
(2014) 04 BOM CK 0231
In the Bombay High Court
Case No : Writ Petition No. 98 of 2014

Yashwant Anant Fadte

APPELLANT

Vs

Shankar Raghu Fadte

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2014) 4 ALLMR 767 : (2014) 5 BomCR 479 : (2014) 6 MhLj 297

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

Bench : Single Bench

Advocate : J. Godinho, Advocate for the Appellant; Arjuna Naik, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.—Since the main dispute is between the petitioners and the legal heirs of respondents No. 2, the petition is heard finally by consent of learned counsel for the petitioner and learned counsel for respondent No. 2(a) to 2(d). Remaining respondents are absent though duly served. Rule, returnable forthwith.

2. Mr. A. Naik, learned counsel waives notice on behalf of the respondent Nos. 2(a) to 2(d).

3. The point that arises for my determination is:-

Whether the order dated 29.11.2013 passed by the Administrative Tribunal is illegal and against well settled principles of law?

4. By the impugned order, the learned Additional President has allowed the application dated 5.1.2012 filed by the legal heirs of respondent No. 2 to drop respondent No. 2 from the proceedings as he was reported to be dead. The only ground stated by learned Additional President for allowing the application is that since deceased respondent No. 2 was proforma respondent against whom no

relief was sought, ratio of the case of Gangadhar Dhal Vs. Batakrushna Dhal, AIR 1995 Orissa 66 was applicable to the facts of the case and, therefore, there was no question of abatement of the appeal against respondent No. 2.

5. Learned counsel for the petitioners has submitted that this ratio has been wrongly applied by the learned Additional President as relief of deletion of name of respondent No. 2 from the survey record has been very much claimed and that he was not a proforma respondent. Therefore, relying upon the case of Smt. Jayalaxmi Janardhan Walawalkar and others Vs. Lalchand Laxmichand Kapasi and others, learned Counsel for the petitioners submits that the impugned order is illegal and against well settled principles of law.

6. Learned Counsel for respondent Nos. 2(a) to 2(d) submits that so far as appeal pending before the Additional Tribunal was concerned, no relief was claimed as against respondent No. 2 and, therefore, dropping of name of respondent No. 2 from the appeal proceedings would not affect in any manner the proceedings pending before the Lower Court. He submits that in view of the fact that no relief was claimed against respondent No. 2 in the appeal, respondent No. 2 has been rightly considered by the learned Administrative Tribunal to be a proforma respondent and therefore, has rightly allowed the application for dropping of the name of respondent No. 2. In support of his submission learned Counsel has placed reliance upon the cases of Kanhaiyalal Vs. Rameshwar and Others, and Gangadhar Dhal and Others Vs. Batakrushna Dhal and Others,

7. The argument canvassed in support of the impugned order by the learned counsel for respondent Nos. 2(a) to 2(d) is fallacious. The order of the remand passed by the Deputy Collector remanding the matter to the Court of Mamlatdar has been challenged in the appeal proceedings pending before the Administrative Tribunal, Goa. This order of remand operates against all the respondents including deceased respondent No. 2. If the appeal is to be allowed and the order of remand has to go, there can be a possibility of issuance of further directions in the nature of re-hearing of the matter by the Deputy Collector in which case, re-hearing would take place in the presence of all the respondents except for respondent No. 2. In such a case, the order of remand would remain operative as against respondent No. 2 and then Mamlatdar would re-hear the original proceeding only as against respondent No. 2 as per order of remand, while the Deputy Collector would re-hear the appeal as against other respondents. In other words, if respondent No. 2 is not heard being party to the appeal proceedings before the Administrative Tribunal, there is every possibility of complications arising in the proceedings before the Lower Courts. That apart, the relief in the original proceedings has been very much claimed against respondent No. 2, which is in the nature of deletion of his name from the survey records.

8. From the above discussion, it would be clear that in no case respondent No. 2 could be termed as a mere proforma respondent against whom no relief has been claimed or whose presence or absence in the appeal proceedings before the

Administrative Tribunal would not matter.

9. In the case of Kanhaiyalal (supra), the Hon"ble Apex Court held that the presence of a proforma respondent against whom no relief has been claimed being not necessary, appeal can proceed even in the absence of his legal heirs. This law appears to have been followed by learned Single Judge of Orissa High Court in the case of Ganbgadhar (supra). Since relief has been claimed against respondent No. 2 in the instant matter ratio of both these cases would not be applicable to the facts of the instant case, inasmuch as, there is likely hood of arising of complications in the absence of respondent No. 2 or his legal heirs in the matter.

10. In view of the above, I am of the opinion that the impugned order is illegal and against well settled provisions of law. It deserves to be quashed and set aside. The point is answered accordingly.

11. I may make it clear here that case of Smt. Jayalaxmi Janardhan Walawalkar and others Vs. Lalchand Laxmichand Kapasi and others, relied upon by learned Counsel for the petitioner has not been considered by me as it is on a point of jurisdiction of the Court to substitute the legal heirs by indirect method of impleadment as necessary parties under Order 1, Rule 10 or u/s 151 of C.P.C. not involved in this petition.

12. Writ Petition stands allowed. Impugned order is quashed and set aside. Liberty is granted to the legal heirs of respondent No. 2 to make necessary application for setting aside abatement and bringing on record legal representatives, if they so wish.

13. Rule is made absolute in this terms.

14. Writ Petition stands disposed of. No order as to costs. Parties to appear before Administrative Tribunal on 10.6.2014 at 10.30 a.m.