(1988) 07 BOM CK 0046

In the Bombay High Court

Case No : Letters Patent Appeal No. 93 of 1987

Atmaram Patil APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 5, 96
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 33

Citation : (1989) 2 BomCR 244

Hon'ble Judges : V.A. Mohta, J;H.D. Patel, J

Bench : Division Bench

Advocate : T.R. Kankale, for the Appellant; V.V. Naik, A.G.P, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—The Sub-Divisional Officer, Khamgaon declared 126 acres 7 gunthas of land as surplus with the land-holder Atmaram Patil (the petitioner) under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (the Act). 9 acres 8 gunthas was allowed as potkharab and was not, therefore, calculated in the total holding. The petitioner had claimed exclusion of 35 acres 19 gunthas on that count. Aggrieved by the inclusion of 26 acres 7 gunthas in the total holding, the landholder filed an appeal u/s 33 of the Act before the Maharashtra Revenue Tribunal and applied for stay of further proceedings before the S.D.O. The Tribunal granted limited stay of delimitation of 26 acres and 7 gunthas and permitted the S.D.O. to limit the remaining area of 100 acres declared as surplus with the landholder with his consultation. Aggrieved by that interim order to stay permitting delimitation of 100 acres, the land-holder filed a writ petition which was heard, by the learned Single Judge and dismissed. The present Letters Patent Appeal is directed against the said judgment of the learned Single Judge.

2. The land-holder contends that filing of the appeal operates as automatic stay of the whole order appealed against and, therefore, the Tribunal''s order granting

only a limited stay and not granting complete stay was without jurisdiction. We find it extremely difficult to accept this submission, taking into consideration, the object of the Act, its scheme and also the powers of the Tribunal. Section 33 of the Act provides for appeals. It reads thus :

"33. (1) An appeal against an order or award of the Collector shall lie to the Maharashtra Revenue Tribunal in the following cases :---

(1) an order under sub-sections (2) and (3) of section 13 not being an order under which a true and correct return complete in all particulars is required to be furnished;

(2) a declaration or any part thereof u/s 21;

23-A, an order u/s 21-A;

(3) an award u/s 25;

(4) an order refusing sanction to transfer or divide land u/s 29;

(5) an order of forfeiture under sub-section (3) of section 29;

(6) an amendment of declaration or award u/s 37;

and

(7) an order of summary eviction u/s 40.

(1-A) Any respondent, though he may not have appealed from any part of the decision, order, declaration or award, may not only support the decision, order, declaration or award, as the case may be, on any of the grounds decided against him, but take cross-objection to the decision, order, declaration or award which he could have taken by way of an appeal :

Provided that, he has filed the objection in the Maharashtra Revenue Tribunal within Thirty days from the date of service on him of notice of the day fixed for hearing the appeal, or such further time as the Tribunal may see fit to allow; and thereupon the provisions of Order 41, Rule 22 of the First Schedule to the Code of Civil Procedure, 1908 shall apply in relation to the cross-objection as they apply in relation to the cross-objection under that rule.

(2) Every petition of appeal under sub-section (1), shall be accompanied by a copy of the decision, order, declaration or award, as the case may be, against which the appeal is made.

(3) In deciding such appeal the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court, under the Code of Civil Procedure, 1908."

Sub-section (3) empowers the Tribunal to exercise all the powers which a Court has and enjoins upon it to follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court, under the Code of Civil Procedure, 1908. While an appeal is provided for in the CPC by section 96, procedure and power of the Appellate Court is prescribed under Order 41, Rules 1 to 37. Order 41, Rule 5 mentions that filing of an appeal shall not operate as stay but the Court may, in appropriate cases, grant stay in such manner as is just and proper.

3. The Bombay Revenue Tribunal Regulations, 1958 (made by virtue of authority conferred by section 14 of the Bombay Revenue Tribunal Act, 1957) regulates the constitution and powers of the Tribunal and so also the manner of hearing the appeals. Rule 14 reads thus :

"14. Stay of execution of award or order. ---

(1) Pending a decision on an appeal or application for revision, which has been admitted under Regulation 13, the Tribunal may direct the execution of any award or order against which the appeal or application is made to be stayed on such conditions as may be deemed fit.

(2) An order made under sub-regulation (1) may be vacated or modified by the Tribunal provided that prior notice is given to the party in whose favour such order has been made to show cause why it should not be vacated or modified."

4. The Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings (Distribution of

Surplus Land) Rules, 1975 framed under the Act deal with the manner of surplus land. Rule 7(3) reads thus :

"(3) If on or before the date fixed for taking over possession of surplus land it comes to the notice of the authorised officer that any land included in the final statement received by him under sub-rule (2) has not been finally declared surplus land, or an appeal has been filed against the declaration of any land as surplus land and the appellate authority or any other competent authority has issued a stay against the distribution proceedings in respect of the said land, he shall not hand over possession of such land to the allottee or allottees concerned, but shall take a notice in the final statement regarding the stay in respect of distribution of the land and inform the allottee or allottees concerned accordingly. He shall also make a report to the Collector giving particulars of surplus land which could not be disposed of for the aforesaid reason and the names of the allottee or allottees of such land from the final statement. There upon the Collector shall consider the claim of the allottee whose name or names is or are so omitted from the final statement for the grant of any other surplus land available for distribution and in respect of which the preparation of final statement in accordance with sub-rules (1) and (2) of this rule is in progress."

We notice in the above provisions a specific discretionary power to grant appropriate stay order running all through. In any case there is no exclusion-specific or by necessary implication.

5. The purpose of the Act is to distribute as quickly as possible the surplus land in possession of the richer section of the society to the landless. Will not the said purpose be defeated by denying to the appellate or revisional authority the power to halt the stalling of the process of distribution in which many times the landholder has a vested interest. There can be examples the instant case is one-where considering the nature of the challenge grant of stay of whole proceedings or delimitation of the whole surplus area may be unnecessary. There can be cases where conduct of the land-holder may disentitle him the indulgence. It is one thing to say that stay of delimitation should normally be granted and quite another to say that stay must be deemed to have been granted or must automatically follow by virtue of the only fact and no other that appeal or revision is filed. In this connection the well-known principles governing the inherent power of courts or Tribunals also will have to be borne in mind. They are to the effect that every Court or Tribunal is constituted for doing justice according to the law and must be deemed to possess as a necessary corollary and as inherent in its very constitution all such powers as are necessary to advance the purpose for which it is constituted. As observed in the case of The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, , inherent power has its root in the necessity and its breadth is co-extensive with the necessity.

6. Strong reliance has been placed on section 21 of the Act which makes the declaration of the Surplus Land final subject to decision in appeal u/s 33 before the Tribunal or the revision u/s 45(2) before the State Government. Sub-section (3) reads thus :

"(3) The declaration made under this section, subject to the decision of the Maharashtra Revenue Tribunal in appeal u/s 33, or of the State Government in revision under sub-section (2) of section 45 shall be final and conclusive, and shall not be questioned in any suit or proceeding in any Court."

It may be noticed that before amendment by Maharashtra Act No. 32 of 1965, the declaration was final subject only to the decision of the appeal and by amendment it is final also subject to decision in revision and thus the amendment does not have any effect on the controversy involved.

No doubt the declaration is subject to the decision in appeal or revision, but we fail to see how mere pendency of appeal or revision operates as automatic suspension of the declaration made. True it is that under the scheme of the Act the Collector is empowered to take possession of the land delimited as surplus, it vests in the Government as soon as possession is taken, it is available for distribution to landless and once distribution takes place third party rights get involved in the process. All these circumstances do justify the grant of appropriate stay in order to avoid likely complications, injustice and prejudice to the landholder as well as the recipient of the surplus land. But why should there be a stay even in case where such situations are not likely to arise. Yes, distribution of undisputed surplus land can have some impact on the right of choice of retention of the landholder, but in some cases the extent of undisputed surplus land may be much more in proportion to the extent of disputed land. In such cases the impact will be either nil or negligible. Desire to retain surplus land on some pretext or the other by delaying the proceeding is common. Many times the choice factor is unreal and is used merely as a pretext. The Tribunal or the Government, must therefore, be empowered to examine the facts and circumstances of each case and to grant only appropriate stay. Such power is absolutely necessary to advance the object of the Act.

7. Our attention was invited to a Single Bench decision of this Court in the case of Jagannath Marotrao Gavande v. State of Maharashtra, 1976 Mh.Law Journal 247 in support of the contention that the Tribunal''s granting only limited stay was without jurisdiction. We are unable to spell out any such ratio from the said decision. It will be improper to miss its basic context. By four different petitions refusal to grant stay by the Tribunal was challenged. In one case no reason whatsoever was given, in the second the reason was that only dispute was about Pot Kharab land, in the third and fourth reason was that only question of validity and correctness of partition was involved. The refusal to grant stay for those reasons was not held to be justified and the orders were quashed and set aside. No doubt, there are certain observations which to some extent lend support to the contention raised but they cannot be torn out of context. Even in that decision it is not held that filing of appeal operates as automatic stay of the operation of the order appealed against or of all further proceedings. Situation of the type before us did not arise there and no case can be an authority for the proposition neither argued nor decided. In any case we are unable to subscribe to the view that mere filing of appeal or revision operates as automatic stay of the order challenged or that in those cases stay must be deemed to have been granted. Thus in our view grant of stay considering the scheme of the Act will be normal, but it appropriate exceptional cases there is jurisdiction even to refuse, vacate or grant only limited stay.

8. This judgment will be incomplete without reference to the submission made that section 33(3) of the Act only attracts the procedure of the Court under the Code of Civil Procedure. We do not agree. The language employed also speaks of all the powers of a Court.

9. Under the circumstances, the Tribunal was right in granting only limited stay and the learned Single Judge was right in refusing to interfere with the said interim order. Letters Patent Appeal dismissed. No order as to costs.

