

(2014) 11 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 2977/2012

Nago Hari Zangte

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Limitation Act, 1963 — Section 5
Maharashtra Land Revenue Code, 1966 — Section 143(4), 143(5), 247

Citation : (2015) 5 ALLMR 279 : (2015) 6 BomCR 351 : (2015) 3 MhLj 381

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : A.B. Mirza, Advocate for the Appellant; M.P. Kariya, Advocate and Tajwar Khan, A.G.P, Advocate for the Respondent

Judgement

Z.A. Haq, J.—Heard Shri A.B. Mirza, the learned advocate for the petitioners, Ms Tajwar Khan, the learned A.G.P. for the respondents 1 to 4 and Shri M.P. Kariya, the learned advocate for the respondents 5 and 6.

2. Rule. Rule made returnable forthwith.

3. The petitioners have challenged the order passed by the learned Additional Collector by which the appeal filed by the respondents 5, 6 and 7 is allowed and the matter is remitted to the Sub-Divisional Officer for fresh enquiry and decision. The petitioners have also challenged the order passed by the learned Additional Commissioner rejecting the revision filed by the petitioners and upholding the order passed by the learned Additional Collector.

4. The petitioners had filed an application before the Tahsildar claiming right of way for their fields through southern side of field Gat Nos.141/1, 141/2, 137 and 138 owned by the respondents 6 and 7. The Tahsildar by the order dated 7th September, 2007 allowed the application filed by the petitioners and granted right of way as sought by the petitioners. The petitioners relied on the award which according to them has been passed by the Loknyayalaya on 27th January,

2008 recording that the parties have agreed that the Tahsildar, Ralegaon would examine the factual position on the spot and would recommend the way and the parties would accept that. According to the petitioners after the award passed by the Loknyayalaya, the respondent no.5 and his wife filed the civil suit under Section 143(4) of the Maharashtra Land Revenue Code, 1966 challenging the order passed by the Tahsildar on 30th June, 2009 granting right of way to the petitioners. As there was delay in filing the civil suit, an application praying for condonation of delay came to be filed.

The learned trial Judge rejected the application filed by the respondent no.5 praying for condonation of delay in filing the civil suit and consequentially, the civil suit is also dismissed.

Simultaneously, the respondents 5, 6 and 7 filed appeal before the Sub-Divisional Officer challenging the abovementioned order on 30th June, 2009. The Sub-Divisional Officer dismissed the appeal. The respondents 5, 6 and 7 filed appeal before the Additional Collector which came to be allowed by the order dated 29th December, 2010 as stated above. The revision filed by the petitioners challenging the above mentioned order is dismissed. The petitioners have therefore, filed this writ petition.

5. Shri Mirza, the learned advocate for the petitioners has submitted that the respondents 5, 6 and 7 having settled the matter before the Loknyayalaya and pursuant to the settlement the award having been passed, it is not open for the respondents 5, 6 and 7 to go beyond the settlement and challenge the order passed by the Tahsildar granting way as claimed by the petitioners. In support of his submission, the learned advocate has relied on the judgment given by the Hon"ble Supreme Court in the case of State of Punjab and Another Vs. Jalour Singh and Others, . In addition, it is submitted that the respondent no.5 having filed the civil suit under Section 143(4) of the Maharashtra Land Revenue Code challenging the order passed by the Tahsildar, the appeal under Section 247 of the Maharashtra Land Revenue Code challenging the same order is not maintainable. Reliance is placed on the judgment given by this Court in the case of Jaglal Jayaswal and Another Vs. Waman Dhobale and Another, and in case of Shantabai Patil and Others Vs. Bhagwan Patil and Others, .

6. The copy of the award dated 27th January, 2008 does not show the names of the signatories on the terms of compromise. Shri Mirza, the learned advocate for the petitioners have produced the xerox copy of the award which shows two signatures. The learned advocate for the petitioners is not in a position to point out as to who agreed to the terms of compromise and who has signed the terms of compromise pursuant to which the award came to be passed. In any case even if the contentions of the petitioners are to be accepted that the parties cannot be permitted to resile from compromise arrived at before the Loknyayalaya, the terms of compromise does not show that the respondents 5, 6 and 7 have accepted the terms of compromise. Therefore, the respondents 5, 6 and 7 cannot be deprived of the opportunity of prosecuting the legal remedies

only on the ground that a compromise was arrived at before the Loknyayalaya when there is nothing on the record to show that all the three respondents (respondents 5, 6 and 7) have accepted the terms of compromise and have signed on the terms of compromise before the Members of the panel of the Loknyayalaya. In these facts, the judgment given by the Hon''ble Supreme Court in the case of Punjab & Anr. V/s. Jalour Singh & Ors. (cited supra) does not assist the petitioners.

7. The submission made on behalf of the petitioners that the orders passed by the Tahsildar granting right of way to the petitioners having been challenged in the civil suit and the civil suit having been dismissed, the appeal filed by the respondents 5, 6 and 7 challenging the same order was not maintainable, is misdirected. The civil suit was filed by the respondent no.5 and his wife. The respondents 6 and 7 have not filed any civil suit challenging the order passed by the Tahsildar. Moreover, the civil suit filed by the respondent no.5 and his wife is not decided on the merits but it is dismissed as barred by limitation. In the cases of Jaglal s/o Premlal Jayaswal and another V/s. Waman s/o Premlal Jayaswal and another and Smt. Shantabai W/o Bhagwan Patil and & Others V/s. Bhagwan S/o Revanand Patil & Others (cited supra), the appeals under the provisions of Section 247 of the Maharashtra Land Revenue Code were held as not maintainable in view of the filing of the civil suit under Section 143(4) of the Maharashtra Land Revenue Code as the civil suits were decided on merits.

8. The reliance placed by the learned advocate for the petitioners on the provisions of Section 143(5) of the Maharashtra Land Revenue Code to contend that in view of the filing of the civil suit by the respondent no.5 and his wife challenging the order passed by the Tahsildar, the appeal under Section 247 of the Maharashtra Land Revenue Code to challenge the same order is not maintainable, cannot be accepted.

9. In the present case, the civil suit having been presented beyond the prescribed period of limitation, an application under under Section 5 of the Limitation Act was filed praying for condonation of delay in filing the suit which came to be rejected and consequentially, the civil suit is also dismissed.

Sections 143(4) and 143(5) of the Maharashtra Land Revenue Code read as follows :-

"143(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

143(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision."

(Emphasis supplied)

Thus, the decision of the Tahsildar can be challenged by filing the civil suit and if the civil suit is "instituted" under Section 143(5) of the Maharashtra Land

Revenue Code challenging the Tahsildar's decision, then the decision of the Tahsildar cannot be challenged in appeal or revision under the provisions of the Maharashtra Land Revenue Code. The word "institute" as per Black's Law Dictionary means "to begin or start; commence." Thus, the bar under Section 143(5) of the Maharashtra Land Revenue Code to file an appeal or revision under the provisions of the Maharashtra Land Revenue Code would apply only if the civil suit has been "instituted" under Section 143(4) of the Maharashtra Land Revenue Code which means that if the civil suit is filed. In the present case, the civil suit having been filed after the period of limitation, the application praying for condonation of delay was filed. It is established practice that until the delay is condoned, the civil suit is not registered and the civil Court cannot look into the civil suit. In these facts, it cannot be said that the civil suit was "instituted" by the respondent no.5 and his wife as per Section 143(5) of the Maharashtra Land Revenue Code. Consequentially, the bar created by Section 143(4) of the Maharashtra Land Revenue Code for filing of the appeal or revision to challenge the decision of the Tahsildar will not apply. In these facts, it cannot be said that the civil suit was instituted as per Section 143(4) of the Maharashtra Land Revenue Code, 1966.

10. Shri Mirza, the learned advocate for the petitioners submits that the application filed by the respondent no.5 and his wife under Section 5 of the Limitation Act is a part and parcel of the civil suit and therefore, it has to be treated that the civil suit was instituted as contemplated by Section 143(4) of the Maharashtra Land Revenue Code. The submission as made on behalf of the petitioners is misconceived and contrary to the established principles of law. The application praying for condonation of delay can never be part and parcel of the civil suit and the civil suit is not registered until and unless the delay is condoned. It is the settled law that Court gets its jurisdiction to entertain and decide the proceedings before it, only after the delay is condoned and till that time the Court does not get the jurisdiction to entertain the proceedings.

11. In view of the above, I find no reason to interfere with the order passed by the learned Additional Collector remanding the matter to the Sub-Divisional Officer for fresh enquiry in the matter. The petitioners have not been able to point out any material irregularity or illegality in the impugned orders which necessitates the interference with the order of remand in the extraordinary jurisdiction. The writ petition is, therefore, dismissed. In the circumstances, the parties to bear their own costs.