

(2004) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 293 of 2003 and Civil Application No's. 2600 of 2003 and 2433 of 2004

Ayub Khan Pathan and Others

APPELLANT

Vs

Mehtabkhan Pathan deceased through LR's. Daulatbi Pathan and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 322

Citation : (2004) 4 MhLj 924

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : S.V. Adwant, for the Appellant; R.N Dhorde, for respondents 1 to 6 and C.K. Shinde, AGP, for the Respondent

Judgement

A.B. Naik, J.—Civil Application No. 2433/2004 is filed by the petitioners seeking permission of this Court to sell five acres of land out of Survey No. 120 (Gut No. 144), admeasuring 22A 18G. The application being wholly misconceived cannot be entertained. Hence rejected.

2. Civil Application No. 2600/2003 is filed by the respondents in the Writ Petition seeking an injunction against the petitioners from alienating the property in dispute. As I have rejected the application filed by the petitioners seeking permission to sell the property, the interim order granted by this Court on this Civil Application on 4th April, 2002, to continue till the final disposal of the matter by the Tahsildar to whom the Maharashtra Revenue Tribunal has remanded the matter for disposal, in accordance with law.

3. This Petition can be disposed of finally as rule has been granted by me on 3-2-2003 and all contesting parties are represented by their Advocates. In this Writ Petition, the order passed by the Maharashtra Revenue Tribunal (for short "the Tribunal") in Review Petition No. 6/C/1999A and Case No. 23B/94/A is challenged. While admitting the petition, I placed reliance on the judgment of the

learned single Judge in the case of Anoopchand Nathmal Baid vs. Maharashtra Revenue Tribunal, Nagpur reported in 1986 M.L.J. 520, wherein the learned single Judge of this Court (Coram M. S. Dehspande, J.: as then he was) while considering the provisions of the Bombay Tenancy and Agricultural Lands Act (Vidarbha Region) section 111 and provisions of section 322 of the Maharashtra Land Revenue Code, has held that the Tribunal has no jurisdiction to review its order and hence I granted interim relief staying further proceedings, as per the remand order passed by the Tribunal allowing the Review Petition. After admission of this petition,¹ the respondent filed a reply and contested the proceedings. I heard the Writ Petition at length. Though the petition is not on Board, it is taken on Board by the consent of the Advocates and is being disposed of finally.

4. Few facts to be noted to understand the controversy. One Mehtabkhan Hayatkhan Pathan claiming to be a tenant of land Survey No. 102 situated at Satara Tq. and Dist. Aurangabad, approached the Additional Tahsildar, Aurangabad, with a request to declare him as a protected tenant under the provisions of Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as the Act"). The respondent Sherkhan Fatehkhan was the owner of the land and respondent No. 2 is his son and respondent No. 3 is his grand-son. On receipt of the notice from the Tahsildar, the respondents filed their written statement. The learned Tahsildar, by a cryptic order, rejected the said application. While rejecting the said application, the learned Tahsildar proceeded on the footing that the tenant was not in possession of the land since 1951 and the application should have been filed within two years from the date of dispossession as per the provisions of section 32 (1) of the Act. As tenant was not in possession of the land from 1951, the question of granting declaration does not arise and, hence application came to be rejected by the order dated 10th June, 1991.

5. Feeling aggrieved by the judgment and order dated 10th June, 1991 passed by the Additional Tahsildar, Aurangabad, the tenant, filed appeal to the Deputy Collector (Land Reforms) Aurangabad who by his order dated 20th April, 1992 rejected the appeal in limine.

6. Against the said order, the tenant through the power of attorney, has filed Revision Application before the Tribunal u/s 91 of the Act. The Revision application came to be dismissed by the Tribunal on 21st June, 1999. The Tribunal dismissed the Revision Application and confirmed the order passed by both the authorities below. The Tribunal while confirming the order proceeded on the footing that the original application was not filed within two years from dispossession by the tenant for restoration of possession, as required u/s 32(1) of the Act and, therefore, the Tribunal held that the claim for declaration of tenancy rights being time barred, the application cannot be entertained and, therefore, the Revision came to be rejected.

7. After revision was rejected, heirs of deceased-tenant filed application to

review the order passed by the Tribunal earlier. It is stated in the Review Application that Mehtabkhan Hayatkhan Pathan died on 13th June 1996 when the Revision Application was pending. That Revision was filed through the power of attorney and the power of attorney has not disclosed the fact of death of Mehtabkhan and. as such, the Revision which was decided on merit which was against the dead person, which is nullity in the eye of law. It is contended that the heirs or respondent No. 2 Ahmedkhan s/o Sher Khan were not served with the notice of Revision Application and the Revision Application was not ripe for hearing. The applicants also prayed that they should be brought on record as heirs and legal representatives of deceased Mehtabkhan. It is contended that the order passed by the Tribunal earlier, is required to be reviewed as it is passed against the dead person as the Revision was dismissed on merit. It was also stated that authorities below have proceeded to decide the matter in a hurried manner and, as such, wrong finding has been recorded regarding dispossession. With these contentions, it was prayed for review of the earlier order. Similarly, an application was filed by the heirs, for condonation of delay in filing the application for bringing heirs on record. The respondent submitted his written submission and opposed the prayer made by the heirs of the deceased to review the order. It is submitted that after the revision was filed, the Tribunal has issued notice to the respondents which was initially not served. Again, another application was filed seeking re-issuance of notice which was served on the respondent on 12-11-1998. As the respondents did not appear, the proceedings proceeded ex parte. It was also submitted on 20th April, 1999 the revision petitioner has submitted an application with a prayer that the Revision be decided on merit. It is further contended that as per the provisions of Article 120 of the Limitation Act, the legal heirs should have been brought on record within 90 days and failure to make such an application, by virtue of Article 121 of the Limitation Act, the proceedings stand abated and as such, the heirs of the revision petitioner were not brought on record, the proceedings stand abated after period of limitation, in the year 1996 itself. It is contended that the heirs of the deceased were not brought on record, the proceedings stand abated, even under provisions of Rule 24 of the Maharashtra Revenue Tribunal Regulations, 1958. It is contended that as the abatement was not set aside, filing of Review application itself was not maintainable. With these averments, the respondents prayed for dismissal of the Review Application.

8. The Tribunal after hearing the parties and considering the submissions advanced, the Tribunal came to the conclusion that Mehtabkhan Hayatkhan Pathan died on 13th June, 1996 and the Tribunal has disposed of the Revision Application on merit on 21st June, 1999 and as the judgment was against the dead person considering the legal position which is brought on record, the Tribunal found that there are sufficient grounds to review the order. The Tribunal also found that the Tahsildar has denied the opportunity to the tenant to prove his case and the order is passed in contravention of the principles of natural justice. Therefore, the Tribunal found that the order passed by the Addl. Tahsildar

is unlawful and ab initio void in the eye of law. Accordingly, the learned Member of the Tribunal has found that the question that could have been decided by the Addl. Tahsildar as to who was in possession on the relevant date as per the Act as the original owner of the land died in 1951, by recording the finding, the Tribunal came to the conclusion that the order passed by the Tribunal earlier, required to be reviewed and the matter is required to be remanded back to the Tahsildar to decide the application on merit by giving opportunity to the parties of being heard and by adducing necessary evidence in support of their cases. Accordingly, the learned Member of the Tribunal by its order dated 16th February, 2002 allowed the Review Application.

9. Feeling aggrieved by the judgment and order passed by the learned Designated Member of the Tribunal dated 16th February, 2002, the petitioners have approached this Court by way of this petition.

10. As already observed by me, while issuing rule, I have placed reliance on the judgment of this Court reported in 1986 M.L.J. 520. The respondents who filed reply, has relied on another judgment of this Court rendered by the learned single Judge of this Court in the case of Genu Laxman Shinde and others vs. Chandrakant Dagdu Kotulkar reported in 1999 (1) M.L.J. 235 : 1999 2 M.L.R. 537, On the basis of the judgment filed along with reply, Shri R. N. Dhorde, the learned Advocate for the respondents 1 to 6 brought to my notice that the judgment rendered by this Court in Anoopchand's case (supra) runs contrary to the Division Bench of this Court in the case of Raghunath Gambhirshet Vs. Ganpat Motiram and Others, and the learned single Judge in Genu Shinde's case (supra), has considered this judgment and did not approve the view taken by Deshpande, J. as then he was. He brought to my notice Para No.8 of Genu Shinde's case, wherein the learned single Judge (A. P. Shah, J.) has observed:

"In the case of Anoopchand vs. MRT Nagpur M. S. Deshpande, J. was considering a question of the power of review of the Maharashtra Revenue Tribunal in cases arising under the Vidarbha Tenancy Act. The learned single Judge seems to have taken a view that the power of review is confined only to the cases arising out of enactment mentioned in Schedule J. On going through the judgment of learned single Judge, it is seen that the Division Bench judgment in Raghunath's case was not cited before the learned single Judge and, therefore, I am unable to agree with the view expressed by the learned Judge."

11. On the basis of the above observations, Shri Dhorde, submitted that the judgment on which reliance is placed at the time of issuing rule "nisi" requires to be re-considered as to whether the judgment in Anoopchand's case is a good law. For that purpose, I will have to consider first the Division Bench judgment in Raghunath's case, in case I came to the conclusion that the point raised in this petition stands concluded in view of the Division Bench judgment; then I have to consider whether Anoopchand's case is a good law. If it is found that the Revenue Tribunal can review its own decision then the second question will arise whether on the material that was before the Tribunal, the Tribunal was justified

in reviewing the judgment.

12. It is not disputed that the revision came to be filed u/s 91 of the Act. Section 91 of the Hyderabad Act is *pari materia* with the provisions of section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 and section 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. In Anoopchand's case the question that arose before this Court regarding the jurisdiction of the Revenue Tribunal to review the orders passed u/s 111 of the Tenancy Act, Anoopchand who was the petitioner, filed an application u/s 50 of the Bombay Tenancy and Agricultural Lands Act (Vid. Region) Act, before the Agricultural Lands Tribunal, claiming that he was in possession of certain agricultural land as the tenant and that land belong to landholder, he continued to be tenant of the said land till 1974-75. On 1st November 1974 he gave a statutory notice to the landholder making an offer to purchase the land as the sale deeds were not executed by the land holder, the petitioner filed an application to the Addl. Tahsildar and Agricultural Lands Tribunal for purchase of land and fixation of price. The application was not opposed by the landholder, the Addl. Tahsildar found that the petitioner was the tenant only from 1971-72 and that since the offer to purchase the land had not been made within one year from the notified date the ownership of the land cannot be claimed u/s 50 of the Act. This order passed by the Addl. Tahsildar came to be challenged before the Sub-divisional Officer in appeal which came to be dismissed. The Revision Application was filed before the Tribunal and the Tribunal disposed of the proceedings. After the proceedings were disposed of the State of Maharashtra filed an application for review of the Tribunal's order because of certain observation made by the Tribunal while deciding Revision that the petitioner has become tenant of the land for the first time in 1970-71, was not correct. The grievance of the State was that the finding so recorded by the Tribunal were not relied upon by the tenant in the Ceiling Acts and they have contended that they are holding the land from the land owner prior to 26th September 1970 and hence those lands are not liable to be calculated in the holding of Anoop who was heir of the land holder. As such, application for review was filed. The Tribunal treated it as *suo motu* revision and accordingly allowed the review application by taking recourse to the provisions of section 322 of the Maharashtra Land Revenue Code. This order was challenged in this Court by filing the Writ Petition. The learned single Judge (M. S. Deshpande, J: as then he was) held that the Tribunal has no authority to review its order. The learned single Judge has observed,

".....It is therefore clear that the powers which the Maharashtra Revenue Tribunal can exercise, under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act would be only those as have been conferred on it by that Act. The provisions of Chapter XV of the Maharashtra Land Revenue Code 1966 do not, therefore, render any assistance or applicability of the power of review insofar as cases arise under the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act."

13. Turning to another judgment of the learned single Judge in the case of Genu Shinde (*supra*) where the learned single Judge (A. P. Shah, J.) was called upon to consider the identical question raised before this Court in Anoopchand's case. The petitioner in that case relied heavily on the judgment of Anoopchand's case. While hearing the petitioner, reliance was placed on the Division Bench judgment of this Court in the case of Raghunath Gambhirshet Vs. Ganpat Motiram and Others, . The Division Bench examined the provisions of Bombay Revenue Tribunal Act, 1939 and the provisions of section 76 of the Bombay Tenancy and Agricultural Lands Act. The Division Bench came to the conclusion that the Tribunal has jurisdiction to review its order. The Division Bench thus observed,

"Now the first question is as to whether the Tribunal has jurisdiction to review its own orders. It is perfectly true that a Tribunal or a Court has no inherent jurisdiction to review its own decisions. Such power must be conferred expressly by statute, and Mr. Chandrachud has drawn our attention to the fact that in the Bombay Tenancy Act which gives revisional powers to the Revenue Tribunal u/s 76, there is no provision with regard to review. Attention has also been drawn to rule 25 which the Tribunal has framed under sections 76 and 82 of the Act, and that rule provides that, in deciding appeals and applications for revision, in matters not provided for in these rules the Tribunal shall so far as may be follow the procedure laid down under the relevant provisions of the Code of Civil Procedure, 1908, and in this connection Mr. Chandrachud is right when he contends that the provisions of the CPC are only made applicable in the actual hearing and deciding all appeals and applications for revision. This rule cannot confer any jurisdiction upon the Tribunal to entertain a review application which follows upon a decision in an appeal or in an application for revision. Then we have the Bombay Revenue Tribunal Act (XII of 1939). It was by that Act that the Bombay Revenue Tribunal was set up and its powers and functions are defined in section 4 and the powers and functions there set out relate to revenue matters. Then we have section 7 which in terms expressly confers upon the Tribunal the power of review. But the contention of Mr. Chandrachud is that section 7 is limited by section 4 and the power of review is only conferred upon that Tribunal which exercises the powers and functions mentioned in section 4. Therefore, according to Mr. Chandrachud, when the Legislature conferred fresh powers upon the Revenue Tribunal by giving it revision powers u/s 76, inasmuch as the Legislature did not confer upon the Tribunal the power to review its own decisions when exercising those revisional powers, it is not open to the Tribunal to fall back upon in section 7 in order to find jurisdiction to review its own decisions. In our opinion that is not the proper interpretation to put upon section 4 and section 7 of the Act XII of 1939. That Act sets up a new Tribunal and section confers upon that Tribunal generally certain power, viz. the power and jurisdiction to review its own decisions. Section 4 defines its functions and so long as this Act stood on the statute book, the only functions which the Tribunal could exercise the power of review conferred upon it u/s 7. But when the Tenancy Act was passed, further functions were allocated to the Tribunal, and

one of those functions was the power to act as a revisional body in certain tenancy matters specified in the Tenancy Act. But when the functions of the Tribunal were increased, the Tribunal still had the power to review its decisions conferred upon it u/s 7. The power to review conferred upon it u/s 7 was not limited to the exercise of the functions enumerated in section 4 but that power attached to the Tribunal as such and it could always be exercised by the Tribunal, whatever powers might be conferred on it from time to time. Therefore, the power to review is the power that attaches to the Tribunal as such irrespective of what jurisdiction may be conferred upon it from time to time by the Legislature. Therefore, it would not be correct to say that as section 76 of the Tenancy Act conferred a new power upon the Tribunal that power had to be exercised without the power of review conferred upon it u/s 7. As we said before, that power attached to the Tribunal, as such and the Tribunal could review its own decisions in whatever capacity those decisions might be arrived at and at whatever jurisdiction the Tribunal might be exercising. Therefore, in our opinion, when exercising its Revisional powers u/s 76, the Tribunal has the power to review its own decisions."

14. I have anxiously gone through all the three judgments in Raghunath's case, Anoop's case and Genii's case and, in my judgment, considering the judgment of the Division-Bench in Raghunath's case wherein the Division Bench was considering the provisions of the Bombay Revenue Tribunal Act, 1939. Section 4 and section 7 of that Act deals with the Tribunal's jurisdiction. The Bombay Revenue Tribunal Act was repealed by the Bombay Revenue Tribunal Act, 1957. By virtue of section 336 of the Maharashtra Land Revenue Code, 1966, the Bombay Revenue Tribunal Act, 1957 was repealed. Under the provision of Chapter XV of the MLR Code, the Maharashtra Revenue Tribunal came to be established. The Bench in Raghunath's case has considered the provisions of section 7 read with section 76 of the Bombay Tenancy and Agricultural Lands Act (which are *pari materia* with the provisions of section 91 of the Act). Therefore, applying the binding ratio of the Division Bench judgment in Raghunath 's case to the facts of this case, in my opinion, the judgment of the learned single Judge in Anoopchand's case (*supra*) cannot be applied and will have to be construed it as a *per incuriam*. Having considered the Division Bench judgment in Raghunath's case and Genu Laxman Shinde's case, I am of the view that the Tribunal has jurisdiction to review its order u/s 322 of the Maharashtra Land Revenue Code. Having arrived at this conclusion, in my judgment, the Maharashtra Revenue Tribunal was justified in reviewing its order. The Tribunal on noticing that the revision was dismissed when the revision petitioner had died and his heirs were not brought on record. The record produced along with this petition shows that the Revision Application was, in fact, filed through the power of attorney of Mehtab Khan s/o Hayat Khan. The fact of death of Mehtab Khan s/o Hayat Khan was not brought to the notice of the Tribunal. As a matter of fact, the advocate who appeared for revision petitioner through the power of attorney filed an application to hear the revision on merit. This aspect was considered by

the Tribunal and. accordingly, the review was allowed. Hence, there was sufficient ground to review the judgment and order. I therefore find no jurisdictional error has been committed by the Tribunal in allowing Revision Application.

15. I may quote one submission which was made by Shri Adwant, Adv. for petitioners; he submitted that the tenant died in 1996 but the Advocate appearing for the petitioner has himself filed an application requesting the Tribunal to hear the Revision application on merit. It is to be noted that the Revision Application was filed through the power of attorney. It is accepted rather established from the record that Mehtabkhan Hayatkhan died on 13th June, 1996. Therefore, on his death, the power of attorney executed by him in favour of Azgarkhan s/o Dilawar khan comes to an end and, therefore, he cannot file an application through an Advocate to request the Tribunal to decide the matter on merit. Shri Adwant submitted that the death of Mehtabkhan was not brought to the notice of the tribunal and the Tribunal has proceeded on the basis of the application filed by the revision petitioner through the Advocate and, therefore, the Tribunal was justified in deciding the Revision Application on merit as it is accepted that Mehtabkhan died prior to the decision rendered by the Tribunal on 21st June 1999. The judgment so rendered by the Tribunal was against a dead person. Therefore, the contention raised by Shri Adwant that the Revision Application was decided on the application filed by the Advocate, was properly decided by the Tribunal, is not a sound proposition, hence, it is not possible for me to endorse this submission. As the matter is remanded to the Addl. Tahsildar for retrial it will be inappropriate to make any observation on merit of the controversy. I keep all questions open to the parties to agitate it before the Addl. Tahsildar. The Addl. Tahsildar shall decide the application filed by the tenant as per the direction given by the Tribunal within a period of six months from today and, in case thereafter, any occasion arises for the parties to file appeal, the Collector, shall decide the appeal within one year from the date of filing of appeal.

16. With these observations, the order passed by the Tribunal stands confirmed. Rule discharged. No order as to costs.