

(1983) 01 GUJ CK 0007
In the Gujarat High Court

Rasulmiya Rehmanmiya

APPELLANT

Vs

Patel Lalbhai Shankerbhai

RESPONDENT

Date of Decision : 21-01-1983

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32(IB), 32(IB)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1984 Guj 27 : (1983) 1 GLR 714

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—In this Special Civil Application under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order passed by the Gujarat Revenue Tribunal in revision application No. TEN. B.A. 1020 of 1977 where by the Revenue Tribunal has allowed the Revision Application of the respondent land-lord and has dismissed the petitioner's application u/s 32(IB) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Tenancy Act) only on the ground of limitation. In order to appreciate the controversy between the parties centering round the question of limitation it is necessary to note a few relevant facts. The dispute centers round the possession of agricultural lands bearing survey No. 264/1 admeasuring 1 acre and 10 gunthas situated on the out-skirts of village Rasulpur-Padal in Thasra taluka of Kheda district. The petitioner claims to be the lawful tenant thereof and respondent is admittedly the owner thereof. Case of the petitioner is that he was in lawful possession and cultivation of the said land as a tenant of the land-lord upto 1959-60 and that the respondent is alleged to have snatched away the possession of the petitioner without following due procedure of law. It is under these circumstances that the petitioner applied to the Mamlatdar and Agricultural Lands Tribunal, Thasra u/s 32 (IB) of the Bombay Tenancy And Agricultural Lands Act on 17-2-1976 for restoration of possession on the ground that he was the lawful tenant of the suit land. He was in possession thereof on the appointed day, that is, on 15th June, 1955 and was dispossessed of the said land by the

respondent-landlord before the specified date, that is, the date on which the Bombay Tenancy and Agricultural (Gujarat Amendment) Act, 1972 came into force and the said dispossession was done without following the due procedure of the Tenancy Act, and that the said land is still in possession of the respondent-landlord. The said application was entertained on merits by the Mamlatdar and A.L.T., Thasra, and after hearing the parties and permitting them to lead their evidence in respect of the respective contentions, the Agricultural Lands Tribunal, Thasra by its order dated 15th July, 1976 came to the conclusion that the petitioner had made out the case u/s 32(1B) of the Tenancy Act for restoration of possession and accordingly his application was granted.

2. The respondent land lord carried the matter in appeal being tenancy appeal No. 170 of 1976 before the Deputy Collector, Anand and in the said appeal a contention was raised that as per the provisions of the Tenancy Act an application can be filed by the aggrieved party within one year of the coming into operation of Section 32(1B) and hence the application as filed by the petitioner on 17th February, 1976 was clearly time-barred. The Deputy Collector, Anand took the view that as the A.L.T. and Mamlatdar, did not reject the application on the ground of limitation, the Mamlatdar could be treated to have exercised his suo motu powers u/s 32(1B) and consequently the question of limitation did not arise. On the facts of this case the Deputy Collector confirmed the findings of the Mamlatdar on merits. Thereafter the respondent land lord carried the matter by way of revision to the Gujarat Revenue Tribunal u/s 76 of the Tenancy Act. The only ground that was urged before the Tribunal was that of Limitation. The Tribunal accepted the said contention of the advocate on behalf of the respondent and held that the petitioner was required to file his application u/s 32(1B) of the Tenancy Act latest by 3-3-1974 as the period of limitation for such application was prescribed by Rule 15A of the Bombay Tenancy And Agricultural Land Rules, 1956 to be one year from the date on which the amending Act came into force. That the said Act had come into force on 3-3-1973 and hence the application as filed by the petitioner on 17-2-76 was barred by limitation. That is how the respondent's revision application was allowed by the Gujarat Revenue Tribunal and the petitioner's application u/s 32(1B) was ordered to be dismissed. The petitioner seeks reversal of the said order passed by the Tribunal on the ground that the Tribunal has committed a patent error of law in doing so.

3. In order to appreciate the aforesaid grievance of the petitioner it is necessary to have a look at Section 32(1B) of the Tenancy Act which reads as under:

32(1B). Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in Section 29 or any other provision of the Act, is not in possession of such land or any part thereof and such land or any part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said

date, then Mamlatdar shall, notwithstanding any thing, contained in the said Section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an enquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, part thereof shall be taken from the possession of the land-lord or, as the case may be, his successor in interest and shall be restored to the tenant; and thereafter, the provisions of this section and Section 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or as the case may be, part thereof is restored to him;

Provided that the tenant shall be entitled to restoration of land or part thereof as the case may be, under this sub-section only (if he gives an undertaking in writing within such period as may be prescribed) to cultivate it personally and if so much thereof as together with the other land held by him as owner of tenant shall not exceed the ceiling area; (Provided further that;

(i) If the tenant fails to give such undertaking within such prescribed period, or if the tenant, after giving such undertaking, refuse to accept the tenancy or possession of the lands, the land the possession of which the landlord or, as the case may be, his successor-in-interests is not entitled to retain under this subsection; or

(ii) if the tenant gives such undertaking and accepts such tenancy or possession of the land, such portion of the land referred to in Clause (i) to the restoration of which the tenant would not be entitled under the first proviso shall vest in the State government free from all encumbrances, and shall be disposed of in the manner provided in Sub-sections (2) of Section 32P.

Explanation-In this sub-section "successor in interest" means a person who acquires the interest by testamentary disposition or devolution on death.)

4. A mere look at the said provision shows that two types of rights have been conferred by the said section. One right is conferred on the aggrieved parties to apply to the Mamlatdar within the prescribed period for getting relief under the said section of the Act. The other right is conferred on the Mamlatdar to act suo motu in cases which according to the Mamlatdar would require decision on merits. So far as the suo motu powers of the Mamlatdar are concerned no period of limitation is prescribed under the said section. The period of limitation is prescribed only for an application by the aggrieved tenant. The term "prescribed" is defined by Section 2 Sub-sections (12) of the Tenancy Act to "mean prescribed by rules made under this Act". Rule 15(A) of the Bombay Tenancy and Agricultural Lands Rules, 1956 lays down that application under Sub-sections (18) of Section 32 by a tenant specified in that sub-section shall be made within a period of one year from the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1972. It is, therefore, obvious that

one year's period provided from the coming into operation of the amendment Act, 1972 for application by concerned tenants who are aggrieved by the alleged illegal acts of dispossession by their land-lords. But so far as the Mamlatdar is concerned he has also been empowered to act suo motu and for that there is no bar on limitation. In the facts of the present case it is obvious that when the Mamlatdar and A.L.T., Thasra was moved by the petitioner by an application on 17-2-1976 his application was admittedly time-barred. It was no application in the eye of law. It had no legal efficacy and consequently on that application the Mamlatdar and A.L.T., Thasra has no jurisdiction to proceed on merits. Still, however the Mamlatdar and the A.L.T. Thasra proceeded to adjudicate the said application on merits by hearing the concerned parties, after issuing notice to them. That act on the part of the Mamlatdar shows that he thought it proper not to throw out the application on the ground of limitation and to shut out the enquiry but to proceed with the same on merits suo motu. It is obvious that on the day on which the petitioner approached the Mamlatdar in 1976 the period of limitation for applying u/s 32(1B) was over. Thus his application only served as a reminder to the Mamlatdar to initiate proceedings suo motu and to proceed on merits of the application. It is obvious and can also be presumed that the Mamlatdar and A.L.T. knew that the Legislature has prescribed a period of limitation for entertaining applications of the concerned tenants. Thus he could have easily visualised that application by the petitioner was time-barred. Yet, however, instead of throwing it off, the Mamlatdar proceeded to consider it on merits. That consideration by the Mamlatdar could not have been based on a legally tenable application by the aggrieved tenant, but only on the exercise of his suo motu powers. The application of the petitioner merely served as a reminder to the Mamlatdar to invoke his suo motu powers. That is not mentioned expressly in the order but it is implicit in the very exercise of the powers of the Mamlatdar u/s 32(1B) of the Act on merits of the controversy between the parties on the basis of such an application moved beyond time by the petitioner-tenant. It is further interesting to note that the respondent landlord never contended before the Mamlatdar that he should not proceed on merits of the case u/s 32(1B) as the petitioner's application was time-barred. Thus even the respondent did not challenge the proceedings before the Mamlatdar on merits. It is true that the respondent raised this contention for the first time before the Deputy Collector and reiterated the same before the Tribunal. However, the Deputy Collector was quite justified in taking a view that the very fact that the Mamlatdar and A.L.T. had not rejected the petitioner's application as time-barred and on the contrary had adjudicated the said application on merit showed that the Mamlatdar had thought it fit to exercise his suo motu powers for inquiring into the matter looking to the facts of the case.

5. The Revenue Tribunal, with respect, has taken too narrow a view of the legal position in the background of admitted facts on records. While it held that the petitioner's application was time-barred and the Mamlatdar had no jurisdiction to decide the same on merits. It must be realised that time-barred applications

would be no applications in the eye of law which could be said to be moved by the aggrieved tenants as per requirements of the Section 32(1B) but they merely serve as reminders to the Mamlatdar to exercise his suo motu powers. If the Mamlatdar rejects such an application as time-barred and does not process the same on merits it can be presumed that he did not think it fit to exercise his suo motu powers and the matter must rest there. Then the higher authorities like the appellate court cannot compel the first authority to exercise its suo motu powers unless it is demonstrated that the refusal to exercise suo motu powers on the part of the lower authority was purely an arbitrary, capricious or an unreasonable act. Save and except such extreme cases in all other cases when the suo motu powers are not exercised by the authority concerned it cannot be forced to exercise them as they are discretionary powers. But in the present case the Mamlatdar and A.L.T. not only entertained a time-barred application which could have been easily noticed as such but he also processed the same on merits. That deary means that he was inclined to exercise his suo motu powers. Mr. Patel submitted for the respondent that the Mamlatdar does not appear to be conscious of the suo motu powers and he seems to have proceeded with the application of the petitioner on merits as if it was within limitation. That is neither here nor there. If the Mamlatdar had suo motu powers and if it is shown that he had no jurisdiction to decide the petitioner's application on merits after the period of limitation and, still if the application is entertained on merits and decided on merits it can be legitimately presumed that he had exercised his suo motu powers which he was decidedly possessing, at the relevant time for deciding the dispute between the parties on merits u/s 32(1B). If any authority were needed on the point it is supplied by the Division Bench judgment reported in 16 GLR at 904 in the case of Keshavlal Paragji v. the Gujarat Revenue Tribunal and Anr. The question before the Division Bench consisting of B.J. Diwan, C.J. and T.U. Mehta, J., centered round the controversy as to whether an appeal lay u/s 74 of the Tenancy Act against an order passed by the Mamlatdar u/s 70(b) of the Tenancy Act. In an earlier decision given by J.B. Mehta, J. of this High Court in Sureshchandra Dhirajlal Store and Ors. v. R.K. Shrotriya, District Collector (1970) 11 G.L.R. 821 it was held that no appeal lay before the Collector u/s 74 against such order of the Mamlatdar. The Division Bench speaking through T.U. Mehta, J. reversed the said view of the learned single Judge and held that such an appeal was competent. But then alternatively it was held by the Division Bench that even assuming that on appeal which the respondent preferred to the Prant Officer was incompetent, the situation has not changed a bit. The Division Bench noted that u/s 76A of the Tenancy Act legislature has conferred suo motu powers to Collectors to revise the orders of Mamlatdars. It was held that even when the appeal was incompetent it was entertained on merits it can be presumed that the suo motu powers of revision were invoked by the concerned Collector. Its order cannot be treated as a nullity on that ground. The following pertinent observations in this connection are found in paragraph 11 of the Report

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Here we should make a reference to Section 76A of the Act which says that where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time, call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by and as to the regularity of the proceedings of, such Mamlatdar or Tribunal, as the case may be, and pass such order thereon as he deems fit. The provision of sec 76A thus invests the Collector with revisional powers and these powers can be invoked either suo motu or on a reference made by the State Government. Thus, when the Prant Officer, Olpad heard the appeal preferred by the respondent in this case, he can be presumed to have heard it, if not under any appellate powers, then under the revisional powers vested in him by Section 76A of the Act.

6. The aforesaid observations of the Division Bench, therefore, clearly show that if a competent officer under the Tenancy Act decides the matter on merit even though the said decision may not be supportable by a given provision of law it can still be sustained under any other provision of the Tenancy Act. In the present case also the Mamlatdar has been advisably entrusted with suo motu power by the legislature, to entertain any appropriate case u/s 32(1B) even if the aggrieved tenant might not have applied within time for redress of his grievance. It is pertinent to note that Section 32(1B) is a beneficial provision enacted with a view to protect the rights of illiterate and ignorant tenants who might have been duped by their crafty landlords into giving up possession of their lands contrary to the provisions of the Tenancy Act. Such tenants might skip the period of one year's limitation as provided by the statutory rules. However, they are given a locus paenitentiae in the form of invocation of suo motu powers of Mamlatdar for getting justice. Their time-barred applications seek to do nothing else but to inform the Mamlatdar about the injustice done to them. Once convinced of the justness of the grievance put forward by such a tenant, if the Mamlatdar proceeds to deal with the case u/s 32(1B) on merits, only inference that can follow from such a course adopted by the Mamlatdar is that he has thought it fit to invoke his suo motu powers which are not subject to any period of limitation. Mr. J.N. Patel, learned advocate for the respondent contended that if the Mamlatdar is held entitled to exercise suo motu powers at any distant time in future, there would be no upper limit to the invocation of such powers and even after 10, 20, or 30 years such powers might be exercised. That would render the working of Section 32(1B) totally arbitrary. This apprehension voiced by Mr. Patel is more imaginary than real. Section 32(1B) itself provides an inherent safeguard against such contingencies. Powers u/s 32(1B) can be exercised against landlords or their successors in interest who as mentioned in the Explanation would mean landlords' heirs testamentary or intestate, if the land in question is bona fide and genuinely sold or otherwise transferred to third parties and is not available for being restored back, to the tenant u/s 32(1B) by the time the Mamlatdar is informed of the grievances of the concerned tenant, the Mamlatdar would

justifiably refuse to invoke his suo motu powers in such cases as the very exercise would be a futile one. If, however, such land has remained as part and parcel of the estate of the original wrong-doer i.e. the landlord who deprived the tenant of his possession illegally during the period contemplated by Section 32(1B) and is traceable in the hands of the land lord or his heirs and is available for restoration to the victim tenant by getting it back from the hands of the landlord or his heirs, who also must remain answerable for the wrongs committed by their predecessor in title from whom they have inherited such land, then in effect and in law there is nothing wrong in the invocation of the suo motu powers of the Mamlatdar even after any number of years. It is further pertinent to note that legislature in its wisdom has not put any time limit to the exercise of suo motu powers by the Mamlatdar u/s 32(1B). By no process of judicial interpretation such a time limit can be engrafted in the section. Only safety valve can be that such powers should be exercised within reasonable time. Whether exercise of suo motu powers of the Mamlatdar is within reasonable time or not will depend on facts and circumstances of each case. As shown above section itself demonstrates how by change of circumstances with passage of time, the said exercise would become unreasonable and or futile. The apprehension of Mr. Patel therefore, is uncalled for.

7. In the facts of this case it is obvious that the Mamlatdar did decide to go into the question in controversy between the parties on merits and, therefore, he can be presumed to have exercised his suo motu powers as admittedly on the date on which he entertained the application u/s 32(1B) the application filed by the petitioner was obviously time barred and incompetent.

The Gujarat Revenue Tribunal had, therefore, patently erred in law in holding that the order of the Mamlatdar u/s 32(1B) was misconcieved and without jurisdiction. The Tribunal was equally wrong in taking the view that the Collector erred in confirming such a patently illegal order. The Tribunal ought to have hold that the order of the Mamlatdar could be well sustained in exercise of his suo motu powers u/s 32(1B). The decision of the Revenue Tribunal, therefore, involves an apparent error of law and requires to be quashed.

8. Mr. J.M. Patel appearing for the respondent landlord submitted that only point of limitation was canvassed before the Tribunal in support of respondent's revision application because the said legal position was well accepted at Tribunal's level in those days. Mr. Patel says that even uptill now the Tribunal has been consistently taking the same view. Once this Court takes a contrary view on the question of limitation, an appportunity should be given to the respondent to argue their revision application on merits before the Tribunal. The said request of Mr. Patel for the respondent is well justified. It is true that only points of limitation was urged before the Tribunal and as the Tribunal accepted that contention of the respondent, the respondent naturally had no occasion to address the Tribunal on merits of the case. Consequently, the proceedings will have to be remanded to the Tribunal for a fresh decision on merits. In the result

this petition is allowed. Rule issued is made absolute. It is held that 32(1B) proceedings as conducted before the Mamlatdar and A.L.T. were maintainable in law as being exercised under suo motu powers and were not barred by limitation. The order of the Gujarat Revenue Tribunal in Revision Application No. THN. B.A. 1020 of 1977 is quashed and set aside. The Revision Application is remanded to the Tribunal with a direction to restore it to its file and to decide the same on merits, after hearing the concerned parties. In the facts and circumstances of the case there will be no order as to costs.