argument he sought to rely on that part of Section 69 of the States Reorganisation Act which states that :

"Nothing in this Part shall affect the application to the High Court for a new State of any provisions of the Constitution,"

His argument is that prior to 1-11-1936, the High Court of Bombay could exercise its power under Article 227 in respect of the orders made by the Bombay Revenue Tribunal and that this constitutional power is saved to the High Court of Bombay by Section 69 of the States Reorganisation Act.

We are not impressed by this argument. By virtue of Section 8 of the States Reorganisation Act, the new State of Bombay came into existence on 1-11-1956. u/s 49 of that Act, the High Court which immediately prior to 1-11-1956 was exercising jurisdiction in relation to the "existing State" of Bombay was deemed to be the High Court for the new State of Bombay. The power of superintendence under Article 227, could be exercised by that High Court throughout the territories of the new State of Bombay only, as from 1-11- 1956. Similarly, the High Court for the new State of Mysore could, as from 1-11-1956, exercise its powers of superintendence under Article 227 in relation to the territories included in the new State of Mysore.

We are not satisfied that there is anything in the provisions of the States Reorganisation Act which would support the view that an order which is effective exclusively within the territories of the new State of Mysore, could after 1-11-1956 be interfered with by the High Court for the new State of Bombay on the ground that the said order had been made by the Bombay Revenue Tribunal sometime prior to 1-11-1956 when the High Court for the former State of Bombay had jurisdiction to interfere with such orders.

7. The Bombay Revenue Tribunal is in the position of a Tribunal which has become functus officio in relation to these territories; the entire records of the case are before, us we are satisfied that there is no bar to the exercise of the jurisdiction under Article 227 of the Constitution, provided that, on the merits of the case, such an interference is found to be justified. There only remains for us to consider as to whether on merits, this is a fit and proper case in which interference under Article 227 would be justified.

In regard to this power under Article 227, the Supreme Court, in the case of Waryam Singh and Another Vs. Amarnath and Another, has observed as follows :

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

It has not been made out that the Tribunal had acted beyond the bounds of its

authority. The Tribunal has held that the statutory notice which the petitioner had given to terminate the tenancy, is an invalid one. By reason of the proviso in Sub-section (1) of Section 14 of the Bombay Tenancy and Agricultural Lands Act 1948, no tenancy could be terminated unless the landlord gave three months' notice in writing intimating the tenant of his decision to terminate the tenancy and the ground for such termination.

In the notice issued by the landlord in the pie-sent case, instead of giving three months' notice as required under Sub-section (1) of Section 14, the landlord stated that the tenancy rights had been terminated from the date of the notice itself. The learned Advocate for the petitioner relying on a decision of the Privy Council reported in *Harihar Banerji v. Ramsashi Roy* 45 Ind. App 222 : AIR 1918 PC 102 urged that this was merely a defect which did not render the notice an invalid one.

He argued that in treating the notice as invalid the Tribunal had committed an error apparent on the face of the record. We cannot agree with this contention. It appears to us that the defect in the notice in the Privy Council case was purely technical and that it would not be correct to understand their Lordships as having laid down as a general rule that whatever may be the defect in the notice a uniformly generous and liberal attitude should be adopted in construing such notice.

In a decision of the Bombay High Court reported at page 1 of 1957 May issue of the Tenancy Law Reporter, *Walu v. Naru*, his Lordship Gajendragadkar J., after discussing the Privy Council decision above referred to, reached the conclusion that in considering the question as to whether any given defect in the notice can be condoned and the notice treated as effective, the terms of the notice will have to be construed and the nature of the defect as against the validity of the notice will have to be examined and that it would necessarily be a question of fact in each case. Further, his Lordship stated as follows;

"In adopting a liberal attitude in such matters Courts must have regard not only to the interests of the landlords whose notices are challenged but to the interests of protected tenants whose interests deserve serious consideration. That is why in our opinion the question as to whether any given notice is valid or not will always depend upon the terms used in the notice and upon the defect alleged in the notice."

In the present case, the statutory requirements of three months' notice had been violated by the landlord by his purporting to terminate the tenancy from the very day of the notice. In the absence of a valid notice, the tenancy could not be terminated and it cannot be said that the Tribunal committed any error apparent on the face of the record or acted beyond the limits of its authority in dismissing the landlord's application. The existence of any circumstance which would justify interference under Article 227 has not been made out. The petitioner fails and his petition is dismissed with costs. Advocate's fee Rs. 100/-.

9. Petition dismissed.