(1999) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 6153 of 1997

The Divisional Forest Officer APPELLANT

Vs

Shri K.N. Shaikh and others RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 34
Maharashtra Private Forests (Acquisition) Act, 1975 — Section 2, 5, 6

Citation : (2000) 2 BomCR 174 : (2000) 2 BOMLR 126

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : P.K. Pandit and V.V. Pai, A.G.P, for the Appellant; S.G. Aney Sr. C. and K.P. Jain, instructed by Harilal Thaker, for the Respondent

Judgement

R.J. Kochar, J.—The Divisional Forest Officer, the petitioner, has prayed for an appropriate order and direction to quash the proceedings filed by the 1st respondent before the 2nd respondent, (Maharashtra Revenue Tribunal) Appeal No. 3/96 as not maintainable. Though Shri P.K. Pandit, the learned Counsel for the petitioner in effect has argued for issuance of a writ of prohibition the prayer made in the petition is for quashing of the proceedings. I have specifically mentioned so, as the Counsel has confined his submission to issuance of a writ of prohibition.

2. The dispute pertains to a piece of land bearing Survey No. 345(A) situated at Borivli, Mumbai. It appears from the record that in the year 1962 the said land along with other lands were sold to one M/ s. Veekaylal Investment Co. Pvt. Ltd. by the Court Receiver. It also appears from the record that the said sale was confirmed by the High Court. Since we are not concerned with the other minor details I am skipping such details. It appears from the record that on 1-10-1970 the said M/s. Veekaylal Investment Co. Pvt. Ltd. had entered into an agreement with M/s. Vijay Associates for the sale of the said Survey No. 345(A) and further

on 9-9-1971 M/s. Vijay Associates had entered into an agreement with the present respondent No. 1 for excavation for quarrying and levelling of the lands and pursuant to the said Agreement, possession of the said land was given to the respondent No. 1. It further appears that on 6-2-1969 a Notification u/s 4 of the Land Acquisition Act intending to acquire Survey No. 345(A) for National Park was issued. On 29-3-1975 one Private Company viz. Maharashtra Land Development Corporation (M.L.D.C.) appears to have purchased 53 acres of land out of Survey No. 345(A) from the Court Receiver, High Court, Bombay and the said M/s. Veekaylal Investment Co. Pvt. Ltd. was the conforming party. On 29-8-1975 the Divisional Forest Officer issued a notice to M/s. Veekaylal Investment Co. Pvt. Ltd. u/s 35(3) of the Indian Forest Act, 1927. On 30-8-1975 the State Act viz. Maharashtra Private Forest (Acquisition) Act, 1975 came into force on and from 30-8-1975. A notice u/s 5 of the State Act was issued to M/s. Veekaylal Investment Co. Pvt. Ltd. which was replied by latter on 10-10-1975. An enquiry u/s 6 of the State Act was held on 24-10-1975 and the Sub Divisional Officer by his Order dated 12-11-1975 held that the whole Survey No. 345(A) was a Private Forest within the meaning of section 2(f)(iii) and it vested in Government on 30-8-1975. The request made by the present respondent No. 1 for being heard was held to be not worth considering by the Sub Divisional Officer. M/s. Veekaylal Investment Co. Pvt. Ltd. filed an appeal against the Sub Divisional Officer''s Order before the Maharashtra Revenue Tribunal. Meanwhile on 11-3-1976 the Tahasildar, Borivli directed the present respondent No. 1 to handover possession of his quarry land to Government as the said land stood vested in Government. To be precise, I may mention here that the M.L.D.C. was in possession of 53 acres of the land and the respondent No. 1 was in occupation of 50 acres of the land from the Survey No. 345(A). It appears further from the record that on 18-3-1976 the present 1st respondent filed a Short Cause Suit before the Bombay City Civil Court against the letters cum orders dated 2-1-1976 and 11-3-1976 and the S.D.O.''s Order dated 12-11-1975. It appears that initially an ex parte injunction was granted in his favour and on 10-10-1979 it was confirmed. The next event that has taken place is that by an order dated 20-3-1976 the Maharashtra Revenue Tribunal confirmed the order of Sub Divisional Officer dated 12-11-1975 and dismissed M/s. Veekaylal Investments Pvt. Ltd.''s Appeal holding that the entire Survey No. 345(A) was a forest, private forest and vested in the Government, subject to compliance with the requirement u/s 2(f)(iii) of the Act. As against the said Order the M.L.D.C. filed a writ petition while M/s. Veekaylal Investment Co. Pvt. Ltd. accepted the said M.R.T. Order and did nothing thereafter. On 19-10-1983 the present respondent No. 1 filed a writ petition challenging the Order of the Sub Divisional Officer dated 12-11-1975 and also the Order of the Maharashtra Revenue Tribunal dated 20-3-1975 and letter cum orders of the Divisional Forest Officer dated 2-1-1975 and Tahasildar''s Order dated 11-3-1975. On filing of the above writ petition the 1st respondent withdrew his suit from the City Civil Court.

3. In the writ petition filed by the M.L.D.C. (Writ Petition No. 512 of 1976) it

appears that on 19-4-1984 a compromise purshish in form of consent terms was filed in respect of the dispute regarding quarrying operations in 53 Acres of land which was in possession of M.L.D.C. It appears that pursuant to the compromise the M.L.D.C. raised dispute u/s 6 of the State Act wherein the Sub Divisional Officer held that the notice u/s 35(3) of the Indian Forest Act, 1927 was illegal for want of prior declaration u/s 34-A of the Indian Forest Act, 1927 and that the land was not forest. It was also held by him that it was not a private forest and did not vest in the Government. The State Government filed an appeal against the said Order before the Maharashtra Revenue Tribunal which finally allowed the appeal on 29-9-1986 and quashed and set aside the Sub Divisional Officer''s Order dated 23-4-1985. It was held by the Maharashtra Revenue Tribunal that the part of the land in possession of the M.L.D.C. was the private forest under the Act and it vested in the Government. Against the said order of the Maharashtra Revenue Tribunal the M.L.D.C. filed a Writ Petition (W.P. No. 4726 of 1986). By a Common Judgement and Order dated 13/17-3-1992 passed in two writ petitions viz. Writ Petition No. 3681/1983 and 4726/1986 the Division Bench of this Court (Pendse and Choudhari, JJ.) held that the entire Survey No. 345(A) was a forest, and private forest and vested in the Government on 30-8-1975. It may be mentioned here that the Writ Petition No. 3681 of 1983 was filed by the present respondent No. 1 which was dismissed as aforesaid. It further appears from the record that the 1st respondent did not keep quiet and had also simultaneously filed a writ petition on 7-4-1997 (W.P. No. 846 of 1992) challenging the vires of the State Act; and praying for consequential orders of cancellation of the impugned order passed by the authorities. He had also filed a Review Application against the order in Writ Petition No. 3681 of 1983. In Writ Petition No. 846 of 1992 this Court passed an order of status quo. Thereafter it appears that the M.L.D.C. had carried the matter to the Supreme Court against the order passed by the High Court on 13/17-3-1992. The Supreme Court finally remanded the matter to the Maharashtra Revenue Tribunal for fresh decision after affording opportunity to both the parties by its order passed on 27-8-1992 in the SLP No. 6670 of 1992 filed by the M.L.D.C. On remand the Maharashtra Revenue Tribunal had accepted the contention of the M.L.D.C. to the effect that the land Survey No. 345(A) was neither a forest nor a private forest as contemplated by the State Act and consequently it was held that it could not vest in the State u/s 3 of the Act. The State Government filed a writ petition against the said Order of the Maharashtra Revenue Tribunal (W.P. No. 2023 of 1994). It is however interesting to note that the Review Application filed by the 1st respondent was allowed on 16-10-1995 by the Division Bench of this Court (G.D. Kamath and Trivedi, JJ.). The order of the Division Bench dated 13/17-3-1992 was quashed and set aside and the Writ Petition No. 3681 of 1983 was required to be re-heard. By an order dated 11/17-4-1996 the Writ Petition No. 3681 of 1983 of the 1st respondent and Writ Petition No. 2023 of 1994 filed by the State against the M.L.D.C. the learned Judges (M.B. Shah, C.J. and A.V. Savant, J.) were pleased to dismiss the Writ Petition No. 3681 of 1983 of the 1st respondent and were pleased to allow the Writ Petition No. 2023 of 1994 filed by the State against the M.L.D.C., Both the M.L.D.C. and the present 1st respondent filed two Special Leave Petitions before the Supreme Court wherein the 1st respondent''s SLP was dismissed leaving it open to the 1st respondent who was the appellant before the Supreme Court to adopt such other remedy as deemed appropriate.

4. Taking advantage of the said observations of the Supreme Court''s Order the 1st respondent filed an Appeal on 27-9-1996 before the Maharashtra Revenue Tribunal for setting aside the Order dated 12-11-1975 and 2-1-1976 passed by the Sub Divisional Officer. By an order dated 1-10-1976 the Maharashtra Revenue Tribunal stayed the operation of the order dated 12-11-1975 and 2-1-1976 pending the hearing and final disposal of the appeal. It is further interesting to note here that after the said appeal was filed by the 1st respondent before the Maharashtra Revenue Tribunal the State Government filed a Contempt Petition on 1-2-1997 on the ground that in view of dismissal of the SLP the 1st respondent could not have filed an appeal before the Maharashtra Revenue Tribunal praying for the very same reliefs which were not granted and were refused by the Supreme Court. I may state here that in the contempt the very same grounds which were canvassed before me were taken. It is further interesting to note that on 19-8-1997 the Contempt Petition came to be dismissed by the Supreme Court as withdrawn.

5. On 14-10-1997 the Appeal filed by the 1st respondent was separated from the Appeal remanded by the Supreme Court qua the M.L.D.C. and both the appeals were ordered to be separated.

6. On 27-10-1997 the State Government filed before the Maharashtra Revenue Tribunal an application requesting the Maharashtra Revenue Tribunal to decide its preliminary objections that the appeal was not maintainable in view of the judgment dated 11/17-4-1996 read with Supreme Court''s Order dated 24-9-1996, and also being barred by res judicata and limitation and that the Applicant (1st respondent) had no locus standi. The present writ petition arises from the said application filed by the State Government before the Maharashtra Revenue Tribunal. On the very same date i.e. 27-10-1997 the Maharashtra Revenue Tribunal passed the following order in the margin of the said Application :

"the same will be considered at the time of arguments."

The Maharashtra Revenue Tribunal appears to have decided to decide the whole appeal at a stretch without any stages and hence it had not rejected the preliminary objections but had only postponed its decision thereon till the stage of the final hearing. Another Order came to be passed by the Maharashtra Revenue Tribunal regarding the evidence, documents, affidavit etc. This order is challenged before this Court in the present writ petition. On 17-12-1997 the learned Single Judge of this Court (D.K. Deshmukh, J.) while granting Rule passed a speaking order expressing prima facie view. The learned Judge had also passed certain interim orders. The 1st respondent was aggrieved by the said order of the learned Single Judge and therefore he carried the matter straight to the Supreme Court. His SLP came to be dismissed as he had not availed of the remedy available under the Letters Patent. On 16-2-1998 his Letters Patent Appeal was not entertained by the Division Bench of this Court comprising of M.B. Shah, C.J. and R.J. Kochar, J. The Letters Patent Appeal Court however had fixed early hearing of the writ petition. Another important event appears to have taken place on 21-2-1998. The Maharashtra Revenue Tribunal''s order dated 21-2-1998 confirmed the Sub Divisional Officers order concerning the suit land belonging to the M.L.D.C. The appeal filed by the State Government before the Maharashtra Revenue Tribunal had failed.

7. In the interest of the aforesaid, multiple facts Shri Pandit, the learned Counsel for the petitioner, in the present petition, has vehemently submitted that a writ of prohibition must be issued against the Maharashtra Revenue Tribunal preventing it from hearing the Appeal No. 3/96 permanently. He has also urged for a writ to quash and set aside the said proceedings for ever as not maintainable at all. The learned Counsel has given a great emphasis on the question that the said appeal filed by 1st respondent after exhausting first round of litigation upto Supreme Court for the very same cause of action and therefore, he cannot once again initiate an appeal from the Lower Court i.e. Maharashtra Revenue Tribunal. He has raised a substantial question of law that since alt the points between the same parties have been finally adjudicated and determined upto the Supreme Court, the doctrine of res judicata will forthwith apply. He has also submitted that the 1st respondent is trying to challenge in 1996 for the first time an order dated 12-11-1975 passed by the Sub Divisional Officer and therefore, the appeal is barred by limitation which is prescribed as six months in section 6 of the said Act. According to him, therefore, the appeal filed by the 1st respondent after a period of more than 20 years cannot be entertained at all and, therefore, deserves to be quashed and set aside without entering into any "so called merits" in the matter. He has also pointed out that the 1st respondent has no locus standi to file the said appeal as he had no right, interest or title in the land as he was not the owner of the land and that the owner M/s. Veekaylal Investment Co. Pvt. Ltd. had accepted the findings against him given by Maharashtra Revenue Tribunal and had not chosen to take the matter further. According to the learned Counsel, the 1st respondent had no right arising from the agreement for sale between himself and M/s. Vijay Associates, who claims in turn through the agreement with M/s. Veekaylal Investment Co. Pvt. Ltd. Shri Pandit therefore vehemently urged that the Maharashtra Revenue Tribunal had no jurisdiction at all to entertain and decide the appeal. He strongly canvassed that there is total absence or lack of jurisdiction in the Maharashtra Revenue Tribunal to entertain and decide the said appeal filed by the 1st respondent. He had pointedly drawn my attention to the first writ petition filed by the 1st respondent for the very same cause of action. In the said writ petition the 1st respondent had challenged the legality and validity of the order dated 12-11-1975 and 18-3-1976 passed by the Sub Divisional Officer and Maharashtra

Revenue Tribunal. More or less the same grounds appears to have been taken to challenge the aforesaid orders in the said writ petition. The Division Bench by its very detailed and exhaustive judgement dated 11/17-4-1996 had dismissed the said writ petitions. I have carefully gone through the said judgement. I have also carefully gone through the writ petition filed by the 1st respondent in that matter. The said order was carried by the 1st respondent to the Supreme Court by filing SLP The Hon''ble Supreme Court had not entertained the SLP and had rejected the same.

8. It is not possible for me to accept the vehement submissions of Shri Aney, the learned Counsel for the 1st respondent that the Supreme Court had granted him leave or liberty to resort to such a remedy which was being appropriate for him and, therefore, he had filed an appeal before the Maharashtra Revenue Tribunal u/s 6 and, therefore, the said proceedings initiated by him were legal, valid and maintainable. I am also not able to accept the contention of the learned Counsel that he was not heard by the Sub Divisional Officer and that he had no opportunity of placing his view before the appropriate authority. According to the learned Counsel, however, during the hearing by the Sub Divisional Officer his representation was also not considered. I fail to appreciate that if the 1st respondent had himself filed the aforesaid writ petition (W.P. 3681 of 1983) challenging the very same order dated 12-11-1975 passed by the Sub Divisional Officer and taking all possible grounds it cannot be argued having lost in the said objections that he had no opportunity of placing all the material before the appropriate authority i.e. the Sub Divisional Officer/Maharashtra Revenue Tribunal and, therefore, the appeal was filed by him. In the aforesaid writ petition he had challenged the said order of the Sub Divisional Officer on all possible grounds which were considered by the Division Bench of this Court and they were not accepted as tenable or valid. The Supreme Court had also considered the aforesaid judgment of this Court and had not thought it proper to interfere with the said order. Having lost on all counts upto the Supreme Court the 1st respondent wants to clutch a straw in the order of the Supreme Court that it was open to him to resort to such remedy which was open and deemed appropriate for him. It cannot be argued as was argued by Shri Aney that the Supreme Court had thought it fit to allow the 1st respondent to urge his dispute once again before the Lower Court or lower authority. The judgment of our High Court is reasoned and exhaustive and appears not to have left any point undecided. According to me, the points or issues between the same parties have been fully adjudicated and therefore, the principle of res judicata will come into play. In view of this the appeal filed by the 1st respondent before the Maharashtra Revenue Tribunal to challenge the very same order dated 12-11-1975 will not be maintainable as the same would be barred by res judicata. The grounds on which the impugned order is being challenged were taken by him in Writ Petition No. 3681 of 1983 and the same were finally decided by the Division Bench of this Court. On merits the said judgment has been confirmed by the Supreme Court. While observing that the 1st respondent could resort to such remedy available as

deemed appropriate the Supreme Court has not in any manner conveyed that he could file an appeal which would be maintainable in law. Even otherwise there was no legal bar for the State Government to urge that the appeal was barred by res judicata as all the issues between the same parties were fully and finally adjudicated by the Division Bench of this Court. Assuming that the first respondent having resorted to the filing of an appeal before the Maharashtra Revenue Tribunal it cannot be said that it must be held to be maintainable and that it must be entertained and finally decided once again ignoring the judgment of the Division Bench of this Court. Ex facie the submissions of the learned Counsel for the 1st respondent are not tenable that the appeal was filed by the first respondent as the Supreme Court had thought it fit to observe that he could file such an appeal. The learned Counsel has further argued that the Maharashtra Revenue Tribunal had not refused to hear the preliminary objections but had merely postponed the hearing of the preliminary objections till the final stage. In my opinion if the issues have been finally determined and adjudicated by the High Court, it is not open to the parties to once again approach the Lower Court or Trial Court requesting it to once again decide the very same issues which were subject matter of the judgement of the High Court. If such course is allowed then there would be no end of the litigation.

9. As far as the point of jurisdiction is concerned I am in agreement with Shri Aney that there is no absence or lack of jurisdiction in the Maharashtra Revenue Tribunal to hear the appeals u/s 6 of the Act. There is no lack of jurisdiction as any order passed by the Sub-Divisional Officer could be challenged before the Maharashtra Revenue Tribunal in appeal as provided u/s 6 of the Act. According to Shri Aney, all these points will have to be decided by the Maharashtra Revenue Tribunal and it cannot be prohibited or stopped by way of writ of prohibition as there is no lack of jurisdiction in the Maharashtra Revenue Tribunal to entertain and decide such an appeal. The point however is whether the Maharashtra Revenue Tribunal could once again go into the same question or same issues which have been already fully and finally adjudicated by the High Court u/s sic Article 226 of the Constitution of India ? In my view the Maharashtra Revenue Tribunal has no jurisdiction to once again go into the very same questions and issues which are already decided by the High Court. Had it been for the first time there is no doubt that the Maharashtra Revenue Tribunal had the jurisdiction to decide the appeal. In that sense it will have to be held that after the decision of the High Court the Maharashtra Revenue Tribunal had no jurisdiction to go into once again very same issues which were decided by the High Court. Testing this argument of Shri Aney and assuming in his favour that the Maharashtra Revenue Tribunal has jurisdiction to decide the present appeal filed by the 1st respondent what if it comes to a totally different conclusions from those of the High Court ? Which judgment or Order will prevail ? Can the Maharashtra Revenue Tribunal, a lower Court go against the order of the High Court ? The acceptance of such submission would create a chaos and confusion in the system and the circle of the litigation would never end even for a century.

10. I, therefore, hold that the Maharashtra Revenue Tribunal u/s 6 has jurisdiction to decide generally the appeals of the nature filed by the 1st respondent, but Maharashtra Revenue Tribunal has no jurisdiction to once again entertain and adjudicate the issues raised in the present appeal filed by the 1st respondent which have been fully and finally adjudicated and decided by the High Court under Article 226 of the Constitution of India. In this sense of the matter I hold that the Maharashtra Revenue Tribunal has no jurisdiction to entertain and try the Appeal No. 3 of 1996 filed by the 1st respondent. The question of jurisdiction will have to be closely considered with the question of res judicata. As the appeal is barred by res judicata the Maharashtra Revenue Tribunal has no jurisdiction to decide the issues which have been finally decided by the High Court under Article 226 of the Constitution of India. As far as the point of limitation and locus are concerned I do not wish to go into those questions. In view of my findings that the appeal filed by the 1st respondent before the Maharashtra Revenue Tribunal is not maintainable and that Maharashtra Revenue Tribunal has no jurisdiction to entertain that appeal on the ground that issues and questions raised in the said appeal have already been decided by the High Court under Article 226 of the Constitution of India. On the face of it the order dated 12-11-1975 cannot be challenged in the year 1996 as the period of limitation prescribed in section 6 of the Act is only six months. Ex facie, the appeal is barred by limitation. For such a conclusion no other details or trial is required. As far as the question of locus is concerned, I do not think that the first respondent is a stranger to the litigation. It cannot be said that he has absolutely no right, interest or title in the land of 50 acres of which he has been allowed to quarry from 1971 onwards. He has been carrying on his business from 1971 onwards. I, therefore, hold that he has a legal and valid locus standi to challenge any order which would adversely affect his right, interest and title to carry on his business activities which according to me, were under the agreement for excavation for quarrying and levelling of the land and under the said agreement he was put in possession of the 50 acres of the land bearing Survey No. 345-A which was the subject matter of the present litigation. No doubt all such questions can be decided by the Maharashtra Revenue Tribunal in any other regular litigation or appeal but not in the present one as the appeal itself is barred by the principles of res judicata. In fact the Maharashtra Revenue Tribunal should have considered the preliminary objections and should have given its findings on the said preliminary objections without postponing the same till final hearing as the said appeal was not maintainable at all.

11. In the facts and circumstances of the present case I do not want to sent the matter back to the Maharashtra Revenue Tribunal with a direction to decide the question of res judicata, limitation and locus of the 1st respondent as ex facie the appeal filed by the 1st respondent is barred by res judicata and, therefore, I do not deem it necessary to send the matter back to the Maharashtra Revenue Tribunal to complete the proceedings and then allow the State Government to have another round of litigation before this Court praying for a writ of certiorari

to quash such an order on the very same grounds as was submitted by Shri Aney.

12. Both the learned Counsel have cited number of authorities. However, in the facts and circumstances of the present case and in view of the judgment of the Division Bench of this Court in Writ Petition No. 3681 of 1983 I do not find it necessary to refer to all those several judgments cited by both the learned Counsel. From the facts I have found that the issues and questions raised by the 1st respondent before the Maharashtra Revenue Tribunal are the very same issues and questions raised and finally decided in the aforesaid writ petition by the Division Bench of this High Court. To find out the said point no authorities are required, though, however, only 50 mlg. of common sense is enough !

13. In view of the above discussion Rule is made absolute in terms of prayer Clause (a). No order as to costs. The Maharashtra Revenue Tribunal is permanently prohibited from deciding the Appeal No. 3 of 1996 filed by the 2nd respondent and the said proceedings are quashed and set aside being not maintainable before the Maharashtra Revenue Tribunal.

14. Parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

15. Rule made absolute.