

(1997) 10 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 2484 of 1984

Ibrahim Amirsaheb Kokani and another

APPELLANT

Vs

Babu Kasam Shaikh and others

RESPONDENT

Date of Decision : 14-10-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 25(2), 29, 76A
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1, Order 22 Rule 3, 115
Constitution of India, 1950 — Article 227

Citation : (1998) 3 ALLMR 324 : (1998) 2 BomCR 81 : (1998) 1 MhLj 100

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : N.S. Shastri, for the Appellant; R.S. Apte, h/f B.P. Apte and V.P. Malvankar, Addl. Govt. Pleader, for the Respondent

Judgement

S.S. Nijjar, J.—This petition under Article 227 of the Constitution on India has been filed with a prayer for quashing the orders passed by the Maharashtra Revenue Tribunal in Revision Application No. TEN.A. 24 of 1983 dated 29th December, 1983 confirming the order passed by the Sub-Divisional Officer, Nasik Sub-Division, Nasik, dated 27th September, 1982 and for restoration of the order of the Tahasildar dated 26th December, 1981 in Tenancy Case No. 28/1973.

2. The facts as stated by the petitioner may be noticed. The petitioners are the owners of the agricultural lands comprising the Survey Numbers mentioned below:--

Village S.No. Area H.A. Asstt. Rs. P. Trees etc.

Vadala, Nasik, Tal. & Dist. Nasik. 18/2 1-41 (P.K. 0-05) 8-93 Mango 10

19/2 1-03 (P.K. 0-03) 5-69 Mango 12

Sandalwood 1

Well 1

19/4 0-37 1-87 Mango 10

48 0-65 4-12 Tamarind 1

Bor 1

Well 1

Mango 10

Kasam Hussain Musalman was the predecessor-in-title of the respondents No. 1 to 10. He was the tenant on the suit land. In Tenancy Case No. 76 of 1959, the petitioners took possession of Survey No. 48, Survey No. 19/4 and half of Survey No. 18 out of the suit lands. Kasam remained as a tenant in respect of Survey No. 19/2 and Survey No. 18/2 (which portion was carved out after possession of half of the Survey No. 18 was taken). Kasam failed and neglected to pay the rent of the suit premises from 1957 onwards. The petitioners, therefore, by a notice dated 2nd July, 1983 terminated the tenancy of Kasam in respect of Survey No. 19/2 and 18/2 on the ground that the tenant had committed defaults in as much as he had not paid the rent from 1957, in spite of the fact that he was informed about non-payment of the rent every year in the month of June. The petitioners filed Tenancy Application No. 24 of 1973 before the Tahasildar, Nasik for possession of the land in Survey No. 19/2 and Survey No. 18/2 u/s 29 read with section 25(2) of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter called as "the Act") on 15th November, 1973. During the pendency of this application, Kasam died on 28th May, 1976. On 8th April, 1977, the petitioners made an application to bring the respondents No. 1 to 10 on the record as heirs of deceased Kasam. The widow of the deceased Kasam, Parvatibai was impleaded and appeared in the proceedings. Parvatibai completed her deposition on 1st December, 1977. She also died on 2nd April, 1981. After the evidence of both the parties was recorded, the Tahasildar gave a judgement on 26th December, 1981, granting possession of Survey No. 19/2 and Survey No. 18/2 to the petitioners. An appeal was filed against the aforesaid order by the heirs of Kasam and Parvatibai in the Court of Sub-Divisional Officer, Nasik Sub-Division, District Nasik, being Tenancy Appeal No. 18/1982. The aforesaid appeal was decided by order dated 31st August, 1982 and the same was dismissed on the ground that the same is barred by limitation. Having dismissed the appeal, the Sub-Divisional Officer, however, continued the proceedings u/s 76-A of the Act, being Tenancy Review No. 25/1982. By order dated 27th September, 1982 exercising the power of review u/s 76-A, the Sub-Divisional Officer set aside the order dated 26th December, 1981. Against the aforesaid order, the petitioners filed a Revision Application No. TEN.A. 24 of 1983 in the Maharashtra Revenue Tribunal (hereinafter referred to as "the Tribunal") at Bombay. The aforesaid Revision Application has been dismissed by the Tribunal by its order dated 29th December, 1983.

3. The Counsel for the petitioners has submitted that the order passed by the Sub-Divisional Officer u/s 76-A is without jurisdiction. It is submitted by the

Counsel that the provisions of section 76-A can only be invoked if no appeal is filed against the original order. In the present case, the appeal had been filed and therefore, it was not open to the Sub-Divisional Officer to exercise jurisdiction u/s 76-A. Whether or not the appeal is filed within the prescribed period is not relevant so long as it is accompanied by an application for condonation of delay. It is submitted that the respondents had filed the appeal, but the same was dismissed on the ground that it is barred by limitation. Having dismissed the appeal, the very same officer exercised the power of review u/s 76-A. It is also submitted by the Counsel that the decision given in the Review Application by the Sub-Divisional Officer is also against the merits of the case. Upon the death of Kasam, Parvatibai had been impleaded as the legal heir along with the other respondents. However, only Parvatibai had appeared in the witness box and gave the statement on 1st December, 1977. She was representing all the respondents. In this view of the matter, it has been wrongly held by the Sub-Divisional Officer and wrongly confirmed by the Tribunal that the proceeding had abated. It has also wrongly been held that the order has been passed against a dead person.

4. For the first submission on the point of interpretation of section 76-A, the Counsel has drawn my attention to the case of Ganpat Ragho and Another Vs. Maharashtra Revenue Tribunal, Nagpur and Others, . In the said case the point raised was "Whether an order of the Tahasildar or the Tribunal is revisable u/s 110 of the new Tenancy Act, whether or not such order is appealable?" Section 110 is reproduced in the said judgement which is as under :

"(1) Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Commissioner or the State Government, at any time,--

(a) call for the record of any inquiry or the proceedings of any Tahsildar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Tahsildar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Tahsildar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

(2) Where any order u/s 81 is made by an Assistant or Deputy Collector performing the duties or exercising the powers of the Collector or by an officer specially empowered by the State Government to perform the functions of the Collector under this Act, such order shall be subject to revision by the Collector and the provisions of sub-section (1) shall apply to the proceedings of the Assistant or Deputy Collector or officer concerned, as they apply to the proceedings of a Tahsildar or Tribunal."

5. Before the Division Bench, it was argued that the revisional powers can only be exercised by the Collector in the case of appealable. If in the Act, it is provided that no appeal shall lie against an order, then, the question of exercising the revisional powers would not arise. On the other hand, it was argued that the only restriction placed on the jurisdiction of the Collector was to the effect that in appealable cases, the power of revision shall not be exercised if any fact in appeal has been filed before the appellate authority and the same is pending. It was submitted that the Collector can revise any order of the Tahsildar whether appealable or not except in the case whether the appeal is actually pending before the appellate authority and the error is capable of being corrected by the appellate authority in view of the pendency of the said appeal. The contention was that the errors of the Tahsildar or the Tribunal are always capable of being corrected by the appellate authority once the appeal is filed and therefore, the legislature wanted to exclude this case from the scope of the revisional powers of the Collector when the appeals were lodged before the appellate authority within time. According to the Counsel the Clause "Where no appeal has been filed within the period provided for it" only means that the other orders of the Tahsildar or the Tribunal are capable of being revised by the Collector excepting in the limited contingencies where the appellate authority is seized of the matter. Weighing up the aforesaid contentions, the Division Bench has held that "In our opinion, the interpretation suggested by Mr. Chandurkar also is equally possible. In fact, the said interpretation has commended itself to Abhyankar, J. We are also inclined to accept the same as, in our opinion, the same is more sound and logical, and accords with the tenor of the section as a whole." Thereafter the Division Bench compared the revisional powers of the Collector u/s 110 with the revisional powers of the High Court u/s 115 of the Code of Civil procedure. Thereafter the Division Bench has held as follows :

"The Clause "in which no appeal lies thereto" in section 115 is decisive and excludes all appealable orders from its purview. u/s 115, therefore, no appealable order is capable of being revised. Now, the Clause, "where no appeal has been filed within the period provided for it" in sub-section (1) of section 110 of the Tenancy Act cannot be said to be as clear and unambiguous as "in which no appeal lies thereto". The scope of the revisional powers conferred u/s 110 on the Collector appears prima facie to be extremely wide, unfettered and unrestricted. One would expect a very strong, clear, unambiguous and compelling phraseology to exclude the non-appealable orders from its sweep and confine the scope of the Collector's such powers only to appealable orders. The true interpretation, therefore of this opening Clause of sub-section (1) of section 110 to our mind is that appealability of the order has nothing to do with the reliability of the same by the Collector in exercise of the powers conferred under this section and its effect must be limited only to such cases where the appeal is actually filed and is pending where the appeal is competent. Where however no appeal is competent or where appeal is competent but the same is not filed, the Collector appears to be free to proceed to revise any order provided of course

the other requirements of this section are satisfied."

"In the present case, we are called upon to restrict the revisional powers of the Collector by the opening Clause of the said section "where no appeal has been filed within the period provided for it". Borrowing from the reasoning of the Supreme Court, in the above case, we can safely say that these words in the opening clause of the section were never intended to distinguish the appealable orders against which no appeal was filed within time, from the non-appealable orders which are sought to be excluded from his revisional jurisdiction. These words appear to be intended to distinguish orders in which appeal has actually been filed and all other orders in which no appeal is or could be filed."

"We, accordingly, hold that the revisional powers of the Collector u/s 110 are not restricted by the Legislature only to the appealable order under the Act. Within the sweep of the revisional powers of the Collector under this section are included, not only the appealable orders against which appeal could have been filed, but also other orders whether appealable or not. Only such orders are excluded from the sweep of the revisional powers of the Collector in regard to which appeal has been filed within time and the remedy of the appeal is being availed of. We answer the reference in the affirmative. The case will now be placed before the learned Single Judge for disposal according to law."

6. A perusal of the extracts reproduced above from the Division Bench judgement clearly show that the arguments by the Counsel for the petitioner is no longer *res integra*. The question has been squarely decided by the Division Bench and this Court is bound by the said ratio. The Counsel for the petitioner also wanted to cite another judgement of the Supreme Court. However, he is unable to locate the same. Apart from the interpretation given by the Division Bench, on the established principles of interpretation of statutes it has to be held that all words used in a section had to be given their ordinary meaning. If the argument of the Counsel is to be accepted, then the opening part of section 76-A would have to read as "where no appeal has been filed" as opposed to the actual provision "where no appeal has been filed within the period provided for it.....". Accepting the argument of the Counsel for the petitioner would mean that this Court would be deleting the words "within the period provided for it". Legislation is not within the competence of the courts. In view of the above, I am unable to accept the submissions made by the Counsel for the petitioner on the interpretation of section 76-A of the Act.

7. Coming now to the second argument that the proceeding had not abated, it has to be seen that the time when the original application came to be decided on 26th December, 1981, both Kasam and Parvatibai had died, On the death of Kasam on 28th May, 1976, it took the petitioners 11 months to bring the legal heirs on record. The application was made on 8th April, 1977. Thereafter Parvatibai gave her statement on 1 st December, 1977. She also died on 2nd April, 1981. The case was decided by the Tahsildar on 26th December, 1981. A perusal of the array of parties before the Tahsildar shows that Kasam Hussain

Musalman is arrayed as an opponent through Parvatibai. There is no mention whatsoever of the other respondents having been impleaded as the legal heirs either of Kasam or of Parvatibai. In this view of the matter, the Sub-Divisional Officer was absolutely correct, when it held that the order passed on 26th December, 1981 was nullity as it was passed against a dead person. Thereafter, the Tribunal has upheld the order passed by the Appellate Court. It may further, however, be noticed that in the Tribunal, the learned Counsel for the revisionist restricted his arguments to the interpretation of section 76-A of the Act. No argument was advanced to the effect that the order of the Sub-Divisional Officer was incorrect, also on the point of abatement. I find that the order passed by the Tribunal does not suffer from any error apparent on the face of the record. Subsequent argument raised by the Counsel for the petitioner could otherwise be rejected simply on the ground that it was not raised before the Tribunal. However, having heard the Counsel for the parties at length, the said submission has been also dealt with on merits. I find no force in both the submissions made by the Counsel for the petitioners.

8. In view of the above, the writ petition deserves to be dismissed. The same is hereby dismissed. Rule is discharged. No order as to costs.

9. Petition dismissed.