
(1989) 07 BOM CK 0032

In the Bombay High Court

Case No : Writ Petitions No"s. 1562. 1585 and 1780 of 1982

Panpoi Dharmal Sansthan Dhotarkherda

APPELLANT

Vs

Bhagwant Dhakulkar and others

RESPONDENT

Date of Decision : 18-07-1989

Acts Referred:

Mamlatdars Court Act, 1906 — Section 5, 7

Citation : (1989) MhLj 710

Hon'ble Judges : C. Mookerjee, C.J;V.A. Mohta, J;C.S. Dharmadhikari, J

Bench : Full Bench

Advocate : N.K. Deshpande, D.S. Deshpande and J.N. Chandurkar in W.P. No. 1562 of 1982, N.S. Kherdekar in W.P. No. 1585 of 1982 and J.N. Chandurkar in W.P. No. 1780 of 1982, for the Appellant; P.G. Palshikar, K.B. Buty, S.V. Akolkar and M.M. Papinwar in W.P. No. 1562 of 1982, K.B. Neware in W.P. No. 1585 of 1982 and K.B. Neware in W.P. No. 1780 of 1982, for the Respondent

Judgement

C.S. Dharmadhikari, J.—The question as to whether limitation of six months as prescribed by sub-section (3) of Section 5 of the Mamlatdar's Courts Act would govern the applications filed u/s 100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 is referred to this Full Bench by the Division Bench consisting of Qazi and A. A. Desai, JJ. in Writ Petition No. 1562 of 1982, Writ Petition No. 1585 of 1982 and Writ Petition No. 1780 of 1982.

2. In these three writ petitions the landlords have prayed for a negative declaration that the respondents were not tenants of the leased lands. These applications are filed u/s 100(2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. Section 100(2) of the said Act reads as under :-

100. For the purpose of this Act, the following shall be the duties and functions to be performed by the Tahsildar.

(2) to decide whether a person is or was at any time in the past, a tenant, a protected lessee or an occupancy tenant;

Section 101 deals with the commencement of these proceedings. Section 102 which deals with the procedure to be followed in such inquiries and proceedings reads as under : -

102. In all inquiries and proceedings commenced on the presentation of applications u/s 101 the Tahsildar or the Tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdar's Courts Act, 1906, and shall save as provided in section 36 follow the provisions of the said Act, as if the Tahsildar or Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the Tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order which shall state the reasons for such decision.

By section 124 of the said Act the Civil Court is barred from settling, deciding or dealing with all questions including the question whether a person is or was at any time in the past a tenant which by or under the Act is required to be settled, decided or dealt with by the Tahsildar. As a necessary consequence of this a reference is provided by section 125 of the Act in a suit instituted in any Civil Court, if it involves an issue required to be decided under the Act. If such an issue is raised the Civil Court is obliged to stay the suit and refer such issue or issues to a competent authority for determination. By the explanation to section 125 it is clarified that for the purpose of section 125 a Civil Court shall include Mamlatdar's Court constituted under the Mamlatdar's Courts Act, 1906. From the bare reading of these various provisions and particularly sections 100, 101 and 102 of the said Act, it is quite clear that save as expressly provided by or under the Act all inquiries and other proceedings before the Tribunal shall be commenced on an application which shall contain the particulars enumerated in Section 101. By Rule 54A and Rule 54B it is provided that in all matters not provided for in the Mamlatdar's Courts Act the Tahsildar or the Tribunal shall follow the procedure prescribed for revenue officers and revenue Courts under Chapter IV of the M. P. Land Revenue Code. It is also provided that in all inquiries and proceedings to which the provisions of section 102 do not apply the procedure to be followed in matters not provided for by or under the Act shall be that prescribed for revenue officers and revenue Courts under Chapter IV of the M. P. Land Revenue Code.

3. The question which is now posed before us is as to whether in view of the provisions of section 102 of the Act read with the provisions of the Mamlatdar's Courts Act limitation of six months prescribed by the Mamlatdar's Courts Act will also govern applications filed u/s 100(2) of the said Act. Sub-section (2) of section 100 of the Vidarbha Region Act is *pari materia* to section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1947.

4. The Division Bench of this Court consisting of Datar and V. S. Desai, JJ. had an occasion to consider the question now posed before us in Special Civil Application

No. 702 of 1958, Deorao vs. Gopalrao decided on 17th June 1958. While construing similar provisions, Division Bench observed : -

Now in view of the provisions of Section 72 of the Tenancy Act read with the provisions of the Mamlatdar's Courts Act it is clear that an application of this kind is governed by the rule of limitation of six months and that the period has to be computed from the date on which cause of action accrues to the applicant.

5. Another Bench consisting of Chainani, C.J. and V. S. Desai, J. in Madhu vs. Maruti, Special Civil Application No. 411 of 1959 decided on 16th of February 1959 followed the decision of the earlier Division Bench. A request was made to this Division Bench to reconsider the earlier decision. The Division Bench observed that it was not inclined to do so. Another Division Bench of this Court in Yusuf vs. Laxman, Special Civil Application No. 1600 of 1962 decided by Patel and Kantawalla, JJ. on 22nd July 1963, though had made certain observations, refused to go into the question as to whether limitation of six months prescribed by Mamlatdar's Courts Act will apply to such an application. While dealing with the question of limitation it observed :

In the present case we do not decide whether a suit for declaration must necessarily be filed within a period of six months. Section 72 of the Tenancy Act merely provides that the Mamlatdar shall have the same power as a Mamlatdar's Court and shall follow the provisions of the Act. It is arguable that only the procedural portion of the Act was intended to apply and not the substantive portion which provided a period of limitation. In this connection different nature of the jurisdiction under the two Acts must be noticed. Normally even if a suit under the Mamlatdar's Courts Act cannot be filed, it does not prevent the party from going to a regular Court and hence he does not suffer injustice; while tenancy disputes are elusively triable by the authorities under the Act and to so limit the period of limitation would seriously prejudice the rights of the parties. The question requires careful consideration and the point may have to be seriously considered when the question arises.

6. The law laid down by the earlier Division Bench in Deorao vs. Gopalrao was thereafter followed by Chitale, J. in Special Civil Application No. 1061 of 1966 decided on 12-11-1968, Patil Rama vs. Babu Dundya (1970 TLR. 267). In Special Civil Application No. 58 of 1968 decided by Malvankar, J. Sitaram Gopal vs. Laxman Dhanji (1972 Ten.L.R. 264) and in Smt. Radhika vs. Janba, Writ Petition No. 792 of 1975 decided by D. B. Deshpande, J. as well as in Rama vs. Vainunnissa decided by Mohta, J. (1980 Mh.L.J. 82).

7. However, when the present writ petition came up for hearing before Masodkar, J., he found that the question being of importance and as the matter required authoritative settlement, it should be placed before the Division Bench.

8. When the present matters came to be placed before the Division Bench consisting of Qazi and A. A. Desai, JJ. in view of the doubt expressed by the Division Bench consisting of Patel and Kantawalla, JJ. on the correctness of the

decision in Special Civil Application No. 707 of 1958 decided by Datar and V. S. Desai, JJ. it thought it fit to refer the matter to the larger Bench. This is how these matters are placed before this Bench.

9. Mr. Chandurkar, learned counsel appearing for the landlord petitioners contended before us that Section 100 deals with the duties of Tahsildar. For carrying out duty no limitation can be prescribed. The provision of the Tenancy Act in terms does not lay down any limitation for entertaining an application filed u/s 101 of the Act. But by section 102 of the Act only the procedure prescribed by the Mamlatdar's Courts Act is made applicable. The procedure will not take in its import even by implication the limitation prescribed for filing such an application under the Mamlatdar's Courts Act. The area and the field covered by the Tenancy Act and that of the Mamlatdar's Courts Act are distinct and separate. Exclusive, jurisdiction is conferred upon the Tahsildar by the Tribunal to decide or deal with the question which by or under the Act is required to be settled, decided or dealt with by the said authority and the jurisdiction of the Civil Court is barred. In these circumstances limitation prescribed by the Mamlatdar's Courts Act cannot be imported in section 102 of the said Act. Limitation is not part and parcel of procedural law but deals with substantive rights of the parties and therefore limitation prescribed by Mamlatdar's Courts Act will not govern the applications filed u/s 101 of the Tenancy Act. In this context Mr. Chandurkar has placed strong reliance upon the observations of the Division Bench in Civil Application No. 1600 of 1962 decided by Patel and Kantawalla, JJ.

10. On the other hand it is contended by Mr. Palshikar and Mr. Neware, learned counsel appearing for the respondent-tenants, that for all the proceedings under the Act some time limit is prescribed. Whenever the legislature wanted that there should be no limitation, it has used different expressions. Normally the proceedings are instituted by landlords u/s 100(2) of the Act for seeking a negative declaration so as to avail of remedy of summary eviction of tenants u/s 120 of the Act. When all the remedies are exhausted and even a civil suit is barred by limitation, landlords take recourse to these proceedings and with an oblique motive they seek a negative declaration and then institute summary proceedings for eviction. If it is held that for these proceedings no limitation is prescribed, then the very purpose of the enactment that is to afford protection to the tenants will lose its efficacy. It is quite obvious from the present proceedings that all these proceedings are instituted by the landlords for seeking a negative declaration. When the legislature by section 102 of the Act has in terms adopted the procedure prescribed by the Mamlatdar's Courts Act and has further laid down that the applications presented u/s 101 of the Act shall be treated as those presented u/s 7 of the Mamlatdar's Courts Act, it is quite obvious that it also wanted that limitation prescribed by the Mamlatdar's Courts Act should apply to such proceedings. Such a view has been consistently taken by this Court right from the year 1958 and is being followed till today. Even otherwise, it will be too late to upset the said view and to open a Pandora's box to enable landlords to

file fresh applications also in the matters which are already held to be barred by limitation and thereby unsettle the settled position. We find much substance in these contentions.

11. Though section 100 deals with duties and functions to be performed by the Tahsildar, it cannot be forgotten that it deals with power and jurisdiction of the Tahsildar to decide certain matters and the said power is coupled with duty. Section 102 then lays down the procedure to be followed in all inquiries and proceedings commenced on an application filed u/s 101. Statutes of limitation are also regarded as procedural. The object of the statute of limitation is not to create any right but to prescribe the period within which legal proceedings may be instituted for enforcement of rights, which exist under the substantive law. As observed by the Supreme Court in *A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others*, , it is a piece of adjectival or procedural law and not of substantive law. A similar view has been taken by the Supreme Court in *C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others*, , wherein it is observed :

The law of limitation is a procedural law and the provisions existing on the date of the suit apply to it.

Internal evidence is also available in section 102 itself to indicate that the legislature intended that the limitation prescribed by the Mamlatdar's Courts Act should apply to such applications also. The words and expressions "and shall save as provide in section 36 follow the provisions of the said Act....." clearly indicate that to the proceedings provided by section 36 of the Act limitation prescribed by the Mamlatdar's Courts Act will not apply as section 36 itself provides for a different period of limitation than the one prescribed by the Mamlatdar's Courts Act. If the intention of the Legislature is that limitation prescribed by the Mamlatdar's Courts Act should not apply to the applications u/s 101 of the Act, then the exception qua the proceedings u/s 36 was wholly unnecessary. The deeming fiction created by using the words, as if the Tahsildar is Mamlatdar and application presented was a plaint presented u/s 7 of the Mamlatdar's Courts Act will have to be carried to its logical conclusion. If Tahsildar is treated as Mamlatdar's Court and application as plaint u/s 7, then limitation prescribed for presentation of plaint must apply to these proceedings also. If the various sub-sections of section 100 are properly analysed with substantive provisions referred to therein, and section 101 of the Tenancy Act, it is quite obvious that in regard to some matters express provisions have been made under the Act. Section 101 of the Act will apply to inquiries and proceedings save as otherwise expressly provided. With regard to proceedings contemplated by section 100(2) of the Act, no express provision has been made. Hence it will be governed by section 102 as if the application is a plaint u/s 7 of the Mamlatdar's Courts Act and Tahsildar is Mamlatdar's Court. Hence limitation prescribed by Mamlatdar's Courts Act must apply to such proceedings.

12. We also find much substance in the contention of Mr. Palshikar, learned

counsel for the respondents that if it is held that no limitation is prescribed for applications seeking negative declarations u/s 100(2) of the Act, then by oblique method, though a civil suit is barred by limitation, a landlord can seek summary eviction of the tenant by taking recourse to these proceedings. It is well-settled that what is directly forbidden cannot be achieved indirectly. Any other view will obviously defeat the very purpose of the Act. Apprehension expressed by Mr. Chandurkar that this interpretation will defeat the very right of the aggrieved person to seek a declaration u/s 100(2) of the Act is wholly misconceived. Sub-section (3) of section 5 of the Mamlatdar's Courts Act lays down the period of six months' limitation from the date of cause of action. Section 7(d) and (e) speaks of the date on which and the circumstances out of which the cause of action arose. Cause of action depends upon the bundle of facts and variety of circumstances. Therefore it must ultimately depend upon the facts and circumstances of each case. In a given case cause of action can be recurring one and it is obvious that such a case is not covered by sub-section (4) of section 5 of the Mamlatdar's Courts Act. Since an application u/s 100(2) is contemplated for seeking a Declaration, it will have to be decided in each case as to when and in what circumstances the cause of action arose for filing an application and no general rule can be laid down in that behalf.

13. In the view, which we have taken therefore, we answer the question in the affirmative and hold that to a proceeding instituted u/s 101 of the Tenancy Act for seeking a declaration under sub-section (2) of section 100 of the Tenancy Act, the period of limitation as prescribed by the Mamlatdar's Courts Act will apply.

The papers now be placed before the appropriate Bench for further hearing.