

(2000) 03 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No's. 159 and 730-A of 1982, 136 and 319 of 1983 and 148 of 1985

Sheikh Mohamed Fatemohamed and etc.

APPELLANT

Vs

Raisuddin Azimuddin Katil and Others, etc.

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Constitution of India, 1950 — Article 166, 166(3)

Citation : AIR 2000 Bom 353 : (2000) 3 ALLMR 456 : (2001) 1 MhLj 850

Hon'ble Judges : N.J. Pandya, Acting C.J.;S.B. Mhase, J;N.V. Dabholkar, J

Bench : Full Bench

Advocate : P.R. Deshmukh, S.V. Chandole, A.G. Godhamgaonkar, R.P. Jethalia and V.O. Solshe, for C.G. Solshe, in W.P. No. 159/1982 and V.C. Solshe, for C.G. Solshe, in W.P. No. 148/1985, for the Appellant; D.R. Bhadekar, for R.G. Bhadekar and E.P. Sawant, Govt. Pleader, K.G. Kedar and M.K. Pisolkar, in W.P. No. 159/1982, R.R. Jethalia, K.G. Kedar, for Respondent Nos. 1(a) and 1(b) and E.P. Sawant, Govt. Pleader for Respondent No. 2 in W.P. No. 319/1983 and M.K. Pisolkar, for Respondent Nos. 1 and 2 and E.P. Sawant, Govt. Pleader for Respondent No. 3, State in W.P. No. 148/1985, for the Respondent

Judgement

N.J. Pandya, A.C.J.

1. With reference to the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954 -- Section 2-A, (hereinafter, referred to as the "said Act") an interesting question arose before the Division Bench of this Court on 31-1-1989. The said Act, as the name suggests, is enacted in keeping pace with the post independence exercise of the land reforms. As a part of that drive, various State Governments in the country were undertaking the exercise of abolition of different tenures and make a . simple ground reality by enabling the actual tiller to become an occupant, free from interference of so-called landlords, half of whom were absentee, making the occupant-tiller to till throughout his life for the benefit of that landlord. With this sort of expectation and to stop exploitation going over for centuries, the Statutes had to be enacted and one of such

Statutes is the said Act.

2. The balance had to be struck in the course of land reforms, that both the tiller and his erstwhile landlord should get a fair deal and therefore, procedural aspect had to be taken care of. As a part of that, in the said Act, Section 2-A was enacted, which is reproduced for easy reference hereinafter :--

"2-A. Powers of State Government or authorised Officer to decide certain questions relating to inams and appeals :

(1) If any question arises, --

(i) Whether any land is an inam,

(ii) Whether any inam is held with or without conditions of service and whether or not coupled with the remission of the whole or part of the land revenue.

(iii) Whether any inam is a community service inam or watan.

(iv) Whether a computation settlement in respect of any watan has or has not been effected.

(v) Whether any land held as inam is or is not alienable without permission of the competent authority, or

(vi) Whether any person is a kabiz-e-kadim, permanent tenant of tenant, the State Government or an officer authorised by that Government shall decide the question.

(2) Whether any question is decided by an officer so authorised by the State Government, any person aggrieved by such decision may file an appeal to the State Government within ninety days from the date of such decision.

(3)

(4)

3. Reading of Sub-section, (1) makes It clear that there are two possibilities related to a question to be decided u/s 2-A of the said Act. Six questions posed under Sub-section (1) may be decided by the State Government or in a given case, by the Officer authorised by the Government to decide the question.

4. Sub-section (2) is in fact, matter of concern in the instant case. It deals with the appellate powers. As is well known, the appeals are the creation of Statutes and therefore, the right given under the Statutes has to be strictly construed wherever required in favour of the party in getting right of an appeal.

5. Sub-section (2) makes it very clear that the appeal is provided in those cases, where the six questions posed by the Sub-section (1) are decided by the delegated authority of the State Government. This would mean, if the questions are decided by the State Government in exercise of its powers, then there is no appeal. This has introduced a finality to the decision, though not stated in so

many words in the Statute. Once this finality is disturbed in the form of an appeal under Sub-section (2), as quoted above, it makes, in our opinion, quite clear that the State Government has to hear the appeal.

6. The State Government wanted that the appeal be heard by its delegated authority. This would be so, though there is no mention in Sub-section (2) of delegating powers of hearing of the appeal to anyone by the State Government. In exercise of its general powers, the Government had routinely delegated the powers to the officer on Special Duty.

7. The learned Judges of the Division Bench of this Court (consisting of Kotwal, C. J. and Vaidya, J.) in Ganeshrao Kishanrao Deshmukh Vs. Devsingh Venkatasingh and Others, took a view that, when a function of making a quasi-judicial decision like one u/s 2-A is before the Court, looking to the scheme of the Statute, it cannot be delegated to another person or authority, in absence of the statutory provision authorising such delegation.

8. It is nobody's case that the Statute provides for any delegation of powers. The State Government, as mentioned earlier, has tried to regulate it by way of its Rule of Business.

9. In fact, another case came before another Division Bench of this Court in Maruti Pandu v. Babu Narayan. 1986 M LR 148, It seems that after the decision in Ganeshrao's case (cited supra), notification is issued in pursuance of the provisions of instruction No. 4 of the instructions regarding the business of the Government, issued under Rule 15 of the Rules made under Article 166 of the Constitution of India.

10. When in the present writ petition, learned Judges of the Division Bench (Deshmukh and Nirgudkar, JJ.) were faced with this conflicting situation, they referred the matter to the learned Chief Justice of this Court. The learned Chief Justice accepted the reference and that is how, the present reference is being heard by this Court.

11. When the State Government has fallen back on its powers under Article 166 of the Constitution of India, it would be appropriate for us to refer to that Article also. Heading of that Article Is "Conduct of business of the Government of a State". Sub-section (1) provides that the decision shall be in the name of Governor, Sub-article (2) provides for authentication and Sub-article (3) relates to the making of rules for the transaction of the business of the Government. For our purpose, it being relevant, Sub-article (3) is quoted herein under :--

"166. Conduct of business of the Government of State .--

(1)

(2)

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers

of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

12. It is quite clear that what is meant by Sub-article (3) is the convenient transaction of business of the Government and allocation amongst different Ministers of this business, so as to make the running of the Government smooth. It is difficult to visualize the situation under this sub-article, whether the concept of an appeal, arising out of a quasi-judicial power can be termed as a business of the Government.

13. So far as the said Act is concerned, there would not have been any question of there being any appeal in respect of inams tenure determining respective rights of the landlord and/or tenant or the occupant. This being entirely the field of the statute, specially enacted for the purpose, and the right of appeal also having been given by it, in our opinion, it cannot be regulated by general power of rule making as provided under Article 166 of the Constitution of India, more so, when the Article 166, in our opinion, does not deal with the business of the nature of deciding quasi-judicial disputes and appeals arising thereunder.

14. The quasi-judicial functions, thus, in our opinion, would be out of the purview of this Article, much less that would not be covered by the Rules of business under Rule 16, as sought to be done, as noted in the decision of Maruti Pandu's case (cited supra).

15. We are, therefore, of the view that there is a conflict between the two decisions. The conflict has to be resolved, in view of the aforesaid discussion, in favour of the view taken in Ganeshrao Kishanrao Deshmukh Vs. Devsingh Venkatasingh and Others, . As a consequence, the view taken in Maroti Pandu's case reported in 1983 MLR 148 is declared as unacceptable to this Bench.

16. In the result, the view taken in Ganeshrao Kishanrao Deshmukh Vs. Devsingh Venkatasingh and Others, is declared to be a good law.

17. Reference is accordingly answered.