

(1993) 09 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 3249 of 1981

Madhavdas Damodardas Gujar and Others

APPELLANT

Vs

Mahadu Keru Raut

RESPONDENT

Date of Decision : 03-09-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 5
Limitation Act, 1963 — Section 3

Citation : (1994) 1 BomCR 509

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni, for the Appellant; P.D. Dalvi and P.M. Vyas, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—Certain novel arguments were advanced before me in the course of the hearing of this petition which essentially concern facets of the Limitation Act, 1963. One of the contentions advanced was that de hors the question of limitation when an application is presented to an appellate authority 22 years after the passing of the original order that it is open to the authority concerned to examine the merits of the original order and the sequitur of this argument is that if such examination indicates that the original order is a void order that it can be struck down regardless of the time-bar prescribed by the Limitation Act. In substance, the argument canvassed is that an order which is a nullity in law can be challenged at any time, even decades later, because it is basically no order, and conversely that limitation applies only in the case of "legal" orders. To my mind, the entire submission is totally confused and wholly untenable. A few of the facts giving rise to the controversy as are follows.

2. The petitioners before me were the original landlords in respect of Survey No. 713, admeasuring 46 Acres and 27 Gunthas. The respondent was the tenant in respect of the land in dispute. An application was filed before the Mamlatdar,

Indapur in Tenancy Application No. 291 of 1956 by the landlords to the effect that the tenant desired to surrender the land which was in his cultivation and that for purposes of legally determining the tenancy, the Court has been approached. This application was filed by the landlords and the record indicates that the Court passed the following order :

"The tenant Shri Mahadu Keru Raut appears before me and states that he is surrendering land S. No. 713 of Indapur of his own accord. He was given to understand that the landlord cannot take possession from him without his willingness. Still he says that he is surrendering the land of his own willing. I, therefore, hold that surrender is voluntary and allow the landlord to take possession of land S. No. 713 vide section 29(2) read with section 5(3)(4) of the B.T. and A.L. Act."

It is of some relevance to indicate that both the parties were present when the order was passed and that the authority concerned, as is required of him, ascertained as to whether the tenant was voluntarily and willingly surrendering the tenancy and, furthermore, informed him of the fact that there was no need for him to do so. Since the tenant stated that he voluntarily desired to surrender the tenancy, an order to this effect was passed and the landlords were permitted to take possession of Survey No. 713. The authority concerned has recorded a clear finding that the tenancy stood determined as the tenant was unwilling to continue with it. The order dated 23-6-1956 was followed by the mutation entry which is Exhibit "B" to the petition dated 10-7-1956. This entry indicates in the "remarks" column that the requisite notice has been served in keeping with the requirements of law. Thereafter at Exhibit "B", the petitioners have annexed a document which indicates that the land was subsequently partitioned and the petitioners have also produced on record evidence of the various revenue receipts over the years indicating that the assessments in question have been paid by them.

3. Sometime in the year 1978, after a lapse of 22 years, the respondent-tenant filed an appeal before the Sub-Divisional Officer, Baramati Division, Baramati, in which it was contended that the provisions of section 5 of the Bombay Tenancy and Agricultural Lands Act, 1948 had not been complied with and that, consequently, the original order dated 23-6-1956 is required to be set aside. The Sub-Divisional Officer, in his order dated 20-3-1979, has observed that according to him there was, in fact, non-compliance with the provisions of section 5 of the Bombay Tenancy and Agricultural Lands Act to the extent that the tenant had not made an application in writing before the authority indicating that he is surrendering the tenancy. However, the Sub-Divisional Officer held that since the order in question was passed in the year 1956 that the appeal was hopelessly time-barred and, therefore, dismissed the same. The tenant thereafter filed a revision application before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal allowed the appeal in question by order dated 5-8-1981. The reasoning adopted briefly was that the provisions of section 5 of the Bombay

Tenancy and Agricultural Lands Act being mandatory, non-compliance with the requirements, namely, a written application from the tenant evidencing the surrender of the tenancy not having been filed before that forum that the order dated 25-6-1956 was a void order and, consequently, that the provisions of the Limitation Act do not apply. The Maharashtra Revenue Tribunal held that since the original order was void, it could be challenged at any time and that in this view of the matter, the appeal was allowed. The present writ petition assails the correctness of that order.

4. Shri Kumbhakoni, learned Counsel appearing on behalf of the petitioners-landlords, has advanced a very short, clearcut and simple submission before me, which is to the effect that the appeal in question was hopelessly time-barred. He submitted that there is no proposition of law which states that if a litigant contends that the order in question is void that the provisions of the Limitation Act stand suspended. He further pointed out that in the present case when the proceeding was re-opened, the landlords made an application to the authority for a certified copy of the original order and other documents on record, to which the Tahsildar gave a reply that the original record had been destroyed in the year 1977 under the orders of the State Government, as 20 years had already elapsed. It is of some significance because the original record of the case is not available. We only have on record the application filed by the landlords and the order passed on that application on 23-6-1956.

5. Shri Kumbhakoni further pointed out to me that the Limitation Act provides an absolute bar, that the reasoning of the Maharashtra Revenue Tribunal was incorrect and that it has no legal basis. More importantly, he pointed out to me that the subsequent record, namely, the mutation entry, partition between the landlords, etc., are evidence of the fact that pursuant to the original order dated 23-6-1956, several transactions have ensued and if there was anything wrong with the original order, namely, that if it had been obtained through fraud, coercion, undue influence or by misrepresenting or deceiving the tenant that he would have most certainly challenged the order very shortly after it was passed. He pointed out to me that these were not the grounds on which it was challenged before the Maharashtra Revenue Tribunal, but that after the lapse of as many as 22 years, non-compliance of section 5 of the Bombay Tenancy and Agricultural Lands Act was pleaded and that there was no means at that point of time to ascertain whether the procedure prescribed u/s 5 of the Bombay Tenancy and Agricultural Land Act was followed or not.

6. On the other hand, Shri Dalvi, learned Counsel appearing on behalf of the respondent-tenant, contended that a reading of the order dated 23-6-1956 will clearly indicate that there was no application filed by the tenant for surrender of the tenancy. He further submitted that this Court ought not to repose implicit faith in the mutation entry dated 18-7-1956 and for this purpose, he drew my attention to a decision of the Supreme Court in the case of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, . That decision, to my

mind, is not even remotely connected with the facts of the present case. The Supreme Court was considering a situation where the overwhelming evidence on record indicated that the mutation entries in question were wrong and the Supreme Court held that there is no absolute presumptive value that can be attached to the mutation entries in the face of cogent and clear evidence to the contrary before the Court. In the present case, nothing is shown to call into question the veracity or the validity of the mutation entry in question.

7. Shri Dalvi submits that the provisions of section 5 of the Bombay Tenancy and Agricultural Lands Act are mandatory and that the Sub-Divisional Officer has come to the conclusion that the tenant had never filed a written application before the Court and that, on the contrary, the application was presented by the landlords. As indicated by me earlier, the original record is not traceable and, therefore, it is not known as to on what basis the Sub-Divisional Officer came to this conclusion. On a perusal of the order in question, it would not be possible to definitely hold that there was no such application on record. I would hasten to add, however, that these provisions are essentially put on the statute book out of abundant caution in order to protect and safeguard the rights of poor and illiterate tenants. It, therefore, makes it incumbent regardless of an application in writing evidencing surrender of tenancy, for the authority concerned to question the tenant himself, to satisfy the Court that the tenancy is being surrendered voluntarily and that there are no unfair means that have been practised. This latter procedure is really an absolute safety clause that has been provided in this section and the order clearly indicates that this requisite procedure had been followed. Under these circumstances, the observations of the Sub-Divisional Officer and the further findings of the Maharashtra Revenue Tribunal are wholly without basis and are liable to be set aside. The lower authorities, as often happens, got carried away by trivialities and technicalities and lost sight of the substance. It is the spirit of the legislative intent as embodied in the section that is crucial and I find from the original order that this has been fully adhered to.

8. Adverting to the arguments canvassed with regard to the provisions of the Limitation Act, Shri Dalvi contended that the order in question being a void order that the provisions of the Limitation Act would not apply and that, therefore, the appeal filed after a lapse of 22 years was competent. This argument is without any substance or basis, for I have already held that there is no ground on which breach of the procedure can be said to have taken place. Quite apart from that, it is not for a litigant to determine as to whether an order in question is void or otherwise, for that would lead to disastrous consequences. An order passed by a competent forum is a valid and binding order unless set aside or declared to be void by an authority legally empowered to do so. That exercise must be undertaken within the time-frame prescribed by the Limitation Act - if that time period is overstepped, the order assumes finality. A party challenging a time-barred order is shut out at the very threshold and the lower authorities had no jurisdiction to entertain the appeal in the first instance.

9. If a contention is raised that the order is void, it will have to be pointed out to the competent forum within the period prescribed by the Limitation Act. In the absence of such a procedure being followed, the order assumes finality and the provisions of section 114 of the Indian Evidence Act, 1872 would clearly apply, namely, that it is presumed to be valid and binding. Parties act on these orders, rights and liabilities are created and extinguished as time passes on and it is for this reason that the order becomes unassailable. It is necessary for me to clarify at this stage that it is well-settled law as far as the limitation clause is concerned that once the period in question elapses, rights accrue in favour of the opposite party and these rights cannot be lightly taken away merely by filing an appeal/application at a subsequent point of time. On the facts of the present case, I have gone to the extent of finding out as to whether at all there were any bona fides in the appeal before the Maharashtra Revenue Tribunal. I have had occasion to observe that in the long period of time that has elapsed after the original order was passed that many things have happened, including the partition of the land, etc., and if at all the tenant was aggrieved by the original surrender, to my mind, he would have most certainly complained/adopted legal remedies immediately. The facts of the case are quite eloquent and it is, therefore, clear, to my mind, that after the lapse of over two decades, the tenant has obviously as an afterthought moved the Maharashtra Revenue Tribunal with some ulterior motive, the obvious reason being the value of the land.

10. In this connection, Shri Kumbhakoni has placed reliance on a decision of this Court in the case of Narhar Shamrao Deshpande Vs. Lakhu Raghu Dalvi (since decd.) through his heir, Yeshwant Laxman and Another, . The facts of that case were very similar to the present one in so far as it concerned the question of surrender of tenancy and a belated challenge to that surrender. The Court held very clearly that the provisions of the Limitation Act applied and that the proceedings could not be re-opened. The present case is on all-fours with the facts in that case and, to my mind, that decision would be applicable.

11. The appeal filed before the Sub-Divisional Officer was clearly time-barred. In that view of the matter, the Revision filed before the Maharashtra Revenue Tribunal was non est and, consequently, there existed a total bar to the tenant's appeal/application and the authorities were precluded from going into the merits of the matter. It was not only unnecessary, but it was impermissible for them to have made any comments with regard to the merits of the matter. The grounds on which the Maharashtra Revenue Tribunal has set aside the order of the Sub-Divisional Officer on the point of limitation are not only incorrect and wholly unjustified but virtually unheard of in law.

12. In this view of the matter, the writ petition succeeds. The order passed by the Maharashtra Revenue Tribunal is set aside and the order of the Sub-Divisional Officer is restored. The rule is made absolute. The writ petition is allowed. The interim orders stand vacated. In the circumstances of the case, there shall be no order as to costs.