
(1978) 09 BOM CK 0021

In the Bombay High Court

Case No : Special Civil Application No's. 4184, 4842 and 4964 of 1976

Shagwan Sonaji Ambhure

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-09-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1979) 81 BOMLR 437

Hon'ble Judges : Pratap, J;Deshmukh, J

Bench : Division Bench

Judgement

Deshmukh, J.—These four petitions have been referred to a division Bench without a speaking order. It is, therefore, necessary to state the point that arises for our decision.

2. The undisputed facts which are similar are these: The petitioners in the first three petitions are the land-holders and all of them have been declared as surplus holders by the Surplus Land Determination Tribunal (S.L. D.T.). Three of them filed appeals before the Maharashtra Revenue Tribunal (hereinafter referred to as the M.R.T.). The Government had not filed independent appeals nor cross-objections as provided by Section 33 (1A) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Ceilings Act). After hearing the appeals of the three surplus holders, not only the appeals were dismissed, but while doing so, the M.R.T. modified the order passed by the S.L.D.T. and added some more acreage to the surplus area of the three appellants. Being dissatisfied with this order, the three surplus land-holders have filed the first three special civil applications. As this order of adding to the acreage of surplus land adversely affects the petitioners in the fourth petition, they have filed Special Civil Application No. 4964 of 1976 in this Court. When these four matters were called out before the learned single Judge, one of the points which arose for his consideration was whether the M.R.T. had the jurisdiction to pass an order adversely affecting an appellant before it even

though the respondent had not filed his substantive appeal nor filed cross-objections as provided by Section 33(1A) of the Ceilings Act. While referring these petitions, no speaking order has been passed by the learned single Judge nor has he framed the point for expressing our decision. Looking to the nature of the reference and the controversy we formulate the following point for being answered by us:

Has the M.R.T. power similar to the provisions of Order XLI, Rule 33 of the CPC while exercising its appellate powers under the provisions of Section 33 read with Section 34 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961?.

3. On this point, two learned Judges sitting as single Judges at Bombay and Nagpur had already taken the view that the M.R.T. has no right or power similar to the provisions of Order XLI, Rule 33 of the Code of Civil Procedure. Chandurkar J. held in *Maroti Sonba v. State of Mah.* [1973] Mh. L.J. 509 that the appellate jurisdiction of the M.R.T. in an appeal filed by the surplus order against the order of the S.L.D.T. does not permit the M.R.T. to pass an order adversely affecting the appellant even though his appeal is found to be without substance. The learned Judge observed that the Tribunal did not seem to have any revisional jurisdiction under the Ceilings Act. This judgment was delivered on the February 15, 1971, at Nagpur reiterating his earlier view in *Saberullakhan v. Fakrullakhan* [1971] Special Civil Application No. 508 of 1969, decided by Chandurkar J., on January 28, 1971 (Nagpur Bench) (Unrep.). According to the learned Judge, in the absence of a separate appeal by the State, it was not competent for the M.R.T. to exercise powers similar to the provisions of Rule 4 and Rule 33 of Order XLI of the Code of Civil Procedure. Those provisions clearly emphasise that the normal rule is that the dispute in appeal Court must be confined to the subject-matter of the appeal and the cross-objections, if any. The provisions of Rule 4 and Rule 33 of Order XLI are an exception to the general rule and cannot be exercised unless similar special powers have been bestowed upon any appellate tribunal. Since the Ceilings Act does not provide for any such provisions, the M.R.T. cannot exercise those powers. This is a very short judgment which makes no reference at all to the provisions of Sub-section (3) of Section 33 or Section 34 of the Ceilings Act.

4. It may now be pointed out that Section 33 of the Ceilings Act originally did not contain a provision for filing cross-objections. The right to file cross-objections was introduced by Maharashtra Amending Act No. 21 of 1975. Very briefly it may be noted here that the provisions of Sub-section (1) as well as Sub-section (1A) of the Ceilings Act do not refer to any particular person who could file the appeal or the cross-objections concerned. Those provisions clearly refer to the Collector's award or order and say that an appeal shall lie against an order or award of the Collector to the M.R.T. Having so declared the right of appeal, Sub-section (1) proceeds to enumerate the various orders and declarations and awards which are made appealable. In the same way, the added Sub-section

(1A) merely bestows a right to file cross-objections upon the respondent in the appeal. A view has already been taken in this Court that the right of appeal u/s 33 is available either to the surplus holder who would be a private owner of property or to the State which is dissatisfied with the order of the Collector which in fact now is the S.L.D.T. In all the proceedings under the Ceilings Act, therefore, wherever an appeal is provided, either the private property owner or the State Government has been given the right to file appeals or cross-objections, as the case may be. We are in agreement with a similar view expressed earlier by the learned single Judge of this Court in *Shakuntala v. Mah. Rev. Tribunal* [1973] Mh. L.J. 737,

5. In the face of the judgment made in 1971 denying the M.R.T. power similar to Order XLI, Rule 33 and refusing any relief to the State without filing its own substantive appeal, the amendment made of the Ceilings Act by the State Legislature is worth noting, By Amending Act No. 21 of 1975, only provision for filing cross-objections has been introduced by adding Sub-section (1A) to Section 33. The proviso to this new sub-section grants an extended time of thirty days to the respondent for filing cross-objections and thereafter makes the provisions of Order XLI, Rule 22 of the First Schedule to the Code of Civil Procedure, 1908, applicable to such cross-objections. Though the Tribunal was denied a right similar to Order XLI, Rule 33, the State Legislature has retained the rest of the provisions of Section 33 as they were without any amendment. Needless to add that after such an amendment when further occasions arose for considering whether the provisions of Order XLI, Rule 33 applied to the hearing of appeals before the M.R.T., the erstwhile view already taken was repeated in later judgments like *Achutrao Mokashi Vs. The State of Maharashtra* and *Another, or Murlidhar v. State* (1977) Special Civil Application No. 3237 of 1976, decided by Masodkar J., on January 19, 1977 (Nagpur Bench [1977] Mh. L.J. 54) as can be seen from Note (54) in the Notes of Cases of 1977 Maharashtra Law Journal.

6. However, the learned single Judge who has made this reference was obviously of the view that these earlier judgments require reconsideration and a larger Bench should consider whether the earlier judgments should be upheld or some other view should be taken. Under these circumstances, we have heard these four petitions only for the purpose of deciding whether the M.R.T. has power similar to the provisions of Order XLI, Rule 33 of the CPC in disposing of appeals before it under the provisions of Section 33 of the Ceilings Act.

7. It was brought to our notice that the earlier judgments do not consider in detail the provisions of Sub-section (3) of Section 33 nor provisions of Section 34 of the Ceilings Act. These provisions are as follows:

33(3} In deciding such appeal, the Maharashtra Revenue Tribunal shall exercise all the powers which a court has, and follow the same procedure which a court follows, in deciding appeals from the decree or order of an original court, under the Code of Civil Procedure, 1908.

34. The Maharashtra Revenue Tribunal, in deciding an appeal u/s 33, may confirm, modify or rescind the decision, order, declaration or award or the amended declaration or award, as the case may be.

The learned counsel for the State argued that the provisions of Sub-section (3) of Section 33 legislate by incorporation and refer to all the powers which a Court has and refer to the procedure which a Court follows in deciding appeals from decree or order of an original Court under the Code of Civil Procedure, 1908. He particularly referred to the expression in this sub-section running like "shall exercise all powers which a Court has". By referring us to the provisions of Order XLI, Mr. Sawant argued that in deciding the appeal under the Ceilings Act all the powers which are given to a civil Court in deciding appeals from original decrees; and orders must be deemed to have been incorporated in Section 33 of the Ceilings Act. The powers of the appellate Court do not end with Rule 32 of Order XLI, but Rule 33 is as much a power of the appellate Court as any other. There is no reason to exclude this particular provision from the sweep of the language of Sub-section (3) of Section 33 of the Ceilings Act.

8. It cannot be said that Mr. Sawant's argument has no logic at all. However, we find that there are some difficulties in accepting such a submission. In fact, the scheme of the Ceilings Act for the purpose of implementing the social legislation must be borne in mind in interpreting any of its sections. The Maharashtra Legislature decided to limit the holding of agricultural land for each individual as well as family. Since the land is limited, the only way to bring about equitable distribution is to put a ceiling on individual holdings. With a view to achieve this object, the Legislature first declared the persons who could hold property and the extent to which each one of them could hold property. The Legislature also indicated the persons and institutions which would not be covered by the provisions of the Act and also made provisions for relaxation of ceilings or prescribing exemptions. It is, therefore, a comprehensive scheme for dealing with the agricultural landholdings in the State. The primary responsibility of filling returns about their respective holdings is on the land-holder as has been provided by Section 12. Whether it is a person or a family unit, a return has to be filed by the person indicated. Once a return is filed, somebody has to decide as to what is the entitlement of the applicant. For determining that entitlement, a tribunal named the Surplus Land Determination Tribunal has been created under the Act. If the Tribunal is satisfied that the applicant does not hold the land in excess of ceiling, it has a right to drop the proceedings. If the Tribunal comes to the conclusion that the particular applicant has excess land, it has to make a declaration that so much of the acreage is in excess of the entitlement of the applicant. If the applicant does not dispute the order, he has to immediately exercise the choice as to the land he will retain and the excess land which he will part with.

9. However, this Act assumes that not only the land-holder but the Government has a right of appeal against the decision of the S.L.D.T. That right arises in this

manner. Where land has been declared as surplus, it is obvious that the property owner may file an appeal if he is dissatisfied with the decision of the S.L.D.T. If the proceedings are dropped because there is no surplus or if certain surplus is declared, the State may think of filing an appeal in either case. If the decision that the holding does not exceed ceiling area is considered incorrect by the State, it may file an appeal before the M.R.T. Even after certain declaration of surplus if the State takes the view that some more land ought to have been declared as surplus and to that extent the decision is wrong, for rectifying it, an appellate remedy is equally open to the State. In addition, as the present provisions of Section 33 stand, a respondent in an appeal after receipt of notice of the appeal has a right to file cross-objections. In view of what we have stated above, it looks logical that either the private property owner or the State may file cross-objections, if so advised. The amendment made of Section 33 in 1975 permitting cross-objections to be filed has to be considered in the light of the two earlier judgments of this Court. When a power was denied to the M.R.T. similar to the one under Order XLI, Rule 33, the Legislature does not amend any of the provisions to give that power to the M.R.T. Since the observations in the judgment of this Court were that in the absence of a cross-appeal by a State the relief which is possible under Order XLI, Rule 33 cannot be granted to the State, the remedy provided was to introduce the idea of cross-objections but not a provision similar to Order XLI, Rule 33. This legislative history must be borne in mind while considering the total scheme of the Act.

10. We may point out that a provision for the revision of the various orders passed and awards made by the S.L.D.T. has always been a part of this Act. We have in mind the provisions of Sub-section (2) of Section 45 of the Ceilings Act. Before we briefly indicate what this provision is, let us analyse and find out the real import and operation of the civil Court's power under Order XLI, Rule 33. A brief look at the various rules in Order XLI will show that either party to a litigation has a substantive right of appeal if the judgment or decree goes against it and has a right to file cross-objections wherever a notice of appeal is served upon it. There can be cases where an appeal is carried by one not the other. There may be no cross appeal or cross-objections. Even then, when the appeal is heard and the appellate Court comes to certain conclusions which while implementing require the revision of the rest of the decree or a part thereof against which there has been no appeal or cross-objections, the Legislature then considered whatever it should be open to the Court to do justice between the parties squarely and properly consistent with the findings and conclusions arrived at while hearing an appeal. It may be that the appeal which is heard is confined to a portion of the decree, but the conclusions are such that their proper implementation requires the disturbance of the rest of the decree. This undoubtedly is treated by the Legislature as an exceptional case. In the implementation of this provision, the Courts have shown great awareness that these are exceptional provisions and a party who has neglected to challenge a decree against him and has in fact submitted to it should normally not be entitled

to the revision of the decree unless at his own instance. Even after bearing in mind this approach, an area of dispute does arise which requires rectification by the interference of Court. A power has, therefore, been vested in the appellate Court under Rule 33 of Order XLI where proper justice between the parties with a view to finally adjudicate a dispute should be available to be exercised in a fit case.

11. Are we to read such exceptional power in the M.R.T. by indirect reference to the powers in the CPC as has been made in Sub-section (3) of 33. These exceptional powers are similar to the revisional powers where an authority or a Court is entitled to revise a certain order suo motu. The power to disturb a decision which is not under challenge with a view to do justice is the essence Of the power of revision which is exercisable suo motu. If the Ceilings Act has already provided such a power somewhere else, it would be difficult to assume that the same or similar power is vested in two different authorities while implementing this Act. Looked at from that fault of view, we find that the provision of Sub-section (2) of Section 45 becomes at once relevant. If a declaration is made by the S.L.D.T. say like dropping the proceedings as the land is not found in excess, the private property owner is not going to bother about the decision even if it is otherwise wrong. Is there any method provided by the Act for correcting the mistake that may have got into the proceedings of the S.L.D.T. which mistake is in favour of the private property owner? All the excess land is to be recovered under this Act for being distributed to landless persons. The responsibility is on the executive authorities to implement this Act faithfully and to recover the entire excess land available for the State for being distributed to the landless. The Legislature has, therefore, made a special provision in Sub-section (2) of Section 45 where the State Government has been authorised to call for the record of any inquiry or proceeding under Sections 17 to 21 (both inclusive) for the purpose of satisfying itself as to the legality or propriety of an inquiry or proceeding or any part thereof under those sections and the State Government is further authorised to pass such order thereon as it deems fit after giving the party a reasonable opportunity of being heard if the order is going to adversely affect that party. The proviso to that sub-section then becomes relevant. When is such a power to be exercised ? The opening clause of Sub-section (2) permits the State Government to exercise these powers either suo motu or on an application made to it by any aggrieved person. However, under what circumstances and to what extent this revisional power is to be exercised is indicated by the proviso to Sub-section (2) of Section 45. So far as the declaration u/s 21 or a part thereof is concerned, the first limitation upon the right of the State is to see whether an appeal has been filed. If an appeal has been filed, the State Government has no right of exercising the revisional power. The first requirement, therefore, in other words, is that there has not been filed an appeal regarding the declaration or part thereof u/s 21 in relation to any land. The second requirement is that three years ought not to have elapsed between the declaration and the calling of the record for the purpose of revision. With

these two limitations the State Government has been vested with the revisional powers for the purpose of rectifying any of the decisions in relation to proceedings under Sections 17 to 21 of the Ceilings Act. Prima facie, therefore, it is clear that the Legislature has visualized a situation where no appeal has been filed and has provided a remedy for the rectification of an error. This is the function of the civil Court under Order XLI, Rule 33 in the matter of doing justice between the parties when no appeal has been filed in respect of a part of the decree. When a function similar to the provisions of XLI, Rule 33 has already been conceived of and provided by a separate section of the same Act, it will require very strong argument indeed, to convince us that the M.R.T. by implication is vested with the same powers by an indirect reference to the powers, of civil appellate Court under the provisions of the Code of Civil Procedure. We may here indicate that the provisions of Section 34 of the Ceilings Act deal with what the M.R.T. will do with an appeal u/s 33. The M.R.T. may confirm, modify or rescind the decision, order, declaration or award or the amended declaration or award, as the case may be. This is precisely what a civil Court normally does in an appeal under Order XLI, Rule 32. Under that rule, the judgment may be for confirming, varying or reversing the decree from which the appeal is preferred. Even under the Civil Procedure Code, the provisions of Order XLI, Rule 32 were never construed to include a power similar to that under Rule 33 by the expression of varying the decree or modifying the decree. There is an additional factor which must now be noted. The provisions of the original Section 33 now stand amended whereby a right of appeal coupled with a right of filing cross-objections has been given to the parties to the appeal. Having thus amended the section, the first clause in Sub-section (3) of Section 33 says that in deciding "such" appeal the M.R.T. will exercise certain powers. This indicates that the scope of the appeal before the M.R.T. is confined to the subject-matter of the substantive appeal and the cross-objections, if any.

12. There seem to be therefore, weighty reasons in favour of taking the view that the Legislature has not vested the M.R.T. with the powers under Order XLI, Rule 33 by an indirect reference to the appeal Court powers under the Code of Civil Procedure. The legislative history, the use of the language and the appropriate provision for rectifying any erroneous decision of the S.L.D.T. by vesting revisional jurisdiction in the State fortifies us in holding that the provisions of Section 33 (3) do not permit the M.R.T. to exercise powers similar to the provisions of XLI, Rule 33 of the Code of Civil Procedure.

13. Before we finally conclude, a doubt raised may be clarified. The proviso to Sub-section (2) of Section 45 is a restraint on the right of the Government to exercise revisional powers. Reference is more particularly made to the filing of an appeal in relation to a declaration or a part thereof. Various propositions were stated before us. Suppose a declaration is made by the S.L.D.T. partly in favour of the property owner and partly against him. If he files an appeal, it is logical that he would file it only against that part which goes against him. After the notice of appeal is served, Government may appear and may choose to exercise

a right of cross-objections in respect of that part which is in favour of the property owner. Supposing it does not, what would be the consequence ? The M.R.T. will hear the appeal of the property owner and will either confirm the declaration, modify or rescind it. All these orders or any of them would be in relation to the subject-matter of the appeal. If after such an appeal is decided, can Government revise that part of the declaration which is already in favour of the property owner, provided the three years' limitation has not yet expired? A further question is raised. Supposing after filing such an appeal even before notice is issued to the State, the appellant withdraws the appeal, what would be the consequence. There will be no occasion for the State to file cross-objections even if it desired to do so. Can the State now revise any part of the order or declaration even though there has been what may be described *prima facie* as "an appeal" ? This point is also not uncovered by authorities. Two Benches of this Court have already taken a certain view. In *Rambabu Bapuji Jaibhaye Vs. The State of Maharashtra and Another*, the learned Judges of the Division Bench had to consider the maintainability of the revision application u/s 45 (2) where an appeal filed by the private party was dismissed on the ground of limitation. The Bench took the view on the express language of the proviso to Sub-section (2) of Section 45 itself that the appeal contemplated is one which is filed within the period of limitation prescribed for it and unless there is such an appeal or an appeal in respect of which the delay has been condoned, there is no effective appeal which debars the State from exercising its revisional powers. In *Baswantrao Appaji Choudhari Vs. Commissioner, Nagpur Division, Nagpur and Another*, another division Bench was faced with the proposition where the property owner as an appellant got his appeal dismissed for want of prosecution. The learned Judges took the view that where an appeal against an order deciding the ceiling area and the surplus land of the petitioner and directing him to file retention statement is dismissed for non-prosecution, a revision against the subsequent composite order passed u/s 21 (1) would be competent and not barred by the proviso to Section 45 (2). The reason, according to them, is that dismissal of appeal may arise for several reasons including the one that appeal was not properly constituted or was not competent or was not prosecuted. Such dismissal would not partake of the character of the appellate scrutiny by the higher authority so as to operate as a bar to the exercise of revisional power. For coming to this conclusion, they rely upon the earlier judgment we have referred to. It is, therefore, clear that two division Benches of this Court have already taken the view that in order that the remedy of revision u/s 45 (2) should be lost, there must be an effective appeal and a scrutiny and examination on merits of the points involved by the appellate authority. Once that is done, howsoever wrong the appellate judgement may be, the State may go ahead like the private citizens to the High Court under the provisions of Articles 226 and 227 of the Constitution of India, but it cannot -revert back to the powers u/s 45 (2) and revise a decision already given by an appellate authority. The real meaning of the proviso to subs. 1(2) of Section 45, therefore, seems to be that to the extent that a controversy has been heard and disposed of on merits by the appellate

authority, the powers of supervision would cease to be operative. So long as we do not have such a decision, the entire area uncovered by the decision of the appellate authority would still be open for the scrutiny by the State u/s 45 (2) of the Ceilings Act.

14. We are in respectful agreement with the view already taken and would prefer to follow the same. If this is the manner in which Section 45(2) is interpreted, the whole scheme of deciding disputes under the Ceilings Act becomes clear. The primary authority is the S.L.D.T. and there is one appeal provided under the Act before the M.R.T. Either party may avail itself of that remedy. Once that remedy is resorted to by either side and a certain portion of the dispute is covered by the appellate decision, on merits, the right of revision comes to an end. However, where there is no appeal at all or the appellate decision is confined to a portion of the controversy, the whole of the dispute in the first case and uncovered portion in the latter case would always be open for the State scrutiny under Sub-section (2) of Section 45. If this is the total scheme of deciding and disposing of disputes arising under the Ceilings Act, it is clear to us that there is no scope for the M.R.T. to exercise powers under Sub-section (3) of Section 33 which are similar to the revisional powers u/s 45 and which also appear akin to the powers under Order XLI, Rule 33 of the Code of Civil Procedure.

15. This being our view, we answer the reference in the negative. All the four petitions will now go back to the learned single Judge for further hearing and disposal according to law.