

(2002) 11 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 1596 of 1988

Madhukar Damodar Pawar deceased through his heirs and
legal representatives Durgabai Madhukar Pawar and Others

APPELLANT

Vs

Madan Purshottam Pandkar and Another

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 73

Citation : (2003) 1 ALLMR 695 : (2003) 3 BomCR 291 : (2003) 2 MhLj 19

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Prafulla Shah, for the Appellant; G.R. Rege and C.R. Sonawane, AGP,
for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition, by tenants, is directed against the order of the Sub-Divisional Officer, Baramati dated 25th August, 1987 by which the Sub-Divisional Officer has dismissed the petitioners/tenants application for setting aside the execution proceedings.

2. It is not necessary to narrate all the facts of the case. The relevant facts are that after several stages of litigations on 16th July, 1971 the application of the respondent No.1 landlord for eviction of the petitioner u/s 31 of the Bombay Tenancy and Agricultural Lands Act was allowed.

3. It appears that the respondent's father Purshottam Pandkar made persistent attempts for obtaining possession of the suit land in pursuance of the order of the Maharashtra Revenue Tribunal. Apparently, after a long period of time the Tahsildar, issued a letter dated 19th December, 1986 and the Circle Officer, Walha, issued an order dated 22nd December, 1986 calling upon the petitioners to deliver possession to the respondent.

4. The petitioners filed an application u/s 73-A of the Bombay Tenancy and

Agricultural Lands Act against the notice issued by the Tahsildar and the Circle Officer. The only contention raised by the petitioners was that there is no power in the Tahsildar to execute an order for possession after a period of 12 years. That contention has been rejected by the Sub-Divisional Officer, against which the present writ petition is filed.

5. In order to appreciate the contention on behalf of the petitioners, it is necessary to set out the scheme for execution of orders of the Mamlatdar or the Tribunal awarding possession to a party. The mode of execution is provided for by Section 73 of the Bombay Tenancy and Agricultural Lands Act, which reads as follows :--

"73. Execution of order for payment of money or for restoring possession.--(1) Any sum the payment of which has been directed by an order of the Mamlatdar or the Tribunal including an order awarding costs shall be recoverable from the person ordered to pay the same as an arrears of land revenue.

(2) An order of the Mamlatdar or the Tribunal awarding possession or restoring the possession or use of any land shall be executed in the manner provided in Section 21 of the Mamlatdars Courts Act, 1906 as if it was the decision of the Mamlatdar under the said Act. Provided that such order shall not be executed till the expiry of the period of appeal or, as the case may be, of application for revision as provided in Section 79.

(3) An order or decision of the Mamlatdar in execution proceedings conducted under Sub-section (2), subject to appeal (if any) to the Collector, shall be final."

Section 21 of the Mamlatdars Courts Act, 1906 reads as follows :

"21. (1) Where the Mamlatdar's decision is for removal of an impediment or for awarding possession or restoring a use, he shall give effect thereto by issuing such orders to the village officers, or to any subordinate under his control or otherwise as he thinks fit:

Provided that, notwithstanding anything contained in this Act where at the time when a decision is recorded by the Mamlatdar for removal of the impediment erected on any land or for awarding possession of any land, there is a crop on such land which has been sown by, or at the expense of, the defendant, and the Mamlatdar is satisfied that it has been so sown in good faith, the Mamlatdar may, and if the defendant makes an application for the purpose and furnishes sufficient security, or deposits in Court a sufficient sum for the payment of the costs of the suit, shall pass an order staying delivery of possession of such land to the plaintiff seeking possession thereof, either -

(a) until the plaintiff agrees to take the crop at a valuation, to be made under the orders of the Mamlatdar according to the value of the crop at such time, including any installments of the Government assessment which the defendant may have paid for the current year; or

(b) where the Plaintiff is unwilling to take the crop at such valuation until after the expiration of sufficient time for the crop to be gathered by the defendant. The amount of any valuation made under Clause (a) of the proviso to this sub-section shall be paid to the defendant through the Mamlatdar, and shall be recoverable from the plaintiff as an arrear of land revenue.

(2) Whether the Mamlatdar's decision is for granting an injunction, he shall cause the same to be prepared in the form of Schedule BB or C, as the case may be, and shall deliver or tender the same then and there to the defendant, if present, or if the defendant is not present, shall send it to the Village Officers, or to any subordinate under his control, to be served upon the defendant.

(3) Where the Mamlatdar awards costs, such costs, together with the costs of execution, shall be recoverable from the party ordered to pay them as an arrear of land revenue.

(4) Any person disobeying an injunction granted under Sub-section (2) shall be punishable u/s 188 of the Indian Penal Code."

In this statutory scheme, there is no limitation prescribed for execution of an order passed by the Tribunal or the Mamlatdar.

6. Therefore, the learned Counsel for the petitioners contends that the execution of an order passed by the Tribunal made in the year 1971 cannot be allowed in the year 1986 since that would not be within a reasonable time.

7. Mr. Shah, learned Counsel for the petitioners relied on the decision of the Supreme Court in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , where Their Lordships held that it is settled law that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. Their Lordships were dealing with a case where the Sale Deeds issued in 1972 were sought to be set aside in exercise of suo motu enquiry u/s 84-C of the Bombay Tenancy and Agricultural Lands Act for setting the sales as invalid. Relying on the settled position in law. It was held that the power for invalidating the sales could not have been exercised after such a long time but ought to have been exercised within a reasonable time.

8. Mr. Rege, learned Counsel for the respondents, however, rightly relied on a decision of the Supreme Court in Uttam Namdeo Mahale Vs. Vithal Deo and others, . In that case the Supreme Court considered the question whether after a period of more than 12 years has lapsed, an order can be executed u/s 21 of the Mamlatdars' Courts Act, 1906, since that section does not prescribe any limitation for execution of the order. It was contended before Their Lordships that in the absence of a rule of limitation the power can be exercised only within a reasonable time as held by the Supreme Court in Mohd. Kavi Mohamad Amin's case (supra) and two other decision i.e. The State of Gujarat Vs. Patil Raghav Natha and Others, and Ram Chand and Others Vs. Union of India (UOI) and

Others, . While rejecting the contention that the orders cannot be executed after the lapse of 12 years, Their Lordships observed as follows:--

"It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise."

9. It is clear that the decision in Uttam Namdeo Mahale's case (supra) applies squarely to the present case. Therefore the order of the Sub-Divisional Officer rejecting the petitioners application attempting to set aside the execution process was rightly rejected by the Sub-Divisional Officer. Even otherwise, it is not clear as if the petitioners were entitled to file an appeal u/s 73-A of the Bombay Tenancy and Agricultural Lands Act which does not provide for any such appeal.

10. In the result, the writ petition is dismissed. Rule is discharged with costs. The Appropriate Authority is directed to forthwith proceed with the execution.

11. At this stage, Mr. Shah, learned Counsel for the petitioners prays for stay of this order. Prayer rejected.

All Authorities concerned to act on an ordinary copy of this order duly authenticated as true copy by the Sheristedar of this Court.

P. A. to give ordinary copy of this order to the parties concerned.