

(2012) 02 BOM CK 0060
In the Bombay High Court
Case No : Writ Petition No. 850 of 2012

Shri Uttam H. Jadhav

APPELLANT

Vs

Shri Vishwanath N. Jadhav and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Bombay General Clauses Act, 1904 — Section 10, 124, 129, 129(1), 130
Bombay Village Panchayats Act, 1958 — Section 14, 16

Citation : (2012) 3 ALLMR 382 : (2012) 4 BomCR 90 : (2012) 3 MhLj 563

Hon'ble Judges : G.S. Godbole, J

Bench : Single Bench

Advocate : M. S. Karnik with Ms. Leena Patil, Mr. Sachin Gite and Mr. Sanskar Marahte, for the Appellant; Parmod Joshi, for Respondent Nos. 1 to 4 and Ms. Aparna Vhatkar, AGP, for the Respondent

Judgement

G.S. Godbole, J.—Heard the learned Advocates for the parties.

2. RULE. Rule made returnable forthwith and heard by consent of the parties. Mr. Joshi waives service on behalf of Respondent Nos. 1 to 4. The learned AGP waives service on behalf of Respondent No. 6. Service of rule on Respondent No. 5 is dispensed with as it is not the contesting Respondent.

FACTS IN BRIEF

3. By the present Petition, the Petitioner, who is elected member of Gram Panchayat, Shinde Taluka Nasik, District Nasik, has challenged the Judgment and Order dated 28th November, 2011 passed by the Collector, Nasik u/s 16 r/w Section 14(h) of the Bombay Village Panchayats Act, 1958 in Gram Panchayat Dispute no. 62 of 2011. By the said order, it was held that the Petitioner has failed to pay the tax or fees due to the Panchayat within three months from the date on which the amount of said taxes or fees became due and a bill for the purpose is duly served on him. Aggrieved by this order, the Petitioner has filed Appeal No. 194 of 2011 before the Additional Divisional Commissioner, Nasik

Division, Nasik, which has been dismissed by the impugned Judgment and Order dated 21st January, 2012, giving rise to the present Writ Petition.

4. It is not disputed that Vasant H. Jadhav is the real brother of the Petitioner. It is also not disputed that a bill dated 1st June, 2011 u/s 129 (1) of the Act was served on Vasant H. Jadhav on 2nd June, 2011 towards tax demand of Rs. 1260/-. According to the Respondent Nos. 1 to 4, another bill was served in the name of Devram Vithoba Jadhav on Dhanaji Sampat Jadhav on 3rd June, 2011. It is not disputed that in so far as the first bill served on Vasant H. Jadhav is concerned, the amount of Rs. 1260/- was paid on 9th September, 2011. Thereafter, proceedings u/s 16 read with Section 14(h) of the said Act were initiated by Respondent Nos. 1 to 4 against the Petitioner for disqualification. In respect of the bill served on Vasant Jadhav, it was the defence of the Petitioner that he was not a member of the joint family of Vasant Jadhav. It was also his defence that Devram V. Jadhav was not his grandfather and he was not related to Dhanaji S. Jadhav. The Collector passed the impugned order dated 28th November, 2011 and held that the Petitioner is the real brother of Vasant H. Jadhav and both of them have constituted a joint family. In respect of the other bill issued in the name of Devram V. Jadhav, the Collector recorded the finding that Devram V. Jadhav was the paternal grandfather of the Petitioner and that Dhanaji H. Jadhav on whom the bill issued in the name of Devram H. Jadhav was served, was the paternal cousin brother of the Petitioner and Vasant H. Jadhav. It is, however, pertinent to note that there is no specific finding recorded by the Collector that the Petitioner and Devram V. Jadhav or his cousin Dhanaji H. Jadhav constituted the joint family.

5. In Gram Panchayat Appeal No. 194 of 2011 which was filed before the Commissioner, the Petitioner has pointed out and argued that the bill in the name of Vasant Jadhav has been paid on 9th September, 2011 and, hence, there can be no disqualification. Before the Commissioner, the submission of Respondent Nos. 1 to 4 was to the effect that the bill has been duly served on the brother of the Petitioner on 2nd June, 2011 and since the payment is not made within 90 days from 2nd June, 2011, the Petitioner has incurred disqualification.

6. The Divisional Commissioner dismissed the Appeal essentially on the ground that the period of three months will commence from 2nd June, 2011 and the said period will end on 2nd September, 2011, within which the bill was not paid and only on that ground the Appeal has been dismissed.

SUBMISSIONS OF ADVOCATES

7. Mr. Karnik relied upon the provisions of Section 129(1) of the Act and contended that the bill for the tax is to be presented under SubSection 1 specifying the date on which appropriate amount shall be paid. Pointing out to the bill dated 1st June, 2011, he submitted that the bill was to be paid within seven days from the service of the bill. He, therefore, submitted that the amount was to be paid on or before 9th June, 2011, as according to him, 2nd June, 2011

being the date of service of bill, is to be excluded. He further submitted that in view of the provisions of Section 10 of the Bombay General Clauses Act, 1904 (which is pari materia Section 9 of the General Clauses Act, 1897), while calculating the period of three months, three calendar months will have to be calculated and for that purpose, the last date on which the bill could have been paid namely 9th September, 2011 will have to be excluded.

8. Mr. Karnik relied upon the observations made in paragraphs 10 and 11 of the Judgment of the Division Bench of this Court in the case of Rameshwar s/o. Ramaji Rewatkar & Others v. Dilip s/o. Tulsiram Rewatkar & Others, reported in 2006 (5) Mah. L.J. 292, in support of his submission that the three months will have to be calculated from the expiry of seven days of the service of the bill.

9. In support of his submission that the period of three months will expire on 9th September, 2011, Mr. Karnik relied upon the following Judgments:

- a). Manjuli Vs. Civil Judge, Senior Division, Wardha and Others, (Division Bench).
- (b). Tamal Lahiri Vs. (Kumar) P.N. Tagore, .
- (c). M/s. Saketh India Limited and others Vs. M/s. India Securities Limited, .
- (d). Tarun Prasad Chatterjee v. Dinnath Sharma AIR 2001 SC 36.

10. On the other hand Mr. P. M. Joshi, the learned Advocate for Respondent Nos. 1 to 4 advanced the following submissions:

i). He submitted that the receipt dated 9th September, 2011 was not produced before the Collector and was brought for the first time before the Collector and, hence, the same could not have been considered.

(ii). He submitted that the demand was made on 2nd June, 2011 and, hence, the period of three months will commence from 2nd June, 2011 itself.

(iii). He submitted that assuming that the period of demand was seven days which will end on 9th June, 2011, the period of three calendar months will expire latest on 8th September, 2011 and, hence, the demand made on 9th September, 2011 will not save the Petitioner.

(iv). He submitted that in any case another bill in the name of Devram Jadhav was served and that had remained unpaid and hence the disqualification be upheld.

CONSIDERATION OF SUBMISSIONS

11. I have considered the rival submissions. The facts are not in dispute. No doubt that the Collector has recorded the finding that Devram Jadhav was the real paternal grand father of the Petitioner. However, there is no finding recorded by the Collector to the effect that Devram Jadhav (who is admittedly deceased) and the Petitioner formed a joint family. No finding is recorded by the Collector that the Petitioner and Dhanaji Jadhav (real paternal cousin of the Petitioner and

Vasant Jadhav) are the members of the joint family. It is difficult to hold that the Collector has relied upon the bill served on Dhanaji S. Jadhav. Secondly, a perusal of the Judgment of the Appellate Court shows that submissions of the Advocate for Respondent Nos. 1 to 4 have been elaborately recorded and in those submissions, reliance is placed only on the bill served on Vasant Jadhav on 2nd June, 2011. In such a situation it is not possible to accept the last submission of Mr. Joshi that the impugned orders be upheld on account of service of bill on Devram Jadhav. It is now necessary to decide two aspects - one as to when does the period of three months contemplated by section 14(1) (h) commence and when does that period end. I deem necessary to quote relevant statutory provisions.

12. Section 14(1)(h) reads thus:

Section 14:Disqualifications:[1]. No person shall be a member of a Panchayat continue as such who:

(h). fails to pay any tax or fee due to the Panchayat [or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him];

13. Section 129(1) of the said Act reads thus:

Section 129(1):-Recovery of taxes and other dues:-When any tax or fee, has become due, a Panchayat shall, with the least practicable delay, cause to be presented to the persons liable for the payment thereof a bill for the amount due from him, specifying the date on or before which the amount shall be paid.

14. It is thus clear that it is the statutory requirement that the Gram Panchayat has to specify the date on or before which the amount of the bill shall be paid. In this case, that date was specified as seven days from the date of service of the bill. The question is whether the period of three months commenced from 2nd June, 2011 when the bill was served as contended by the Advocate for Respondent Nos. 1 to 4 or from 9th June, 2011 as contended by Advocate for the Petitioner. In my opinion, answer to this question is to be given in favour of the Petitioner in view of observations made in paragraphs 10, 11, 13 and 15 of Judgment of the Division Bench in Rameshwar Rewarkar (supra) which read as under:

Para-10:-Section 14(1)(h) provides that no person shall be a member of a panchayat or continue as such, who fails to pay any tax or fee due to the Panchayat within three months from the date on which the amount of such tax or fee is demanded, and a bill for that purpose should be duly served on him. The provision is in relation to the disqualification of a member of a panchayat can incur disqualification to continue to be the member thereof. The eventuality relates to the nonpayment of tax or fee due and payable to the panchayat by such member. It prescribes a period of three months as the outer limit to avoid disqualification in case of failure on the part of the member of the panchayat to

pay the tax or fee demanded from him as the tax or fee due to the Panchayat from him. The provision specifically refers to the date on which the demand of tax or fee is made as well as it refers to the bill to be served for the purpose of such demand. As already seen above, the entire controversy in the matter is in relation to the date from which the period of three months would commence for the purpose of incurring disqualification under the said clause. While according to the appellants, it would commence from the last date of demand disclosed in the bill for the purpose of payment of dues whereas it is the contention of the respondents that it would relate to the date on which the bill is served upon the member.

Para-11:-If one reads clause (h) of section 14(1), it is at once clear that the expression "within three months" refers to "the date on which the amount of tax or fee is demanded" and not to the date of service of demand notice. Undoubtedly the said expression is followed by further expression "and the bill for the purpose is duly served on him." However, in between these two expressions there is a "coma" followed by a word "and" and these expressions clearly disclose that the period of three months specified in the said clause refers only to the date of demand and not to the date of service of the bill. The provision regarding the bill in the said clause refers to the mode or manner of demand. It does not refer to the date of demand. In fact, as regards the date of demand, there is separate provision in the said Act and that is comprised u/s 129. It is to be borne in mind that section 129 of the said Act is to be found in Chapter IX which deals with the subject of taxation and recovery of claims. The said Chapter comprises of sections 124 of 130. Those provisions primarily deal with the power of the panchayat to levy taxes as well as the methodology to be followed for recovery of taxes. In those provisions, section 129(1) specifically provides the method of issuing the demand notes for recovery of the taxes. The first demand note is in the form of bill. In case of failure to comply with the said demand note, the second stage is of issuing a writ of demand. If after issuance of writ of demand, the tax payer fails to pay the tax, the panchayat is empowered to adopt coercive method as specified therein. In other words, as regards the period during which the demand should be made or demand for tax should subsist and the mode for making such demand is specified in section 129 of the said Act.

Para-12:-The contention that the date of demand should be construed from the service of the bill is totally devoid of substance. Firstly, there is no such specific provision in the said Act to that effect. In case of liability to pay the tax when the statutory provision comprised u/s 129 imposes a duty on the panchayat to make it known to the tax payer the period within which the tax liability is to be cleared, to assume that the service of the bill itself should be considered as the date of demand would clearly be contrary to the provisions of section 129 itself. Being so, the mere date of service of bill cannot be construed as the last date of demand.

Para-13:-Therefore, it would be the last date of the period that has to be construed as the last date of demand, whenever a period is prescribed for payment of the amount. It would be the last date of demand that would be the date for the purpose of complying the liability in respect of the demand. Bearing in mind the same, clause (h) which specify the period of three months from the date of demand, it will have to be construed as the period from the last date of demand in the bill. For example, if a bill is issued on the first day of the month specifying that the tax is to be paid by 30th of the said month, the period of three months will have to be counted from the 30th day of that month.

15. This Judgment clearly supports the case of the Petitioner as it held that the period of seven days within which the bill was to be paid will have to be considered to be expiring at the end of the period of seven days contemplated by Section 129(1) i.e. on 9th June, 2011.

16. It is now necessary to decide the next question as to when the period of three months will expire Section 3(30) of the Bombay General Clause Act, 1904 (which is *pari materia* Section 3(35) of the General Clause Act, 1897) defines the term "month" as under:

"month" shall mean a month reckoned according to the British calendar.

17. Section 10 of the Bombay General Clause Act, 1904 reads as under:

(1). In any Bombay Act [or Maharashtra Act] made after the commencement of this Act shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and, for the purpose, of including the last in a series of days or any other period of time, to use the word "to".

(2). This section applies also to all Bombay Acts made before the commencement of this Act.

18. In my opinion, the answer to this question must be given in favour of the Petitioner. In paragraph 6 of the Judgment of the Supreme Court in Tamal Lahiri (*supra*) it was observed as under:

Para-6:-We must, therefore, proceed on the basis that the failure to remove the encroachment having occurred on the expiry of December 20, limitation began to run for the purpose of Section 533 on that and not on any earlier date. The only question which then requires examination is whether the prosecution which was filed on June 19, 1968, was instituted as required by Section 533, "within six months next after the commission" of the offence. An argument was raised in the High Court that "six months" must be construed to mean 180 days and not six calendar months. The High Court does not appear to have accepted that submission. There the High Court is right, because, Section 3(27) of the Bengal General Clauses Act, 1 of 1899, defines " a month" to mean a month reckoned according to the British calendar. The expression "six months" which occurs in Section 533 of the Act must accordingly be construed to mean six calendar

months and not 180 days. The offence, being alleged to have been committed on the expiry of December 20, 1967, and the prosecution having been instituted on June 19, 1968, the provisions of Section 533 must be held to have been duly complied with.

19. In paragraph 8 of the Judgment of the Supreme Court in the case of M/s. Saketh India Ltd. (supra), it was observed thus:

Para-8:-Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in complying the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer, expires. Period of 15 days, in the present case, expired on 14th October, 1995. So cause of action for filing complaint would arise from 15th October, 1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15th November, 1995. The result would be that the complaint filed on 15th November is within time.

20. The learned Single Judge of this Court had an occasion to decide the controversy in the case of Smt. Pushpaben Narayan Rathod v. Shri Uttamchand Buarnal Nahare in which it is held that the month means 12th part of a solar year called a solar month and not a lunar month of 30 days" duration. According to the British Calendar a solar year is divided into 12 parts as January, February and so on. The period of one month will not, therefore, necessarily of 30 days" duration. The duration of the month in a particular case would depend upon the number of days in the relevant month. If the relevant month has 31 days, the period of one month will be of 31 days. Hence, if the period of one month is to be calculated from 1st January, the period of one month will expire on 1st February.

21. In view of this, the contention of the Mr. Joshi that the period of three months will expire on 8th September, 2011 cannot be accepted. While calculating the period of three months as contemplated by Section 14 (1)(h), it will commence from 9th June, 2011 and will end on 9th September, 2011. It is an admitted position that on that date i.e. 9th September, 2011 a sum of Rs. 1260/ was deposited. Thus at least on the last date, the Petitioner deposited the arrears of tax and is entitled to the benefit of said deposit.

22. The learned Commissioner and Collector have clearly proceeded on an erroneous assumption that the period of three months Pushpaben Narayan Rathod Vs. Uttamchand Bhurmal Nahar etc., will be equivalent to 90 days. They have also clearly proceeded on assumption that the period of three months will begin from 2nd June, 2011 instead of 9th June, 2011. Hence, the impugned Judgments and Orders deserve to be quashed and set aside. Accordingly, rule is made absolute in terms of prayer clause (a).