
(1956) 06 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 163 of 1956

Pitamber Dhondu Patil

APPELLANT

Vs

Bhagchand Ratanchand and Others

RESPONDENT

Date of Decision : 20-06-1956

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 209
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 74
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 16, 9

Citation : AIR 1957 Bom 9 : (1956) 58 BOMLR 797 : (1956) ILR (Bom) 925

Hon'ble Judges : Vyas, J;Shah, J

Bench : Division Bench

Advocate : G.S. Gupte, for the Appellant; Y.V. Chandrachud, for the Respondent

Judgement

Shah, J.—The petitioner Pitambar Dhondu Patil preferred Tenancy Appeal No. 86 of 1954 against the order passed by the Mamlatdar, Amalner, in Tenancy Suit No. 78 of 1954. The District Deputy Collector summarily rejected the appeal after reading the papers and without giving a hearing to the petitioner or his Advocate. The petitioner preferred a revision application to the Bombay Revenue Tribunal and the Tribunal has expressed the view that the Collector was not bound to give a hearing to the petitioner before summarily dismissing the appeal.

The Tribunal observed that there was no provision under the Bombay Tenancy and Agricultural Lands Act about the procedure to be followed, by the Collector in entertaining & deciding appeals under the Tenancy Act and inasmuch as Section 209 Bombay Land Revenue Code provided for summary, dismissal of the appeals under that Code and further provided that no reasons need be given by the Collector when dismissing an appeal summarily the" Dist. Deputy Collector was not bound to give a hearing to the petitioner before summarily dismissing his appeal.

2. We are unable to agree with the view taken by the Tribunal. A tore perusal of the provisions of the Bombay Tenancy and Agricultural Lands Act, is sufficient to

show that certain disputes giving rise to complicated questions relating to civil rights of parties are by the Act entrusted for adjudication to the Revenue Courts and the Revenue Courts are entitled to decide those disputes finally and the Civil Court's jurisdiction in respect of those disputes is excluded.

A right of appeal to the Collector against the decision of the Mamlatdar in those disputes is conferred upon litigants and if that right is to be real and effective we are of the view that the Collector must follow the ordinary rule of procedure followed by the Civil Courts that if any party is given the right to make an application or appeal to a Court he is entitled to be given an opportunity to support the same by oral argument.

The Tribunal was of the view that u/s 209, Bombay "Land Revenue Code the appellate authority has the power summarily to dismiss appeals and in the absence of an express provision to the contrary made by the Bombay Tenancy and Agricultural Lands Act a litigant preferring an appeal had no right to be heard before his appeal was summarily dismissed. But Section 209 of the Land Revenue Code" does not provide that an appeal may be dismissed summarily without hearing the parties who have preferred the appeal.

In any case the Jurisdiction which is conferred upon the Collector as an appellate authority under the Bombay Tenancy and Agricultural Lands Act, is as we have already observed jurisdiction to adjudicate finally upon disputes which are essentially of a civil nature and even if on the consideration of expediency the Legislature has entrusted that jurisdiction to the Collector thereby the nature of the proceeding in which the dispute is litigated is not so fundamentally altered that even the bare right of a litigant to be heard in support of the appeal before his appeal is disposed of should be regarded as excluded.

We are unable to agree with the view of the Tribunal that the District Deputy Collector acted properly in dismissing the appeal filed by the petitioner summarily without giving him a hearing. It is unnecessary, therefore, to consider the other questions which have been decided by the Tribunal.

3. We accordingly set aside the order passed by the Tribunal. We also set aside the order passed by the District Deputy Collector and direct that the proceedings be sent back to the District Deputy Collector with a direction that the District Deputy Collector do hear and dispose of the appeal pending before him according to law. Costs in this application will be costs before the District Deputy Collector.

4. Order set aside.