(1967) 02 BOM CK 0028

In the Bombay High Court

Case No : Spl. C. Application No. 1170 of 1966 with Spl. C. Application No. 1195 of 1966

Paygonda Surgonda Patil APPELLANT

Vs

Jingonda Surgonda Patil RESPONDENT

Date of Decision : 02-02-1967

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(11)
Civil Procedure Code, 1908 (CPC) — Section 54
Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 3(11)

Citation : (1967) MhLj 880

Hon'ble Judges : V.M. Tarkunde, J;K.K. Desai, J

Bench : Division Bench

Advocate : G.N. Vaidya in Spl. C. appln. No. 1170 of 1966 and M.A. Ranein Spl. C. appln. No. 1195 of 1966, for the Appellant; S.B. Bhasme in Spl. C. Appln. No. 1170 of 1966 and R.G. Samant for respodent No. 1 in Spl. C. Appln. No. 1195 of 1966, V.H. Gumaste, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Tarkunde, J.—These petitions raise a short question of law relating to the scope of the appellate and revisional powers exercisable under sections 203 and 211 respectively of the Bombay Land Revenue Code. The petitioners in both the cases are parties to decrees passed by civil Courts for the partition of agricultural lands and other properties. The decrees were transferred as required by section 54 of the CPC to the Collector for the partition of agricultural lands. From the partition effected by the Collector the petitioners went in appeal to the Commissioner on the ground that the partition was inequitable. The Commissioner dismissed both the appeals by orders which are in identical terms. The Commissioner held that he had no jurisdiction to entertain and dispose of the appeals, since it was "clarified by Government that the Commissioner has not jurisdiction to entertain appeals/applications against the orders of Collectors in the matter relating to execution of civil Court decrees."

The orders of the Commissioner are challenged in these petitions under Article 227 of the Constitution on the ground that the Commissioner in rejecting the appeals failed to exercise the jurisdiction vested in him by law.

2. Since the Commissioner gave no reasons for rejecting the appeals but merely referred to some clarification sent to him by the Government of Maharashtra, notices were issued in these petitions to the learned Government Pleader to appear and assist the Court. We have heard detailed arguments of the learned Government Pleader as well as the learned advocates who appeared for the parties.

3. According to the petitioners, the decision of the Collector in effecting a partition of agricultural lands in pursuance of a decree passed by a civil Court is appealable u/s 203 and revisable u/s 211 of the Land Revenue Code. Section 203 lays down.

In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act or any other law for the time being in force, to that officer''s immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer''s decision or order or not.

4. The first paragraph of section 211 says:

The State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

It was common ground before us that if an appeal lies u/s 203 from the decision of the Collector in the matter of effecting a partition of agricultural lands, the decision would also be revisable u/s 211. We will, therefore, examine the disputed question with reference to the terms of section 203.

5. It will be noticed that section 203 provides for appeals from decisions and orders passed under the Land Revenue Code as well as from decisions and orders passed under any other law for the time being in force. When the Collector proceeds to partition revenue paying lands in pursuance of a civil Court''s decree, decisions or orders made in that proceeding are passed under the powers conferred by section 54 of the CPC and not by powers conferred by any provision of the Bombay Land Revenue Code. It is clear from the terms of section 203 of the Bombay Land Revenue Code that a decision or order of the Collector in such proceedings will be appealable to the Commissioner if the Collector is a revenue officer, if the Commissioner is his immediate superior, and

if there is no express provision to the contrary either in the Bombay Land Revenue Code or any other law for the time being in force.

6. The word "Collector" has been defined in section 3(11) of the Bombay General Clauses Act, 1904, to mean "in the City of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the revenue administration of a district". A similar definition of the word "Collector" is also found in section 3(11) of the (Central) General Clauses Act of 1897. There should, therefore, be no doubt that the Collector is a revenue officer. It is not disputed that the Commissioner is the immediate superior of the Collector under the provisions of the Bombay Land Revenue Code. There is no express provision either in the Bombay Land Revenue Code or in the CPC or in any other law for the time being in force which provides that a decision or an order of the Collector in partition proceedings shall not be subject to any appeal. It would follow, therefore, that an decision or order made by the Collector in effecting a partition of revenue-paying lands in execution of a decree passed by a civil Court is subject to an appeal to the Commissioner u/s 203 and is also revisable u/s 211 of the Bombay Land Revenue Code.

7. Our attention was drawn to certain resolutions of the Government of Bombay which indicate that the above position was recognized by the Government as early as in 1890. We were also told that till the impugned orders of the Commissioner in the present cases, parties aggrieved by a decision of the Collector in partition proceedings filed appeals before the Commissioner, and the appeals were entertained as a matter of course and disposed of on the merits. We understand that the reason why the Government of Maharashtra have instructed the Commissioners not to entertain any such appeals or revision applications is that the Government agreed with the views recently expressed by a Division Bench of the Mysore High Court in Ramchandra v. Pralhad AIR 1964 Mys. 31.

8. In this Mysore case the revenue-paying lands which were to be partitioned under a decree of a civil Court were situate in that part of the Mysore State in which the Bombay Land Revenue Code was in force. The Division Bench came to the conclusion that the partition made by the Collector u/s 54 of the CPC was not subject to any appeal u/s 203 of the Bombay Land Revenue Code. In coming to this conclusion the Court held, in the first place, that the partition made by the Collector u/s 54 of the CPC is made, not under the provisions of the Land Revenue Code, but under the provisions of the Civil Procedure Code. We have no difficulty in accepting this view. However, as noticed above, section 203 of the Land Revenue Code allows an appeal where a decision or order has been passed under the Bombay Land Revenue Code as well as under any other law. The reason why, according to the Mysore Division Bench, a partition effected by the Collector is not appealable even as a decision or order passed under the CPC is that such partition "does not involve the rendering of any decision or the making of any order by the Collector." The learned Judge, who delivered the judgment of the Division Bench, observed (p. 33):

...The appeals which are envisaged by section 203 of the Bombay Land Revenue Code being appeals which may be preferred from a decision or order passed by a revenue officer under the Bombay Revenue Code or under any other law for the time being in force, those appeals would be unavailable in respect of proceedings in which no decision or order is made by that revenue officer. Since in the view that I have taken, no decision or order emerges from a partition made u/s 54 of the Code of Civil Procedure, no such appeal can be preferred by a party who is dissatisfied with a partition made by a Collector.

With great respect, we do not find it possible to accept this view. No reasons are given by the learned Judges in support of their view that a partition made by the Collector does not involve the rendering of any decision or the making of any order. In every partition the Collector has to decide in what manner the lands should be divided and how they should be allocated to the different sharers. The decision made by the Collector on these questions is often of vital concern to the parties. The decision is usually embodied in an order which directs the parties to be placed in possession of the lands allocated to their respective shares. In the case of properties other than lands which are assessed to the payment of revenue, the civil Court normally passes a preliminary decree which is followed by a final decree. The proceedings between the preliminary decree and the final decree are analogous to the proceedings before the Collector for the partition of lands assessed to the payment of revenue. It cannot be disputed that the final decree of a Court which allocates specific properties to different sharers involves the rendering of decisions and the passing of a decretal order. It seems to us, with respect, that the rendering of decisions and the making of an order are also involved when a partition is effected by the Collector of lands assessed to the payment of revenue u/s 54 of the Civil Procedure Code.

9. In the course of their judgment in the above case the Mysore High Court further held that any view other than the one taken by them would lead to inconvenient results. In this connection the learned Judges referred to several cases of the Bombay High Court in which it was held that the civil Court has a very limited power of superintendence over the partition entrusted to the Collector u/s 54 of the Civil Procedure Code. The last such reported case was Ningappa Balappa and Others Vs. Abashkhan Gouskhan, . It was there held that after a decree for partition of lands assessed to revenue has been passed, the Court has nothing further to do with the decree, but that the Court is not entirely deprived of controlling the action taken by the Collector. The Court has a very limited control, and "it is to be exercised only if the Collector contravenes the decretal order or transgresses the law relating to partition or refuses to execute the decree." The Mysore Division Bench agreed with this view of the Bombay High Court and differed with the contrary view adopted by a Full Bench of the Madras High Court in Sree Rajah Mantripragada Venkataraghava Rao Bahadur Zamindar Garu and Others Vs. Sree Rajah Mantripragada Venkata Hanumantha Rao Bahadur Zamindar Garu (deceased) and Others, , where it was held that even the very limited control specified above cannot be exercised by a civil Court

over the work of the Collector in effecting a partition u/s 54 of the Civil Procedure Code. After adopting the above Bombay view, the learned Judges of the Mysore High Court felt that a clash of jurisdiction is bound to result if it is held that a partition effected by the Collector is subject to a right of appeal u/s 203 of the Bombay Land Revenue Code. It was observed in the judgment (p. 33):

If the civil Court has the power to issue directions and direct a re-partition in cases in which the decretal command is transgressed or there is a refusal to make a partition in accordance with the provisions of the preliminary decree and the same complaint can also be made the subject-matter of an appeal to the appellate authority under the Land Revenue Code, it is plain that both the civil Court and that appellate authority would have jurisdiction to deal with the matter, thus resulting in a situation in which a conflict of decisions cannot altogether be eliminated.

With respect, we are unable to agree that the recognition of a right to appeal u/s 203 of the Bombay Land Revenue Code must lead to a clash between the appellate jurisdiction of the Commissioner and the very limited jurisdiction of the civil Court. Even according to the Bombay view, if parties are aggrieved by a partition effected by the Collector on the ground that the partition is inequitable, they cannot agitate their grievance before the civil Court. The recognition of the right of appeal u/s 203 of the Bombay Land Revenue Code would enable parties to have such grievances considered and adjudicated by the Commissioner. On the other hand, if a partition effected by the Collector contravenes the decretal order or transgresses the law relating to partition, or if the Collector refuses to execute the decree, the aggrieved party can approach the civil Court even if the action of the Collector is upheld in appeal by the Commissioner. As stated above, the right of appeal u/s 203 from partition proceedings conducted by the Collector has been recognized since 1890, and we are not aware of a single case in which a clash of jurisdiction of the type apprehended by the learned Judges of the Mysore High Court has occurred. On the other hand, in so far as considerations of reasonableness and propriety are relevant; to the issue, we are of the view that it is clearly reasonable and proper that decisions and orders made by the Collector in partition proceedings should be subject to the appellate jurisdiction of a superior revenue officer. Questions of substantial and vital interest to the parties are frequently involved in a partition of revenue paying lands and it does not appear likely that the Legislature intended that the decision of the Collector on such issues should be final and should not be subject to any appeal or revision.

10. In the course of his arguments before us the learned Government Pleader urged that we should accept the conclusion of the above Mysore case, but on grounds different from those mentioned by the learned Judges who decided it. The learned Government Pleader did not argue that a partition effected by the Collector of revenue paying lands does not involve the rendering of any decision or the making of any order. His contention was that section 203 of the Land

Revenue Code provides for an appeal from any decision or order passed by a "revenue officer", that the Collector is not a revenue officer when he exercises his powers u/s 54 of the Civil Procedure Code, and that, therefore, any decision or order passed by him in the exercise of those powers is not appealable u/s 203 of the Bombay Land Revenue Code. In support of this argument the learned Government Pleader referred to the definition of "revenue officer" in section 3 (1) of the Bombay Land Revenue Code. According to that definition, "revenue officer" means "every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith........." According to the learned Government Pleader, this definition implies that an officer is a revenue officer in so far as he is engaged "in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith", but that he ceases to be a revenue officer if he is engaged in any other official work. The argument implies that the word "employed" in the definition of "revenue officer" does not refer to the purpose of his employment or even to the normal work for which he is employed, but that it refers to the particular activity in which he is engaged for the time being. The learned Government Pleader then went on to argue that a person who is engaged in effecting a partition of revenue paying lands cannot be said to be engaged "in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith". The business of land revenue, it was argued, or of surveys, assessment, accounts or records connected therewith, may be consequential to the partition of revenue paying lands, but is not involved in the partition itself. Partition of revenue paying lands can be effected, and is often effected, by the sharers themselves. The sharers who effect such a partition cannot be said to have been employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith. It was accordingly urged that the Collector is not a revenue officer when he effects a partition of revenue paying lands, and that any decision or order passed by him in effecting a partition is, therefore, not subject to an appeal u/s 203 of the Bombay Land Revenue Code.

11. It will be noticed that the above argument is two-fold-(1) that the Collector is not a revenue officer when he is engaged in any official work other than the business of the land revenue, or of the surveys, assessment, accounts or records connected therewith; and (2) that the work of effecting partition of revenue paying lands is not a business of the type mentioned above. In contesting the second part of this argument, Mr. Vaidya and Mr. Rane invited our attention to the provisions of section 117-A of the Bombay Land Revenue Code. Sub-section (1) of section 117-A provides that survey numbers may be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason. Sub-section (2) deals with the fixing of the assessment on the sub-divisions into which survey numbers are thus divided. Sub-section (3) refers to the entries to be made in land records of the area and assessment of such sub-

divisions. We were also referred to section 113 which provides for the recovery of expenses incurred in making a partition of revenue paying lands from the sharers at whose request a partition is made or from the persons interested in the partition. These provisions show, and it is clear even apart from these provisions, that a partition of revenue paying lands leads to a re-allocation of the liability to pay land revenue between the sharers to fresh entries in land records, and sometimes to other work in connection with land revenue. But we are inclined to agree with the learned Government Pleader that a person who is engaged in effecting a partition of revenue paying lands cannot be said to have been employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith. Partition of revenue paying lands is often brought about by persons unconnected with revenue administration and it is after a partition is effected that some business in connection with land revenue is required to be done.

12. We are, however unable to accept the first part of the learned Government Pleader''s argument, viz. that the Collector is not a revenue officer when he is engaged in any official work other than "the business of the land revenue or of the surveys, assessment, accounts or records connected therewith". In our view, the word "employed" in the definition of revenue officer in section 3 (1) of the Land Revenue Code has reference to the purpose of employment of the officer concerned or the normal work for which he is employed, and not to the particular work which he may have to do at a particular time in the course of his official duties. It appears to us that this is the natural meaning of the word "employed" in the context in which it occurs. The Collector is a revenue officer, because he is appointed under the provisions of the Bombay Land Revenue Code and because the purpose of his employment and the normal work for which he is employed is to look after the revenue administration of a district. Decisions and orders passed by him are, therefore, appealable u/s 203 even when they are not passed in the course of revenue administration. There are some cogent reasons for accepting this interpretation of the term "revenue officer" defined in section 3 (1) and occurring in section 203 of the Bombay Land Revenue Code.

13. In the first place, it can be shown that in section 203 itself the Legislature has used the term ''Revenue Officer" in the sense mentioned above. Several provisions of the Land Revenue Code itself confer powers and impose duties upon the Collector in the performance of which he is not engaged "in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith". According to the view urged by the learned Government Pleader, the Collector is not a revenue officer when he acts under those provisions. Any decision or order made by the Collector under those provisions should, therefore, not be subject to any appeal u/s 203. That, however, is not the case. For instance, sub-section (2) of section 37 of the Bombay Land Revenue Code says that where any property or any right in or over any property, is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer,

after formal inquiry of which due notice has been given, to pass an order deciding the claim. Now the property involved in the Collector''s decision u/s 37 (2) need not be a revenue paying land, and even when it is a revenue paying land the inquiry into the claim connected therewith cannot be said to be a business of the land revenue or of the surveys, assessment, accounts or records connected therewith. Yet a decision of the Collector u/s 37 (2) is appealable and this is recognized by the Legislature itself. For the Legislature has provided in sub-section (3) of section 37 that a suit instituted to set aside an order of the Collector passed under sub-section (2) or for a relief inconsistent with such order must be filed within one year of the date of the order or, "if one or more appeals have been made against such order", then within one year of the order passed by the final appellate authority. Again section 62 empowers the Collector to make a grant of alienated land and it is clear that the making of such a grant does not involve the type of work which is mentioned in the definition of revenue officer in section 3 (1). It was held by a Full Bench of this Court in State of Bombay Vs. Chhaganlal Gangaram Lavar, that a grant made by the Collector u/s 62 can be validly modified or cancelled in the exercise of revisional powers u/s 211. Another instance of the same type is found in the provisions of section 187. That section provides inter alia that all sums declared by any Act or Regulation or by any contract with the Government to be leviable as an arrear of land revenue "shall be levied under the foregoing provisions of this Chapter and all the foregoing provisions of this Chapter shall, so far as may be, be applicable thereto". By virtue of this provision various types of sums, such as income tax dues or dues payable under a contract with the Government, are recovered by adopting the provisions for realisation of land revenue contained in Chapter XI of the Bombay Land Revenue Code. Movable and immovable properties are sold by the Collector for the realisation of such sums. The work involved is not the type of work which is specified in the definition of revenue officer in section 3 (1). Questions relating to the sale of properties under the provisions of section 187, such as setting aside those sales or confirming them, have to be decided by the Collector, and appeals from the Collector''s orders in this behalf are entertained as a matter of course by the Commissioner and decided on the merits.

14. Secondly, the interpretation which the learned Government Pleader seeks to impose on the term ''revenue officer'' in section 3 (1) and section 203 would render nugatory that part of section 203 which allows an appeal to be filed from any decision or order of a revenue officer passed under any law other than the Bombay Land Revenue Code. The Bombay Land Revenue Code is a complete Code providing for all matters regarding land revenue and work connected therewith. It is not easy to find another Act which confers on a revenue officer such powers and imposes upon him such duties as would employ him "in or about the business of the land revenue or of the surveys, assessment, accounts, or records connected therewith." No instance of such an Act was brought to our notice.

15. Besides the main argument examined above, the learned Government

Pleader advanced a supplementary argument in support of his contention that a decision or order passed by the Collector in partition proceedings u/s 54 of the CPC is not subject to any appeal or revision. The learned Government Pleader referred to sections 68 to 72 which were deleted from the CPC by an Amending Act of 1956. Section 68 empowered the State Government to declare by notification that the execution of decrees in which a Court had ordered any immovable property or any particular kind of immovable property to be sold shall be transferred to the Collector. Section 70 empowered the State Government to make rules in this behalf and clause (c) of sub-section (1) of that section laid it down that the State Government may make rules so as to provide that the orders of the Collector in respect of the transferred decrees shall be subject to appeal and to revision before superior revenue authorities in the same manner, as nearly as possible, as the orders of a civil Court are subject to appeal and revision under the provisions of the Civil Procedure Code. The learned Government Pleader pointed out that a provision similar to section 70 (1) (c) is not found in section 54, and argued that the Legislature in enacting section 54 did not intend that orders of the Collector under that section should be subject to appellate and revisional jurisdiction of superior revenue authorities. We do not find any substance in this argument. Sections 203 and 211 of the Bombay Land Revenue Code were on the statute book when the CPC of 1908 was enacted. The Legislature which passed the CPC must be assumed to have had knowledge of the law as it then existed. Orders made by the Collector under the Bombay Land Revenue Code or under any other Act were appealable and revisable under sections 203 and 211 of the Land Revenue Code. The Legislature which passed section 54 of the CPC must, therefore, be assumed in the absence of anything to the contrary to have intended that orders passed by the Collector u/s 54 should be appealable and revisable under sections 203 and 211 of the Bombay Land Revenue Code.

16. We must finally refer to an argument which was advanced by Mr. Bhasme on behalf of the respondents to one of these petitions. Section 203 provides for an appeal from any decision or order of the Collector if there is no express provision to the contrary in the Bombay Land Revenue Code or any other law for the time being in force. Mr. Bhasme argued that an express provision to the contrary is found in the terms of section 54 of the CPC itself. Section 54 provides that in the case of revenue paying lands the partition "shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf". Mr. Bhasme argued that the expression "shall be made by the Collector or any gazetted subordinate of the Collector" excludes every revenue authority superior to the Collector from any function in connection with the partition of revenue paying lands. In our view, this argument also is without substance. The fact that the duty to effect a partition of revenue paying lands is cast by section 54 on the Collector or any gazetted subordinate of the Collector deputed by him does not exclude the right of superior revenue authorities to examine and correct any decision or order of the Collector in the exercise of their appellate and revisional

powers. Section 54 contains no provision, and certainly no "express" provision, which runs counter to the appellate powers conferred by section 203 of the Bombay Land Revenue Code.

17. We are accordingly of the view that the Commissioner erred in law in holding that he had no jurisdiction to entertain an appeal or a revisional application against any order of a Collector passed in proceedings relating to the execution of a decree for partition of revenue paying lands passed by a civil Court.

18. In the result the impugned order of the Commissioner in Special Civil Application No. 1170 of 196(5 is set aside, the appeal filed before him by the petitioners is restored, and he is directed to hear and dispose of the appeal in accordance with law. Respondents Nos. 1 to 5 will pay the petitioners'' costs.

19. We are, however, unable to make a similar order in Special Civil Application No, 1195 of 1966. The petitioners in that case are in possession of all the lands which are to be partitioned according to the directions of the Collector. Mr. Samant, who appears for one of the respondents in that petition, urged that the petitioners are in fact not aggrieved by the partition directed by the Collector and that they filed an appeal before the Commissioner and subsequently the present petition in order to delay the transfer of possession to the respondents of their share of the lands. Mr. Samant pointed out that he had made an offer to the petitioners that if they were genuinely aggrieved by the partition directed by the Collector, they could have the lands which were allotted by the Collector to the share of the respondents and that the respondents were prepared to accept the lands which were allotted by the Collector to the petitioners'' share. This offer, however, was not accepted by the petitioners, Mr. Bane, who appeared for the petitioners, did not deny that such an offer was made and that it was not accepted. He was unable to give any reason why the petitioners did not accept the offer. It is, therefore, obvious that the petitioners are not really aggrieved by the partition directed by the Collector and that they filed an appeal to the Commissioner and then the present petition in order that they could continue in possession of all the lands which are liable to be partitioned. Mr. Bane argued that since we have found that the Commissioner failed to exercise the jurisdiction vested in him by law when he dismissed the petitioners'' appeal, we ought to set aside the Commissioner''s order and direct that the appeal filed by the petitioners should be restored. We are, however, not bound to do so. Interference by this Court under Articles 226 and 227 of the Constitution is discretionary and it is the settled practice of this Court not to interfere under these provisions unless it is necessary to do so in the interest of justice. In the present case the interest of justice requires that we should not interfere with the order of the Commissioner, however wrong in law that order may be. The petition, therefore, is dismissed. Under the circumstances there will be no order as to costs of this petition.

