

(1983) 02 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 2795 of 1978

Narhar Shamrao Deshpande

APPELLANT

Vs

Lakhu Raghu Dalvi (since decd.) through his heir, Yeshwant
Laxman and Another

RESPONDENT

Date of Decision : 08-02-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 31, 32R, 88B

Citation : (1984) 1 BomCR 14

Hon'ble Judges : R.D. Tulpule, J

Bench : Single Bench

Advocate : D.P. Hegde, A.G.P. for State, Y.S. Jahagirdar, for A.B. Naik, for the Appellant; M.A. Rane, for respondent No. 1., for the Respondent

Final Decision : Allowed

Judgement

R.D. Tulpule, J.—This petition challenges the order passed by the Revenue Tribunal in Revision Application No. SS-403/1976, confirming the order passed by the Collector, Sangli, in Tenancy Appeal No. 23 of 1975.

2. Survey No. 119 of Village Padali in Khanpur Tahsil, District Sangli, according to the petitioner, was in his possession, the land belonged to the Datta Devasthan, Vita, a public trust. According to the petitioner, this land was originally leased by a registered lease deed on the 28th of September, 1903 by the predecessor of the respondent-tenant. The respondent was inducted in the land in the year, 1947. Thereafter it is his contention that as the petitioner landlord was a minor, upon his majority, he served a notice upon the tenant on 7th October, 1960 seeking to terminate his tenancy and restoration of possession of land for personal cultivation. He filed that suit on the 17th of November, 1960 before the Tenancy Aval Karkun.

3. During the pendency of that proceeding it appears, another application came to be filed on the 9th June, 1964, which was Tenancy Application No. 47 of 1964.

That was an application for possession on the ground that the tenant-respondent had surrendered his tenancy in favour of the petitioner and the petitioner had become entitled on that account to the possession of that land. That proceeding, in appears, transmitted (sic) in an order for possession and acceptance of surrender by the order of the Mamlatdar on the 20th of April, 1965.

4. In the meantime, it appears, that there were other proceedings going on record and documents in respect of which were produced by the respondent-tenant before the Appeal Court. Those were 32(G) proceedings in which an order was passed on the 17th of November, 1960, dropping those proceedings on the ground that the lands were Devasthan lands covered u/s 88-B of the Bombay Tenancy and Agricultural Lands Act and therefore, sections 32 to 32-R were not applicable. It appears that in that proceeding a statement was recorded of Narhar, a copy of which was also produced. It also appears that a tenancy case was filed being Tenancy Case No. 11 of 1959. It is not clear as to for what purpose that case was filed but was apparently for the purpose of grant of certificate u/s 88-C by the landlord Narhar.

5. It appears that during the pendency of the Tenancy Application No. 47 of 1964 it was sought to be ascertained as to whether the landlord's application u/s 15 read with section 29(2) for personal cultivation of the lands was pending. It was so found to be pending and, therefore, there was no difficulty apparently felt in accepting surrender of the tenancy by the Mamlatdar, who thereafter having verified and found that the surrender is bona fide, directed delivery of possession of the lands to the landlord Narhar.

6. Though such an order was passed, till 1971 nothing seems to have been place and the order was not executed. It was on 15th of October, 1971 only when the order came to be executed and the petitioner was put in possession. He then filed a suit being Regular Civil Suit No. 38 of 1975 in the Court of Civil Judge. (Junior Division), Vita praying for an injunction against the respondent-tenant to prevent him from disturbing the possession of the petitioner-landlord. When this injunction was granted against the tenant, he first filed an appeal against the decision which was given on the 20th of April, 1965 before the Collector, Sangli which is Tenancy Appeal No. 23 of 1975. The Collector, Sangli before whom the question as to whether the appeal being barred by time and could not be entertained as no appeal had been preferred against the order dated 20th of April, 1965 was raised. The Collector however, took the view that the order passed by the Tahsildar on the 20th of April, 1965 was a nullity. He held that since the lands were covered by the provisions of section 88 B, sections 32 to 32-R do not apply nor do the provisions of section 15 and section 31. In that view of the matter, he held that as the lands belong to Datta Devasthan of Padali, that order was a nullity and no question of limitation arose. According to him, if the order was nullity, then it can be ignored and apparently was of the view that an appeal can be filed against it at any time. For this purpose, he relied upon two decisions of the Maharashtra Revenue Tribunal reported in Tenancy Law Reports

(1965) pg. 37 Ganesh Narayan Kulkarni v. Tukaram Dada Patil. In the result, be allowed the appeal and set aside the order passed by the Tenancy Awal Karkurn, in the Tenancy Case No. 47 of 1964 decided on 20th of April, 1965. Against that order and judgment, the petitioner preferred revision application to the Revenue Tribunal. It appears that the Tribunal in upholding the order purported to follow a decision of this Court reported in 55 Bom.L.R. page 946. It is the correctness of these two orders, which are challenged by the petitioner.

7. It is clear that the decision in 55 Bom.L.R. reported at page 946 is of no application and does not lay down proposition that an appeal can be filed against an order, which the party contends to be a nullity after any amount of time. An appeal has to be filed within the period permitted for filing an appeal, if a party wants to challenge the order passed in appeal. According to the Collector if the order is a nullity, then he can conveniently ignore it. This he can do however in proceedings which are collateral or for such a declaration that the decision is null and void and may not operate against him. However, when he prefers an appeal under an Act which allows an appeal he must do so in accordance with the law of limitation providing for filing of such an appeal. The order which was challenged in the case of Husein Miya Dosumiya v. Chandubhai Jethabhai Desai 55 Bom.L.R. 946, was not challenged by way of an appeal against that order, but was challenged in another proceeding in a Civil Court. That decision, therefore, can be of no application or assistance to the respondent in the present case.

8. Shri Rane, appearing for the respondents, however, strenuously urged that fraud has been committed upon the tenant and that the tenant has been deceived who is a landless person. He referred to various documents which are produced at the appellate stage by the tenant and the statement said to have been made by the petitioner Narhar. These documents do not, however, show that the delay in preferring an appeal against the order dated 20th of April, 1965 becomes explained or can be condoned. Neither the Collector nor the member of the Tribunal offered further reason which may have been urged or which were urged that the delay in this case was fit to be condoned for any reasons whatsoever. He seems to have taken a view that in a case where an order is invalid, no question of limitation is involved and can be challenged by way of an appeal after any length of time. Such a proposition is obviously unsupportable.

9. The result, therefore, is that this petition must be allowed and the matter remitted back to the Collector for deciding the question whether an appeal preferred by the tenant could or could not be entertained and if it was delayed, whether the delay in the circumstances should be condoned. If the respondent-tenant seeks to make an application for condonation of the delay and seeks to support it, it is the Collector, Sangli, who will consider those circumstances and evidence which may be adduced and decide accordingly. On the determination of the question whether an appeal is maintainable or whether it is barred by time and whether the delay should be condoned, the Collector, Sangli, will decide the appeal filed by the tenant and pass orders in accordance with law.

There will be no order as to costs.

10. In case the application is filed by the respondent and evidence is adduced, it goes without saying that the petitioner-landlord will also have an opportunity to meet that evidence and contention.