

(1958) 07 BOM CK 0040

In the Bombay High Court

Case No : Special Civil Application No. 1324 of 1958

Bai Rukhi and Others

APPELLANT

Vs

Vrajlal Jechand and Others

RESPONDENT

Date of Decision : 29-07-1958

Acts Referred:

Bombay Tenancy Act, 1939 — Section 24, 24(2), 24(3), 24(4), 28

Citation : AIR 1960 Bom 212 : (1959) 61 BOMLR 408

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

Bench : Division Bench

Advocate : V.M. Limave, for the Appellant; M.H. Chhatrapati and C.S. Trivedi for Opponent 1 and M.A. Rane, Asstt. Govt Pleader for Opponent 5, for the Respondent

Judgement

Vyas, J.—This is an application made under Art. 227 of the Constitution of India by three petitioners wherein the petitioners have prayed for the setting aside of the order made by the Government of Bombay on 5-2-1958. By the said order, the Government reversed the order of the Prant Officer dated 24-4-1953. By his order dated 24-4-1953 the Prant Officer held that the application made by the present opponent No. 1 of 4-11-1947 for the restoration to him of the land from which he was ejected was barred by limitation and he ordered that the said application do stand dismissed. By an order dated 5-2-1958 made by the Government of Bombay, the Government allowed the aforesaid application of opponent No. 1 and directed that the said application of opponent No. 1 and directed that the possession of the lands which are the subject matter of the present application be restored to him. It is from this order of Government dated 5-2-1958 that the present application under Art. 227 of the Constitution has been made by the petitioners.

2. This application raises a point under S. 28 of the Bombay Tenancy Act of 1939 and the point is whether u/s 28 Government has power to revise an order made by the Mamlatdar under S. 24(2), or by the Collector in appeal u/s 24(3), of the

Act. This point arises upon the following facts and circumstances:

3. It would appear that the opponent No. 1 Bhavsar Vrajlal Jechand was evicted from the lands comprising 22 survey Nos. of village Vataman by the opponent No. 3 Thakorsahed of Sanand on 20-5-1944. The Bombay Tenancy Act of 1939 was applied to the area on 11-4-1946. Under sub-section (2) of S. 4 of the said Act, the opponent No. 1 gave two notices to the opponent No. 3 contending that he (opponent No. 1) was wrongfully evicted from the above-mentioned land and that therefore possession of these landscapes, the opponent No. 1 on 4-11-1947, made an application under S. 24 of the Tenancy Act of 1939 to the Mamlatdar for restoration of possession of the 22 survey numbers to him. By an order made on 22-9-1952 the Mamlatdar held that the opponent No. 1 had been wrongfully evicted from 10 out of the 22 survey numbers. It may be noted that amongst those we are concerned in this application were not included. In other words, the opponent No. 1's application for restoration of possession of the lands with which we are concerned in this application was rejected by the Mamlatdar by his order dated 22-9-1952. It may be necessary to note what are the survey numbers with which we are concerned in this application. The first petitioner's grievance is in respect of S. No. 333 of village Vataman. The second petitioner's grievance is in respect of S. No. 217/1 of the same village and the third petitioner's complaint is in the matter of S. No. 335 of the same village. It is the petitioners' case that these lands were had by them under the various mortgages which were effected in their favour by the opponent No. 1 feeling aggrieved by the order made by the Mamlatdar on 22-9-1952 went in appeal against it to the Prant Officer. The opponent No. 3 Thakorsahed of Sanand, also appealed from the said order of the Mamlatdar, since the Mamlatdar had decided against him in respect of 10 survey numbers out of 22 survey numbers. By an order made by him on 24-4-1953, the Prant Officer held that the opponent No. 1's application dated 4-11-1947 for restoration to him of the lands from which he was ejected by the opponent No. 3 was time-barred and he accordingly dismissed the appeal of opponent No. 1. While dismissing the appeal of opponent No. 1 by the Mamlatdar, was reversed From the aforesaid order of the Prant Officer allowed the appeal of opponent No. 3. The effect of the Prant Officer allowed the appeal order, therefore, was that the order of restoration of 10 survey numbers, which was made in favour of opponent No. 1 by the Mamlatdar, was reversed. From the aforesaid order of the Prant Officer, opponent No. 1 made an application to the Government acting under S. 28 of the Tenancy Act of 1939, passed an order on 5-2-1958 allowing the application of opponent No. 1, reversing the order of the Prant Officer and directing that the possession of the three lands with which we are concerned in this application, be restored to opponent No. 1. It is from this order, as I have mentioned in the earlier part of this judgment that the petitioners have come to this Court under Art. 227 of the Constitution.

4. Now, the learned Advocate Mr. Limaye appearing for the petitioners has raised only one point in this application, and the point is an important point. Mr. Limaye

contends that Government had no jurisdiction under S. 28 of the Bombay tenancy Act of 1939 to revise an order made by the Manladar under sub-section (2), or by the Collector in appeal under sub-section (3), of S. 24 of the Act. Mr. Limaye says that upon a proper construction of S. 28 of the Tenancy Act of 1939 it would appear that the jurisdiction, which the Legislature conferred upon the Government under that section, was of a entirely administrative or executive character. Now, S.28 of the Tenancy Act of 1939 provides:

Except in cases provided in Section 12, in all matters connected with this Act, the Provincial Government shall have and exercise the same authority and control over the Collectors and Mamlatdars as they have and exercise over them in the general and revenue administration.

Mr. Limaye contends that his language of Section 28, which is plain and admits of no ambiguity, clearly shows that the control, which the Legislature intended the Government to exercise over the Collectors control, which the Government to exercise over the Collectors and Mamlatdars, was of the same character as the control, which the Government exercise over these officers in matters of general and revenue administration. Mr. Limaye say that the distinction between the judicial administration on the one hand and the general and revenue administration on the other hand is patently clear and, therefore, when S. 28 expressly of the same control and authority over the Collectors and Mamlatdar, which the Government exercises in general revenue administration, the Legislature intended to lay down that in matters affecting judicial administration the Government shall not interfere with the orders made by the Collectors and Mamlatdars. In support of this contention, Mr. Limaye has Court in Special Civil Application No. 1651 of 1952 decided by the learned Chief Justice and Mr. Justice Dixit on 17-11-1952. In that application also an order made by the Government of Bombay, which was purported to have been made under S. 28 of he Tenancy Act of 1939, was challenged. In that case, the landlord made an application on the 9th December 1948 to eject his tenant. While that application, which was made under the Act of 1939, was pending, the Act of 1948 came into force. The Mamlatdar directed the tenant to restore possession of the land to the landlord. From that order of the Mamlatdar directed the tenant went in appeal to the Collector. The Collector confirmed the order of the Mamlatdar. Thereupon the tenant went in revision before the Revenue Tribunal and the Revenue Tribunal held that it had no jurisdiction to entertain the application and expressed an opinion that the Government of the State was empowered under S. 28 of the Tenancy Act of 1939 to revise the orders of the Courts below. It may be noted that in the present case also the Bombay Revenue Tribunal by an order passed by them on the 15th July 1955, held that they had no jurisdiction under the Act of 1939 to interfere with the order made by the Prant Officer in appeal under sub-s. (3) of S. 24 of the said Act. To revert to the case which was considered in Special Civil Application No. 1651 of 1952, the tenant feeling aggrieved by the order of the Revenue Tribunal Mamlatdar, which was confirmed in appeal by the Collector. In that case, the learned Chief Justice delivering the judgment of the

Bench observed:

No judicial order can be interfered with administratively or by an executive fiat. The decision of the Collector in appeal was a judicial order and that order can only be corrected judicially, We do not read Section 28 to confer upon the Government a power to correct a decision of the Collector judicially. That section only empowers the Government administratively and the present order of the Government is not in the exercise of their power to control the Collector or the Mamlatdar administratively but is in the exercise of their power to correct the Mamlatdar and the Collector judicially and no such power exists under the old Tenancy Act.

Relying upon these observations, Mr. Limaye for the petitioners contends that in the present case also the Government of the State of Bombay had no power of judicial revision to correct the orders of the Mamlatdar and the Collector, which orders had the character of judicial orders. It may be noted that while deciding Special Civil Application No. 1651 of 1952, the High Court had referred to its earlier decision in Special Civil Application no. 274 of 1951. In that case also the Tribunal had held that it had no jurisdiction to entertain the revisional application and thereafter the Government had passed an order setting aside, the appellate order of the Collector. In that case also it was held by the High Court that Government could not by an executive fiat interfere with the judicial decision arrived at by the Tribunal. Mr. Limaye relies upon that decision also, namely, he decision of this Court in Special Civil Application No. 274 of 1951.

5. We have given an anxious thought to the above contention of Mr. Limaye, but we have felt constrained to reject the contention. The important section which falls to be considered and construed, while considering S. 28 of the Act of 1939, is S. 24(4) of the said Act. Now, if we turn to S. 24(4) this is what the sub-section provides:

Subject to the provisions of Section 28 every order passed by the Mamlatdar under sub-sec, (2), unless modified or revised by the Collector on appeal under sub-section (3), and every order passed by the Collector under sub-s. (3), shall be fined.

The language of this sub-section is perfectly clear. There is no ambiguity about it. By enacting sub-s. (4) of S. 24 the Legislature expressly made every order of the Mamlatdar made under sub-s. (2) of S. 24 and every appellate order of the Collector to the power of revision by Government under S. 28 of the Act. It is clear, in our view, that the power which the Legislature conferred upon Government under S. 28 was a power to modify, annul and reverse any order made by the Mamlatdar under sub-s. (2) of S. 24 or any order by the Collector under sub-s. (3) of S. 24. Unless power of judicial revision was conferred upon the State Government by S. 28 there could possibly arise no question of an order of Government made under S. 28 affecting the finality of the orders of sub-ss. (2) and (3) respectively of S. 24. Sub-section (4) of S. 24

expressly speaks of the finality of the orders of the Mamlatdars and the Collectors subject to the provisions of S. 28. The important words in sub-s. (4) are:

subject to the provisions of S. 28, every order passed by the Mamlatdar
and every order passed by the Collector shall be final.

Now, the word "final" is not defined in the Tenancy Act of 1939. Therefore, in order to ascertain what the Legislature meant when they used the word "final" in sub-s (4) of S. 24, we must turn to the provisions of S. 2 (13) of the Tenancy Act of 1939. Section 2(13) provides:

Words and expression used in the Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879.

It is clear, therefore, that in order to understand what the Legislature meant when they used the word "final" in S. 24 (4), the finality being subject to the provisions of S. 28 we must turn to the provisions of Ss. 212 and 211 of the Bombay Land Revenue Code. Section 212 provides:

Whenever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The State Government alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section.

It is clear, therefore upon the reading of S. 212 of the Bombay Land Revenue Code and S. 24(4) of the Tenancy Act of 1939 that the orders passed by the Mamlatdars and Collectors under sub-ss. (2) and (3) respectively of S. 24 shall be final subject to the power of Government to modify them, annul them or reverse them. Now, under what circumstances the Government will exercise its power to modify, annul or reverse the orders of the Mamlatdars and Collectors is made clear by S. 211 of the Bombay Land Revenue Code. Section 211 provides:

The State Government and any revenue Officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

There is, therefore, no doubt upon the reading together of Ss. 211 and 212 of the Bombay Land Revenue Code that the Legislature has conferred power upon the Government to examine the legality or the propriety or the regularity of the proceedings of any revenue officer not inferior in rank to an Assistant or Deputy Collector. In this particular case, the Government examined the propriety and regularity of the order of the Prant Office, an officer not below the rank of an Assistant or Deputy Collector. In our view, reading Ss. 211 and 212 of the

Bombay Land Revenue Code with S. 24(4) and S. 28 of the Tenancy Act, it was competent to Government to do so.

6. It is true that in Special Civil Applications Nos. 1651 of 1952 and 274 of 1951 the view taken by this Court was that the decision of the Collector in appeal under sub-s. (3) of S. 24 of the Act of 1939 was a judicial order and it could not be interfered with administratively or by an executive fiat by Government under S. 28 of the Act. With very great respect, it may be stated that the provisions of S. 24(4) of the Tenancy Act of 1939 do not appear to have brought to the notice of the Court in those Special Civil Applications. It is sub-s. (4) of S. 24 which makes the Mamlatdar's orders and the Collector's orders, passed under sub-ss. (2) and (3) respectively of the section, subject to the provisions of S. 28. Sub-section (4) of S. 24 does not confer absolute finality upon those orders. The finality of these orders depends upon what Government might do in the exercise of the power conferred upon them under S. 28. This aspect of the case, with great respect, does not appear to have been brought to the notice of the Court when Special Civil Applns. Nos. 1651 of 1952 and 274 of 1951 came up for decision.

7. At this stage it might be pointed out that in the case of *Parvatibai Utamlal v. Rupa Keshav* 49 Bom LR 658 : AIR 1948 Bom 118, also it was observed by a Division Bench of this Court:

Taking now the provisions of the Bombay Tenancy Act relevant to the question referred to us, the provision in section 28 that "in all matter connected with the Act, the Provincial Government shall have and exercise the same authority and control over the Collectors and Mamlatdars as they have and exercise over them in the general and revenue administration" clearly indicates, in my opinion, that an order made by the Collector under S. 24 of the said Act is subject to the revisional jurisdiction not of this Court, but of the Provincial Government.

These observations also do not appear to have been brought to the notice of this Court in Special Civil Applns Nos. 1651 of 1952 and 274 of 1951.

8. Again with great respect, the scheme of the Tenancy Act of 1939 does not appear to have been brought to the notice of the Court in those Special Civil Applications. There are several sections in the Act of 1939 which lead us to the conclusion that the jurisdiction, which was conferred by the Legislature upon the Government under S. 28, was jurisdiction of a revisional character and not a mere administrative or executive jurisdiction. Section 2A (2) provides that where an application under sub-s. (1) of that section has been made and the Mamlatdar refuses to make a declaration which is prayed for and where the Mamlatdar's decision is not set aside by the Collector in appeal under sub-s. (1) of that section has been made and the Mamlatdar refuses to make a declaration which is prayed for and where the Mamlatdar's decision is not set aside by the Collector in appeal made under sub-s. (3) of S. 13 of the Act by the Provincial Government under S. 28, the person concerned shall be deemed to be a tenant for the purposes of the Act.

When the Legislature enacted Section 2A, it clearly intended that the Mamlatdar's decision under sub-s. (1) of that section could be judicially revised either by Collector in appeal u/s 13(3) or by the Provincial Government u/s 28. Then again, Section 3A (2) provides that where an application under sub-s. (1) of that section has been made by the person concerned and where the Mamlatdar refuses to make a declaration sought by him and where the Mamlatdar's decision is not set aside by the Collector in appeal under sub-s. (3) of S. 13 or by the Provincial Government u/s 28 the said person shall be deemed to be a protected tenant for the purposes of the Act and his rights as such protected tenant shall be record language used by the Legislature is sub-s. (2) of S. 3A would show that the decision of a Mamlatdar under sub-s. (1) of that section which decision has undoubtedly a judicial character about it. could be revised either by the Collector in appeal under S. 13(3) or by the Provincial Government under S. 28. Sub-section 2) of S. 3A deals with an important question of the rights of the protected tenant and it is clear that the Legislature intended by this sub-section that in pursuance of the power conferred by the Legislature upon Government under S. 28 the Government could interfere with the decision of the Mamlatdar even upon such an important point as the point affecting the tenancy rights. Then again, there is sub-s (4) of S. 13 which provides that the order of the Mamlatdar made upon such an important point as the affecting the tenancy rights. Then again, there is sub-s. (4) of S. 13 which provides that the order of the Mamlatdar made under sub-s (2) of that section shall, subject to an appeal to the Collector under sub-s. (3) of the same section and the provisions of S. 28 be final. The order of the Collector also shall, subject to the provisions of S. 28 to be final. It is not disputed, and indeed it cannot be dispute, that the order made by the Mamlatdar under sub-section (2) of Section 13 and the order made by the Collector under sub-s. (3) of S. 13 possess judicial character and, therefore, when the Legislature provide by sub-s (4) of S. 13 that these orders could be interfered with by the Government under S. 28, it is clear that the Legislature intended to confer upon the Government powers of judicial revision of the order of the Mamlatdar and the Collector. IT is no doubt true that in Special Civil Appln. No. 1651 of 1952 a reference to S. 13 (4) of the Act of 1939 was made. But the attention of the Court does not appear to have been invited to the effect of S. 28 upon the subject of the finality of the orders of the Mamlatdar and Collector. The relevant observation which was made by this Court in that case was this:

When we turn to the old Tenancy Act, 1939, an appeal was provided by sub-s. (3) of S. 13 to the Collector from a decision of the Mamlatdar and that decision became final under sub-s. (4).

It is true that sub-s. (4) conferred finality upon the Collector's decision, but the Court's attention does not seem to have been invited to the fact that the said finality was subject to the provisions of S. 28.

9. Then, again, if we turn to sub-s. (3) of S. 18, the sub-section provides that if

within the specified intimation to his landlord that he is willing to purchase the site the landlord shall apply to the Mamlatdar for the determination of the value of the site. Upon receipt of the said application from the tenant and shall hold a formal enquiry for the purpose of determining the value of the site. The sub-section provides that the determination so made by the Mamlatdar of the amount of the value of the site shall be final, subject to the provisions of S. 28. Then, there is sub-s. (4) of S. 18 and this sub-section provides that that if the tenant fails to intimate his willingness to purchase the site within the specified time to his landlord or if he fails to deposit the amount of the value of the site as determined by the Mamlatdar, the tenant shall be deemed to have relinquished his right of first option to purchase the site and the landlord shall, be deemed to have relinquished his right of first option to purchase the site and the landlord shall, in the event, be entitled to evict the tenant on payment of such compensation for the value of the structure of such dwelling house may be determined by the Mamlatdar after holding an enquiry in the manner providing in sub-s. (3). Once, again, the Legislature, while enacting sub-ss. (3) and (4) of S. 18, conferred power of judicial revision over the orders made by the Mamlatdar sub-s. (3) of S. 19, which provides that the order made by the Mamlatdar under sub-s. (1) of S. 19 shall be final subject to an appeal to the Collector under sub-s. (2) of that section and also subject to the provisions of S. 28. Now sub-s. (1) of S. 19 provides that if a protected tenant or any other person has planted trees on the land, he shall be entitled to the produce and the wood of those trees owing the continuance of his tenancy and shall on the termination of such tenancy be entitled to such compensation for those trees may be determined by the Mamlatdar after holding an enquiry. Sub-section (3) of S. 19 says that the order made by the Mamlatdar under sub-s. (1) shall, subject to an appeal to the Collector under sub-s. (2) and the provisions of S. 28, be the final. Then there is sub-s. (4) of S. 19 which provides that the order of the Collector made under sub-s. (2) of S. 19, namely, the appellate order, shall be subject to the provisions of S. 28 be also final. All these provisions which are enacted by the Legislature in the Act 1939 furnish clear evidence that the intention of the Legislature was to confer powers of judicial revisions upon the Government under S. 28, pursuant to which the Government could modify, annul or reverse an order made by the Mamlatdar initially or by the Collector in appeal.

Even upon the assumption that the powers conferred upon the Government under S. 28 are merely administrative or executive powers and not powers of judicial revision of the orders of the Mamlatdars has made the Mamlatdars' orders and the Collectors' order subject to the power of revision conferred upon the Government to modify those orders, annul them or reverse them. The word "final" which occurs in sub-s. (4) of S. 24 has the same meaning as is assigned to the word is not defined in the Tenancy Act itself. There is no doubt that under the provisions of the Land Revenue Code the State Government has power to examine the legality or the propriety or the regularity of the proceedings held by an officer subordinate to the Government and in the exercise of that power the

Government has jurisdiction to modify, annul or reverse the orders made by the subordinate officers. Therefore, there is no doubt that by enacting S. 28 of the Tenancy Act of 1939, the Legislature conferred powers upon Government, pursuant to which powers the Government could revise the orders made by the Mamlatdars and the Collectors under sub-ss. (2) and (3) respectively of S. 24.

10. The learned advocate, Mr. Limaye, appearing for the petitioners has invited our attention to the provisions of sub-s. (5) of S. 24. This sub-section says:

Every order passed by the Mamlatdar under sub-s. (2) and every order passed by the Collector under sub-s. (3) shall be deemed to be a decree of a Civil Court and shall be executable as such.

Mr. Limaye says that the order passed by the Prant Officer under sub-s. (3) of S. 24 having the effect of a decree, it would not be competent to Government under S. 28 to modify or set aside that order. We are unable to accept this contention of Mr. Limaye. All that sub-s. (5) of S. 24 does is to create a legal fiction for the purpose of execution of an order made by the Mamlatdar under sub-s. (2) of S. 24 or by the Collector under sub-s. (3) of S. 24 shall be treated as though such orders were decrees of a Civil Court. In any view of the matter, the language of sub-s. (4) of S. 24, which is absolutely clear, leaves no doubt that the Mamlatdar's order under sub-s. (2), and the Collector's order in appeal under sub-s. (3), of S. 24 are given finality, subject to the power of Government to revise them under S. 28. That being so, we see no substance in the contention of Mr. Limayer that because the Mamlatdar's order and the Prant Officer's order are to be treated as decrees for the purpose of execution, Government would have no power to set them aside or modify them under S. 28.

11. It may be noted that in his case no challenge or merits is made by the petitioners to the order made by the Prant Officer. So far as the point of law is concerned, for the reasons stated above, we are unable to accept Mr. Limaye's contention.

12. The result, therefore, is that the application fails and is rejected. We make no order as to costs.

13. Application dismissed.