(1965) 06 BOM CK 0013

In the Bombay High Court

Case No : Letters Patent Appeals No''s. 10 and 11 of 1961

Raje Vyankatrao Jagjiwanrao Deshmukh APPELLANT

Vs

Sitalprasad Sivnath RESPONDENT

Date of Decision : 28-06-1965

Acts Referred:

Berar Regulation of Agricultural Leases Act, 1951 — Section 16, 16A, 2(j)

Citation : (1965) 67 BOMLR 868 : (1965) MhLj 913

Hon'ble Judges : H.K. Chainani, C.J;Tambe, J;Abhyankar, J

Bench : Full Bench

Judgement

H.K. Chainani, C.J.—The question referred to the Full Bench as slightly reformulated by us is as under:

Whether in view of the fact that no notification u/s 2(j) of the Berar Regulation of Agricultural Leases Act, 1951 (No. XXIV of 1951) appointing any Revenue Officer to discharge the functions of a Revenue Officer u/s 16 of that Act has been issued, the Civil Court''s jurisdiction to decide the question referred to in Sub-section (1) of this section is ousted ?

2. The facts of the two suits, which have given rise to this reference, are briefly these: The plaintiff had filed the two suits for obtaining possession of the lands from the defendants and for eviction of the defendants. In each suit, he alleged that the defendant was a trespasser and that he had forcibly taken possession of the land. The defence was that the plaintiff had entered into an oral agreement with each defendant, by which the land had been leased to the defendant, that the defendants had acquired the rights of protected lessees under the Berar Regulation of Agricultural Leases Act, 1951 (hereinafter referred to as the Act), and that, consequently, the plaintiff had no right to evict them from the lands. It was also contended that the question whether they were protected lessees could only be decided by a Revenue Officer under the Act and that the Civil Court had, therefore, no jurisdiction to decide the suits. Both the trial Court and the First Appellate Court have found that the defendants were trespassers and that they

had forcibly entered upon the lands. These Courts also took the view that in the circumstances it was not necessary to refer any question for decision to a Revenue Officer under the Act. Against these decisions, second appeals were filed in this Court. These came up for hearing before a Single Judge of this Court. It was urged before him that as no Revenue Officer had been appointed to decide questions of the kind referred to in Sub-section (1) of Section 16, the Civil Court was competent to decide the two suits. This argument was not accepted, as in the opinion of the learned Judge, even though no notification had been issued by the State Government u/s 2(j) of the Act, the Deputy Commissioners and Sub-Divisional Officers were competent to decide such questions. He, therefore, reversed the decisions of the lower Courts and directed that, in each suit, the question whether the defendant was a protected lessee should be referred to a Revenue Officer for decision. Against the decisions in these two second appeals, Letters Patent Appeals were filed. The Division Bench, before which these appeals came up for hearing, has referred the question mentioned above for consideration by a Full Bench.

3. In order to appreciate the arguments, which have been advanced before us, it is necessary to refer to the relevant provisions of the Act. Clause (j) in Section 2 defines the expression "Revenue Officer" in these terms:

''Revenue Officer'' in any provision of this Act means such Revenue Officer appointed under the Berar Land Revenue Code, 1928, as the State Government may, by notification direct to discharge the functions of a Revenue Officer under that provision;

In order to be a Revenue Officer within the meaning of any provision of the Act, the officer must, therefore, be a Revenue Officer appointed under the Berar Land Revenue Code. The second thing, which is necessary, is that the State Government should by a notification direct that such officer should discharge the functions of a Revenue Officer "under that provision". A notification has been issued by the State Government under this clause empowering Deputy Commissioners to discharge the functions of Revenue Officers u/s 15 and Deputy Commissioners and Sub-Divisional Officers to discharge the functions of Revenue Officers under Sections 4,8, and certain other provisions of the Act, This notification was issued in 1952, The present Sections 16 and 16-A were inserted in the Act in 1953. Thereafter the definition seems to have been lost sight of and no notification has so far been issued empowering any officer to discharge the functions of a Revenue Officer u/s 16 of the Act.

4. There has been some argument before us as to what the words "that provision" mean. It has been urged by Mr. Kherdekar that these words refer to the Berar Land Revenue Code and that they have no reference to the words "any provision of this Act" in the opening part of the definition. In this connection, our attention has been invited to certain provisions of the Code. Section 3 of the Code states that there shall be the following classes of Revenue Officers :

Deputy Commissioners.

Assistant Commissioners of the first and second grade.

Tahsildars.

Naib-Tahsildars.

The section further provides that the term "Assistant Commissioner" includes "Extra Assistant Commissioner". Section 7 provides that the State Government shall appoint in each district a Deputy Commissioner who shall exercise therein the powers and discharge the duties conferred and imposed on a Deputy Commissioner or a Collector by this law or by any enactment for the time being in force. This section, therefore, provides for the appointment of a Deputy Commissioner in each district. He can, however, exercise only such powers and discharge such duties as are conferred and imposed on him by the Code or by any enactment for the time being in force. Section 7-A provides for the appointment of an Additional Deputy Commissioner. Sub-section (3) of this section states that an Additional Deputy Commissioner shall exercise such powers and discharge such duties conferred and imposed on a Deputy Commissioner or a Collector by this law or by any enactment for the time being in force, as the Deputy Commissioner of the district may direct. Section 8 states that an Assistant Commissioner shall exercise such powers as the State Government may, by notification, direct. Sub-section (2) of Section 9 states that the Tahsildars and the Naib-Tahsildars shall exercise the powers and discharge the duties conferred and imposed upon them by or under this law or any enactment for the time being in force. Section 10 states that the State Government may appoint such other officers and invest them with such powers as may be necessary to give effect to the provisions of this law. Section 11 states that an Assistant Commissioner, who is placed in charge of one or more sub-divisions of a district, shall be called a Sub-Divisional Officer and shall exercise such powers of a Deputy Commissioner as the State Government may, by notification, direct. In exercise of the powers conferred on the State Government by Sections 8 and 11, notifications have been issued by the State Government. No notification of the State Government is, however, required in regard to the powers to be exercised and the duties to be discharged by a Deputy Commissioner, Tahsildar or Naib-Tahsildar. Under Sections 7 and 9 these officers can exercise such powers and discharge such duties as are conferred and imposed upon them by the Code or by any law for the time being in force.

5. If the argument of Mr. Kherdekar that the words "under that provision" in the definition of "Revenue Officer" mean "under the Berar Land Revenue Code" be correct the notification contemplated by this section would be a notification directing a Revenue Officer appointed under the Code to discharge the functions of a Revenue Officer under the Code. Such a provision would, as rightly pointed out by the Division Bench, convey no sense. The Code provides for the appointment of different classes of Revenue Officers, each of whom exercises

certain kinds of powers, but there is no provision in the Code specifying the powers of a Revenue Officer as a Revenue Officer. The Code does not contemplate the investment of any Revenue Officer with the powers of a Revenue Officer as such. The Notifications issued by the State Government under Sections 8 and 11 specify the powers which the Assistant Commissioners and Sub-Divisional Officers may exercise. They have not been directed to discharge the functions of a Revenue Officer as such. In our opinion, therefore, the argument of Mr. Kherdekar that the words "that the provision" mean the Land Revenue Code is devoid of any merit.

6. The definition contained in Section 2(j) is also clear and unambiguous. A plain reading of it leaves no doubt that the words "that provision" refer to the opening words in the definition "in any provision of this Act." In other words, reference to a Revenue Officer in any provision of the Act is reference to that officer who is directed by the State Government to discharge the functions of a Revenue Officer under that particular provision. It follows that before a Revenue Officer appointed under the Code can discharge functions under any provisions of the Act, it is necessary that he must be empowered by the State Government to discharge those functions.

7. Sub-section (7) of Section 16 of the Act states that whenever any question arises whether any transaction between a landholder and a person claiming to be his lessee is a lease within the meaning of this Act, such question shall be decided by the Revenue Officer. In Paika v. Rajeshwar [1957] N.L.J. 344. a Full Bench of this Court has held that if an issue arises between the parties whether there was a transaction, which resulted in one of the parties becoming a lessee, and the lease is a lease which falls within the Act, then that issue could only be tried by the Revenue Officer and not by the Civil Court. The argument that no officer had been empowered to discharge the functions of a Revenue Officer under Sub-section (1) of Section 16 was not advanced before the Full Bench. Consequently, the Full Bench did not consider the question, which has now arisen for our consideration. The judgment of the Full Bench proceeds on the assumption that there was a competent Revenue Officer for deciding the question referred to in Sub-section (1) of Section 16. According to the decision of the Full Bench, the Civil Court''s jurisdiction would, therefore, be ousted, if there is a Revenue Officer within the meaning of Section 2(j), who can determine the question as is referred to in Sub-section (7) of Section 16.

8. Sections 16-A and 16-B are in the following terms:

16-A. (1) Whenever any question as is referred to in Section 16 arises before a Civil Court in any suit or proceeding, the Court shall, unless such question has already been determined by a Revenue Officer, refer the question to the Revenue Officer for decision and shall stay the suit or proceeding so far as it relates to the decision of such question.

(2) The Civil Court shall accept the decision of the Revenue Officer on the

question and decide the suit or proceeding before it accordingly.

16-B. Except as otherwise provided in this Act, no Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which a Revenue Officer is by or under this Act, empowered to determine, decide or dispose of.

The effect of these provisions is that the question whether a person is a lessee is to be decided by a Revenue Officer. Before, however, any officer can discharge the functions of a Revenue Officer u/s 16, it is necessary that the State Government should issue a notification empowering him to discharge those functions. If such a notification has been issued, and if there is a Revenue Officer competent to decide the question of the kind referred to in Sub-section (1) of Section 16, then the jurisdiction of the Civil Court to decide such question will be barred, and under Sub-section (1) of Section 16-A, the Civil Court will have to stay the suit, so far as it relates to the decision of such a question, until that question has been decided. It will be noticed that Sub-section (1) of Section 16-A does not bar the Civil Court from entertaining a suit. What the Civil Court is required to do is to stay the proceeding until the question, as is referred to in Section 16, has been decided by the Revenue Officer.

9. In the present case, however, no officer has been empowered to discharge the functions of a Revenue Officer u/s 16. There is, therefore, no Revenue Officer who can decide any question as is referred to in Section 16. In the absence of such an officer, there is no one to whom the Civil Court can refer the question for decision under Sub-section (1) of Section 16-A. The Legislature has, no doubt, provided for a special tribunal to decide the questions as are referred to in Section 16. Having made provision for a special tribunal, the Legislature has deprived the Civil Court of its jurisdiction to decide such questions. But where no such tribunal has been constituted, the special remedy provided is not available and cannot be resorted to. There being no Revenue Officer to whom the Civil Court can refer the question, Sub-section (1) of Section 16-A cannot be given effect to. The Legislature could not possibly have intended that a person should be left without any means of obtaining relief to which he may be lawfully entitled. In such a case, therefore, the Civil Court, before which the suit is proceeding, being unable to obtain a decision from a competent Revenue Officer, is not required to stay the suit. It must proceed to decide the issue itself and give relief and redress to the person aggrieved. This is on the principle that if a Civil Court is deprived of its jurisdiction, because the Legislature has provided for trial of the matter by a special tribunal, then if the tribunal is not constituted, the provisions made for referring the matter to the tribunal having become ineffective, the aggrieved person has the right to proceed in an ordinary Civil Court and the Civil Court will be competent to decide the matter.

10. The view, which we are taking, is in accordance with the Full Bench decision of this Court in Bhima Balu v. Basangouda Nemgouda [1954] Bom. 1080 : 56 Bom. L.R. 520. That was a case u/s 64 of the Bombay Tenancy and Agricultural

Lands Act, 1948. Sub-section (1) of Section 64 of this Act provides that where a landlord intends to sell any land, he shall apply to the Agricultural Lands Tribunal for determining the reasonable price thereof, and that the Tribunal shall thereupon determine the reasonable price of the land in accordance with the provisions of a, 63-A. Sub-section (8) of this section provides that any sale made in contravention of this section shall be invalid. In the case before the Full Bench, a deed of sale was executed on January 6, 1949, after the Act had come into force on December 28, 1948. The notification u/s 67(5) of the Act appointing the Mamlatdar to exercise the powers of the Agricultural Lands Tribunal was issued by the Government on January 18, 1949. It was held that Section 64 of the Act only became effective on January 18, 1949, when the authority to perform the functions of the Tribunal was set up, and that as the sale was effected prior to that date, it did not come within the ambit of Section 64(3) of the Act and that, therefore, the sale was valid. On the same reasoning, Sub-section (7) of Section 16 cannot become effective, until there is a Revenue Officer competent to decide the question as is referred to in this section. If there is no such officer, the question of staying the suit under Sub-section (1) of Section 16-A will not arise.

11. The same principle has been expressed in Bharat Chandra Maiti Vs. Gour Chandra Adak, In that case, Section 7 of the West Bengal Bargadare Act, 1950, provided for disputes of the kind referred to in Sub-section (1) of Section 7 being decided by a Board established u/s 6 of the Act. Sub-section (2) of Section 9 stated that no Court shall entertain any suit or any proceeding whatsoever in respect of a matter required under Sub-section (1) of Section 7 to be decided by a Board referred to in that sub-section. It was observed that if there was no Board established under the Act, the dispute, even if it came within Section 7(1), could not be said to be one which was required to be decided by a Board: see also Krishna Chandra Vs. Panchu Ghosh and Others, .

12. A similar view has been taken in Lachmi Chand Suchanti V. Ram Pratap Choudhry I.L.R (1934). Pat. 24. and Sat Narain v. Hanuman Parshad A.I.R [1946] Lah. 85.

13. Mr. Kherdekar has relied upon the decision of the Madras High Court in Balakrishna Mehat Vs. Corporation of Madras, . The principle laid down in that case is that where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed, and it is not competent to the party to pursue his remedy at common law. That principle has no application to the facts of the present case. The right of a landlord to obtain possession from his tenant is a right exercisable by him at common law. The Act imposes restrictions on the exercise of this right and provides for the question whether a person is a tenant being determined by a Revenue Officer. This provision cannot, however, be given effect to because the State Government has not empowered any officer to decide questions of this kind.

14. We are, accordingly, of the opinion that as no notification has been issued by

the State Government under Clause (j) of Section 2 of the Act, appointing any officer to discharge the functions of a Revenue Officer u/s 16 of the Act, the Civil Court has jurisdiction to decide the question whether the defendants were the tenants of the plaintiff.

15. The reply to the question referred to the Full Bench will, therefore, be in the negative. Both the appeals may be placed before a Division Bench for further orders.