
(1961) 08 GUJ CK 0012
In the Gujarat High Court

Chaudhari Abheraj Hemraj

APPELLANT

Vs

The Collector Mehsana and Others

RESPONDENT

Date of Decision : 23-08-1961

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 73(2), 73(2)
Mamlatdars Court Act, 1906 — Section 21, 23(2)

Citation : (1962) 3 GLR 192

Hon'ble Judges : M.R. Modi, J;J.M. Shelat, J

Bench : Division Bench

Judgement

J.M. Shelat, J.—This is a petition challenging the jurisdiction of the collector Mehsana in respect of an order passed by him u/s 23(2) of the Mamlatdars Courts Act 1906.

2. The petitioners case is that he was at all material time the tenant in respect of Section No. 519/3 situate in village Motidau and that his possession of that Section No. was taken away contrary to the provisions of the Bombay Tenancy and Agricultural Lands Act 1948 by respondents 2 and 3. He therefore filed an application before the Mamlatdar Mehsana being Tenancy Application No. 69 of 1956 for a declaration that the sale of the land Section No. 519/3 by respondent No. 4 in favour of respondents Nos. 2 and 3 was contrary to the provisions of sections 63 and 64 of the Bombay Tenancy and Agricultural Lands Act 1948 that the sale should be declared invalid and that possession of that land should be restored to him. The Mamlatdar made his order on the 16th of September 1957 granting the declaration asked for and directing that possession of the land in question should be handed over by respondents 2 and 3 to the petitioner. The respondents filed an appeal to the Prant Officer who confirmed the order of the Mamlatdar and being dissatisfied with that order respondents 2 and 3 filed a revision application before the Revenue Tribunal. The Revenue Tribunal remanded the case to the Prant Officer directing him to give a finding whether the petitioner was a tenant in the year 1955-56 when the sale took place. The Prant Officer in his turn remanded the case to the Mamlatdar directing him to take

fresh evidence u/s 25A of the Act. The Mamlatdar dismissed the application of the petitioner and thereupon the petitioner went in appeal to the Prant Officer. The Prant Officer reversed the order of the Mamlatdar whereby the petitioners application was dismissed. The Prant Officer gave a finding that the sale in favour of respondents 2 and 3 was illegal by virtue of the provisions of Section 64 of the Act and declared that the petitioner was a tenant. He also directed that respondents 2 and 3 should hand over possession of Section No. 519/3 to the petitioner. Respondents 2 and 3 thereafter took out a Revision Application before the Gujarat Revenue Tribunal which by its order dated the 13th of April 1961 rejected the Revision Application and confirmed the order of the Prant Officer. The decision of the Revenue Tribunal was that the petitioner was a tenant in 1956; that there was an infringement of Section 64 of the Act consequently the sale was bad and that the petitioner was entitled to possession of the land.

3. On April 27 1961 respondents 2 and 3 filed Special Civil Application No. 269 of 1961 in this Court against the petitioner and respondent No. 4. On May 5 1961 a rule was issued and an order of Interim injunction was granted to respondents 2 and 3 whereby the petitioner was restrained from executing the order passed by the Tribunal dated April 13 1961. It would seem that the order of injunction was served upon the petitioner on May 14 1961.

4. It is however the case of the petitioner that before the order of Interim injunction was served upon him he had presented an application on April 27 1961 before the Mamlatdar Mehsana praying for execution of the order passed by the Gujarat Revenue Tribunal. Thereupon the Mamlatdar directed the Talati of the village Motidau where the land in question is situate to hand over possession of the land in question to the petitioner from respondents 2 and 3.

5. We are told by Mr. Patel who appears for the petitioner that the village Motidau is situate at a distance of about 5 or 6 miles from Mehsana. It appears from the file of the Mamlatdar that the petitioner had obtained a certified copy of the order of the Tribunal on April 26 1961 at Ahmedabad and as we have said the petitioner managed to file his application before the Mamlatdar the next day. It is however not possible to find from the record at what time the petitioner filed the application before the Mamlatdar on April 27 1961. If there was any endorsement on that application giving an indication as to the time when the petitioner lodged his application before the Mamlatdar it would have been possible to say with some amount of certainty whether the order passed by the Mamlatdar could have been passed on that very same day and whether that order could have been sent to the Talati at Motidau at a distance of about 5 or 6 miles from Mehsana and executed by him on that very day. It is also not possible to say from the record before us as to the manner in which the order of the Mamlatdar was dispatched to the Talati at Motidau. It could not have been sent by post but must have been sent to the Talati by personal delivery. The record before us however does not give any indication as to how that order was dispatched to the Talati to enable him to enforce it on the very same day that the order was passed.

by the Mamlatdar.

6. The order of the Mamlatdar sets out several particulars about the proceedings taken out by the various authorities in respect thereof and directs the Talati to restore possession to the petitioner. The Mamlatdar's order we may observe is a typewritten order which bears his signature. Reliance was placed by Mr. Patel on the Panchnama made on the 27th of April 1961. The Panchnama sets out the fact that possession was taken over by the petitioner in the presence of three Panchas; that there was no standing crop in the land in question and that respondents 2 and 3 were not present at the time when the Talati handed over possession to the petitioner.

7. On May 16 1961 respondent No. 2 made an application before the Mamlatdar Mehsana alleging that in spite of the order of interim injunction passed by this Court the petitioner had taken over possession of the land in question and was in fact constructing a fence around that property. He also complained that the Talati had failed to serve the order of injunction upon the petitioner and that he had committed an infringement of the order of Interim injunction. As he did not receive any reply from the Mamlatdar he filed an application before the Collector Mehsana a copy of which is Ex. 1 to the affidavit in reply. In that application the 2nd respondent set out certain facts relating to the possession having been taken over by the petitioner. The application contained a serious allegation to the effect that the papers relating to the handing over of the possession to the petitioner were antedated having been prepared after the date of the passing of the order of Interim injunction by this Court. In that application a relief was prayed for that Mamlatdar's order under the date April 27 1961 should be set aside and possession of the land in question should be restored to him and respondent No. 3.

8. On receipt of this application the Collector issued a notice upon the petitioner calling upon him to show cause why the Mamlatdar's order should not be set aside. In para 9 of the petition it is alleged that on receipt of the show cause notice the petitioner appeared before the Collector on June 7 1961 and applied for an adjournment on the ground that he wanted to obtain certified copies of certain documents to enable him to reply to the show cause notice. In that paragraph it was alleged that the Collector declined to grant adjournment and thereupon the petitioner made another application for adjournment on the same day stating that he wanted to move this Court by a petition under Article 226 of the Constitution. In his Affidavit in reply the Collector has stated that the statements made in Para 9 of the petition are misleading that in fact the petitioner made an application on June 6, 1961 for adjournment and upon that application he granted the adjournment to the next day. He has also stated that on the 7th of June 1961 the petitioner made another application for adjournment and that application was rejected by him. It is clear therefore that the allegation made by the petitioner in para 9 that he made the first application on June 7 1961 and that application was refused is incorrect.

The petitioner has challenged the proceeding adopted by the Collector on two grounds:

- (1) that the action of the Collector was mala fide and
- (2) that it was without jurisdiction.

9. Mr. Patel contended that the order passed by the Mamlatdar M as one under Sub-section (2) of Section 73 of the Bombay Tenancy and Agricultural Lands Act 1948 and that that order being under the Tenancy Act the Collector had no jurisdiction to initiate any proceeding by way of revision under the powers reserved to him by Sub-section (2) of Section 23 of the Mamlatdars Courts Act 1906 Mr. Patel contended that under Sub-section (2) of Section 23 all order of a Mamlatdar awarding or restoring possession has to be executed in the manner provided in Section 21 of the Mamlatdars Courts Act 1906 He argued that the only thing these words in Sub-section (2) of Section 73 of the Act would mean is that the procedure prescribed in Section 21 of the Mamlatdars Courts Act is incorporated in Section 73(2) of the Bombay Tenancy and Agricultural Lands Act 1948 Consequently the only effect of Sub-section (2) of Section 73 is that for the purpose of execution of the orders passed by the Mamlatdar or the Tribunal as provided for in that sub-section the procedure laid down in Section 21 of the Mamlatdars Courts Act 1906 has to be followed. Mr. Patel contended that though the procedure u/s 21 of the Mamlatdars Courts Act has to be followed for execution of the orders referred to in Sub-section (2) of Section 73 of the Bombay Tenancy and Agricultural Lands Act 1948 the order passed by the Mamlatdar would still be an order under the Tenancy Act and not under the Mamlatdars Courts Act and therefore the Collector would have no jurisdiction to exercise his revisional powers set out in Section 23 of the Mamlatdars Courts Act in respect of such orders. In support of his contention Mr. Patel relied upon an uncertified copy of an unreported judgment in Special Civil Application No. 2084 of 1956 decided on the 21st of November 1956 by a Division Bench of the High Court of Bombay consisting of Gajendragadhar J. and Chainani J. (as he then was). That decision however cannot assist Mr. Patel as it is clear from the decision that the learned Judges left the question of jurisdiction raised by Mr. Patel undecided.

10. Sub-section (2) of Section 73 expressly states that an order of the Mamlatdar awarding or restoring possession shall be executed in the manner provided in Section 21 of the Mamlatdars Courts Act 1906 The Legislature however did not stop with incorporating in this section the procedure laid down in Section 21 of the Mamlatdars Courts Act but provided also that such an order shall be deemed to be a decision of the Mamlatdar under the Mamlatdars Courts Act, 1906. The Legislature, besides directing that the procedure laid down in Section 21 of the Mamlatdars Courts Act 1906 should be applicable added that the orders of the Mamlatdars shall be as if it was the decision of the Mamlatdar under the said Act. These words create an artificial fiction the effect of which is that an order of the Mamlatdar awarding possession or restoring possession

passed under Sub-section (2) of Section 73 is to be treated as if it was the decision of the Mamlatdar under the Mamlatdars Courts Act 1906. It is a well settled rule of construction that where the Legislature creates such a legal fiction it is the duty of the Court to give to it its full implication and significance. The result therefore would be that in respect of an order passed by the Mamlatdar awarding possession or restoring possession such an order has to be executed in accordance with the procedure laid down in Section 21 of the Mamlatdars Courts Act 1906 and furthermore by the legal fiction created by the Legislature such an order must be treated as if it was the decision of the Mamlatdar under the Mamlatdars Courts Act 1906. Mr. Patel however argued that the words as if used in Sub-section (2) of Section 73 have relation to the procedure laid down in Section 21 of the Mamlatdars Courts Act in accordance with which such an order has to be executed. In our view that contention is not correct. If the intention of the Legislature was merely to apply for the purpose of executing the order of the Mamlatdar u/s 73(2) of the Tenancy Act the procedure laid down in Section 21 of the Mamlatdars Courts Act it would have stopped after the words in Section 21 of the Mamlatdars Courts Act 1906. Had the Legislature stopped there Mr. Patel would have been right and it would have meant that the only thing that was done in Section 73(2) of the Tenancy Act was to incorporate into that section the procedure for execution laid down in Section 21 of the Mamlatdars Courts Act 1906. The fallacy in the argument of Mr. Patel lies in the fact that he does not give any significance or meaning to the subsequent words used by the Legislature viz. as if it was the decision of the Mamlatdar under the said Act. These words indicate that the intention of the Legislature was not only to apply the procedure laid down in Section 21 of the Mamlatdars Courts Act but to regard the decision of a Mamlatdar u/s 73(2) of the Tenancy Act as if it was a decision under the Mamlatdars Courts Act 1906. Our conclusion is fortified to a certain extent by the fact that in Section 74 of the Bombay tenancy and Agricultural Lands Act 1948 no appeal is provided for against an order passed u/s 73(2) of the Act nor is a revision contemplated u/s 76A of that Act. Similarly in Section 70 an order passed by the Mamlatdar u/s 73(2) has not been set out as one of the duties or functions of the Mamlatdar. Apparently this is so because the Legislature has provided for a revisional jurisdiction by creating the artificial fiction in respect of the order of the Mamlatdar passed u/s 73. In the view that we take of these words in Section 73(2), it is clear that the order passed by the Mamlatdar dated 27th of April 1961 was an order under the Mamlatdars Courts Act, 1906, in respect of which under Sub-section (2) of Section 23 of that Act, the Collector has revisional jurisdiction. In our view therefore it would not be right to say that the Collector initiated the proceeding in question without jurisdiction.

11. So far as the allegation of mala fide against the Collector is concerned Mr. Patel was constrained to admit that the petition did not contain any particulars with regard to the alleged mala fide of the Collector and therefore he was obliged to state that he was not in a position to press that allegation. It is quite obvious

from the facts of this case and the inability of the petitioner to give any particulars that the allegation against the Collector as to his mala fide was an irresponsible allegation and to which no possible weight could be attached. The petition therefore fails and will have to be dismissed....