

(1952) 11 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 1311 of 1952

Raghunath Gambhirshet

APPELLANT

Vs

Ganpat Motiram and Others

RESPONDENT

Date of Decision : 10-11-1952

Acts Referred:

Bombay Revenue Tribunal Act, 1939 — Section 4, 7, 7(2), 76, 82
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 76
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1908 — Section 5

Citation : AIR 1953 Bom 284 : (1953) 55 BOMLR 298 : (1953) ILR (Bom) 827

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : Y.V. Chandrachud, for the Appellant; I.C. Bhatt and H.M. Choksi, Govt. Pleader, for the Respondent

Judgement

Chagla, C.J.

(1)This petition raises a rather important Question as to whether the Revenue Tribunal has the jurisdiction to review its own decisions. The facts briefly are that an application was made by the petitioner who is the landlord for possession from his tenant on the ground that he had not paid rent for three years. The Mamlatdar, the Prant Officer and the Revenue Tribunal all took the view that the landlord was entitled to possession and ordered possession. The order of the Tribunal was passed on 27-9-1958. On 20-3-1951, the opponent applied for review of the decision of the Tribunal, and on 13-6-1952, the Tribunal made an order reviewing its decision and holding that the landlord was not entitled to possession. The ground for the Tribunal coming to this decision was that on 23-7-1951, the Tribunal had taken the view in another matter that a landlord was not entitled to possession, even though the tenant was in default in payment of rent unless the landlord gave a notice and terminated the tenancy. The Tribunal has observed in the order that it passed on 13-6-1952, that this aspect

of the law was overlooked when they gave its decision on 27-9-1950, and therefore this was a proper case of reviewing its decision.

(2) Now, the first question is as to whether the Tribunal has jurisdiction to review its own orders. It is perfectly true that a Tribunal or a Court has no inherent jurisdiction to review its own decisions. Such power must be conferred expressly by statute, and Mr. Chandrachud has drawn our attention to the fact that in the Bombay Tenancy Act which gives revisional powers to the Revenue Tribunal u/s 76, there is no provision with regard to review. Attention has also been drawn to Rule 25 which the Tribunal has framed under Sections 76 and 82 of the Act, and that rule provides that in deciding appeals and applications for revision, in matters not provided for in these rules the Tribunal shall so far as may be follow the procedure laid down under the relevant provisions of the Code of Civil Procedure, 1908, and in this connection Mr. Chandrachud is right when he contends that the provisions of the CPC are only made applicable in the actual hearing and deciding all appeals and applications for revision. This rule cannot confer any jurisdiction upon the Tribunal to entertain a review application which follows upon a decision in an appeal or in an application for revision. Then we have the Bombay Revenue Tribunal Act (12 of 1939). It was by that Act that the Bombay Revenue Tribunal was set up and its powers and functions are defined in Section 4 and the powers and functions there set out relate to revenue matters. Then we have Section 7 which in terms expressly confers upon the Tribunal the power of review. But the contention of Mr. Chandrachud is that Section 7 is limited by Section 4 and the power of review is only conferred upon that Tribunal which exercises the powers and functions mentioned in Section 4. Therefore, according to Mr. Chandrachud, when the Legislature conferred fresh powers upon the Revenue Tribunal by giving it revisional powers u/s 76, inasmuch as the Legislature did not confer upon the Tribunal the power to review its own decisions when exercising those revisional powers, it is not open to the Tribunal to fall back upon Section 7 in order to find jurisdiction to review its own decisions, In our opinion that is not the proper interpretation to put upon Section 4 and Section 7 of Act 12 of 1939. That Act sets up a new Tribunal and Section 7 confers upon that Tribunal generally certain power, viz., the power and jurisdiction to review its own decisions. Section 4 defines its functions and so long as this Act stood on the statute book, the only functions which the Tribunal could discharge were the functions mentioned in Section 4, and in discharging those functions it could exercise the power of review conferred upon it u/s 7. But when the Tenancy Act was passed, further functions were allocated to the Tribunal, and one of those functions was the power to act as a revisional body in certain tenancy matters specified in the Tenancy Act. But when the functions of the Tribunal were increased, the Tribunal still had the power to review its decisions conferred upon it u/s 7. The power to review conferred upon it u/s 7 was not limited to the exercise of the functions enumerated in Section 4 but that power attached to the Tribunal as such and it could always be exercised by the Tribunal, whatever powers might be conferred upon it from time to time.

Therefore, the power to review is the power that attaches to the Tribunal as such irrespective of what jurisdiction may be conferred upon it from time to time by the Legislature. Therefore, it, would not be correct to say that as Section 76, Tenancy Act conferred a new power upon the Tribunal that power had to be exercised without the power of review conferred upon it u/s 7. As we said before, that power attached to the Tribunal as such and the Tribunal could review its own decisions in whatever capacity those decisions might be arrived at and whatever jurisdiction the Tribunal might be exercising. Therefore, in our opinion, when exercising its revisional powers u/s 76, the Tribunal has the power to review its own decisions.

(3) It is then pointed out that Section 7 lays down a period of limitation for an application for review and that period of limitation is 90 days from the date of the decision or order of the Tribunal. Now, in this case, as already stated the order of the Tribunal was passed on 27-9-1950, and the application for review was made on 20-9-1951, long after the 90 days contemplated by Section 7, but the proviso to sub-s. (2) of Section 7 makes the provisions of the Limitation Act, 1903, applicable, and therefore, notwithstanding the efflux of 90 days, It would be competent to the Tribunal to condone the delay in making the application for sufficient cause. Mr. Chandrachud's grievance is that the Tribunal has not applied its mind to the question Of limitation, that it has never considered the question of condonation of delay and in fact the delay has never been condoned, and Mr. Chandrachud says that in the absence of condonation the Tribunal had no jurisdiction to entertain this revisional application. It is true that if we look at the order of the Tribunal, it does not appear that the question of limitation or condonation was considered. But we should be reluctant to take the view that the Tribunal was not conscious of its own powers u/s 7 or the limitations upon those powers, and when it did entertain an application after the period of limitation, we must assume that it was satisfied that there was sufficient cause for the condonation of the delay. There is a further aspect of the matter to which attention might be drawn. The question of limitation was not expressly raised by the petitioner when the review application was filed before it. It is true that the petitioner has mentioned the fact that the application was being made a year after the order was passed, but the point of limitation has not been taken in terms.

(4) Mr. Chandrachud has also relied on the rules framed under Sections 76 and 82 of the Act and he draws our attention to the fact that those rules only deal with appeals and revisional applications and not with review applications. The mere fact that the rules do not deal with review applications does not necessarily lead to the conclusion that the Tribunal has no jurisdiction to entertain review applications. Further, Section 7 of the Act of 1938 deals with the procedure that has got to be followed by the Tribunal in review applications and perhaps the rule making authority thought it unnecessary to frame any special rules with regard to review applications. It has then been suggested that there is no error apparent on the face of the record, no allegation of discovery of new and

important matter and no other sufficient reason existed which would justify the earlier order to be reviewed. Now, once we hold that the Tribunal had jurisdiction to entertain the review application, it would not be for us dealing with the petition under Articles 226 and 227 of the Constitution to consider whether the facts which have to exist in order to entitle the Tribunal to review its own decision existed or not. That would be a question of merits and not a question of jurisdiction and it would be for the Tribunal itself acting within jurisdiction to decide whether a case has been made out for the exercise of its jurisdiction to review its own decision. The view taken by the Tribunal in this case seems to be that as the decision given by it on 27-9-1950, was in conflict with the decision given by it subsequently on 23-7-1951. there was an error apparent on the face of the record and that justified the Tribunal in reviewing its own decision. Whether we agree with that view of the Tribunal or not, it would not be for us to interfere with that decision of a Tribunal which was acting with jurisdiction.

(5) The result is that the petition fails. The rule must be discharged with costs.

(6) Rule discharged.