

(1974) 07 BOM CK 0001

Bombay High Court (Nagpur Bench)

Case No: Sp. C.A. No. 1280 of 1969 and 211 of 1970

Suka Hari

APPELLANT

Vs

Lilabai Onkar

RESPONDENT

Date of Decision: July 12, 1974

Acts Referred:

- Constitution of India, 1950 - Article 227
- Maharashtra Co-operative Societies Act, 1960 - Section 154

Citation: (1974) MhLj 931

Hon'ble Judges: C.S. Dkarmadhikari, J

Bench: Single Bench

Advocate: P.N Chandurkar, for tenant, for the Appellant; R.N. Deshpande, for landlord, for the Respondent

Final Decision: Dismissed

Judgement

C.S. Dkarmadhikari, J.

The original landlord Gangaprasad Ramprasad filed an application for possession of land, namely, survey number 11, measuring 15 acres 26 gunthas, situated at village Matoda, Taluq Murtizapur, district Akola. The said application was initially decided by the Naib Tahsildar, Murtizapur by an order dated 31-12-1963. The Naib Tahsildar found that the lease in favour of tenant Suka was created by lease deed dated 4-10-1957 for the year 1957-58. The petitioner holds in all 15 acres 28 gunthas of land which is less than a family holding, that is, 28 acres. He further found that original petitioner Gangaprasad fulfilled all the conditions. However instead of ordering the resumption of whole of the suit land u/s 36 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 referred to hereinafter as the Tenancy Act, he passed an order terminating the tenancy of Suka over survey number 11 to the extent of half the area of the land, that is, 7 acres 33 gunthas.

2. Being aggrieved by this order tenant Suka filed an appeal u/s 107 of the Tenancy Act. The landholder, namely, Gangaprasad, did not file any appeal against the order passed by the Naib Tahsildar. In para 1 of the said order while reciting the facts of the case it was observed by the Special Deputy Collector that the Naib Tahsildar held that the landlord was entitled to the possession of the land to the extent of whole of the survey number. Obviously this observation was incorrect. However, he dismissed the appeal filed by the tenant holding that the order passed by the lower Court is correct.

3. Being aggrieved by this order of the Special Deputy Collector the landlord filed a revision application before the Maharashtra Revenue Tribunal contending that the Special Deputy Collector as well as the tenancy Naib Tahsildar should have directed the resumption of the whole land. However, the learned Member held that the landholder is entitled to 9 acres 13 gunthas of land which was one-third of the family holding and which was more than half of the total holding leased by the landholder. In this view of the matter the learned Member modified the order passed by the Courts below and allowed the applicant-landlord to resume the land to the extent of 9 acres 13 gunthas. Against this order both the landlord and the tenant filed these writ petitions. Special Civil Application No. 1280 of 1969 has been filed by the tenant whereas Special Civil Application No. 211 of 1970 has been filed by the landholder. As both these Special Civil Applications have been filed against the same order they were heard together and are being disposed of by this judgment.

4. During the pendency of the Special Civil Applications original landlord Gangaprasad died and in his place his legal representative Lilabai was substituted in both the petitions.

5. Shri R.N. Deshpande, the learned counsel for the land-holder, contended before me that the Maharashtra Revenue Tribunal committed an error in holding that the landlord was entitled to resume land to the extent of one-third family holding only. According to him, once this finding was recorded that the tenancy was created after 1-4-1957 and the landholder owns land less than one family holding, then the landholder was entitled to resume the whole land. Therefore, the landholder is claiming a relief in the writ petition that the said order of the Revenue Tribunal should be modified and he should be permitted to resume the whole of the land from survey number 11, area 15 acres 26 gunthas.

6. On the other hand, in the tenant's petition, that is, Special Civil Application No. 1280 of 1969, it is contended by Shri P.N. Chandurkar, the learned counsel for the petitioner tenant, that the learned Member of the Revenue Tribunal has committed an error in granting the landlord a relief which he has not claimed before the Special Deputy Collector by filing of an appeal u/s 107 or a revision application u/s 110 of the Tenancy Act. According to Shri Chandurkar, after the order was passed by the Tenancy Naib Tahsildar, as the landholder was satisfied with the said order he did

not choose to challenge the same before the higher Tribunal. In this view of the matter in an appeal filed by the tenant he was not entitled to get a relief which he has not sought for either by filing an appeal or a revision application. He further contended that if the landholder was not entitled to a relief before the Special Deputy Collector in an appeal filed by the tenant, then he was not also entitled any further relief in a revision application before the Maharashtra Revenue Tribunal. According to Shri Chandurkar, it cannot be said that the landholder was aggrieved by the order passed by the Special Deputy Collector in view of his own conduct in not challenging the order of the Naib Tahsildar at a higher forum. So far as the landholder is concerned, the order passed by the Tenancy Naib Tahsildar became final and conclusive between the parties and it was not open for the learned Member to interfere with the said order of the Tenancy Naib Tahsildar for granting higher relief to the landholder.

7. In reply to the said contention it is contended by Shri R.N. Deshpande, the learned counsel for the landholder, that when a matter comes before the Special Deputy Collector, either in appeal or otherwise, it is his duty to exercise his jurisdiction conferred upon him u/s 110 of the Tenancy Act to correct the obvious errors or mistakes. In the present case the matter came before the Special Deputy Collector in an appeal filed at the instance of the tenant. From the recitals in the order of the Special Deputy Collector it seems that the Special Deputy Collector thought that the Tenancy Naib Tahsildar has granted a relief to the landholder to resume the whole of the land and on this assumption he has confirmed the order passed by the Tenancy Naib Tahsildar. While deciding the said appeal preferred by the tenant it was the duty of the Special Deputy Collector to have exercised his jurisdiction u/s 110 of the Tenancy Act in correcting the obvious error committed by the Tenancy Naib Tahsildar and he could have ordered resumption of the whole land by the landholder. As the Special Deputy Collector has failed to exercise the jurisdiction vested in him by law, the landholder has a right to challenge the said order of the Special Deputy Collector refusing to exercise his power u/s 110 of the Tenancy Act by filing a revision application before the Maharashtra Revenue Tribunal and in that revision application it was open for the Revenue Tribunal to have corrected the orders passed by the Special Deputy Collector by holding that he has failed to exercise jurisdiction vested in him. Thus in substance according to Shri Deshpande, the revision application filed by the landholder before the Maharashtra Revenue Tribunal was maintainable. According to Mr. Deshpande, the landholder was entitled to resume the whole of the land.

8. For appreciating the rival contentions raised before me it will be useful to refer to certain provisions of the Tenancy Act. Section 101 of the Act deals with the commencement of proceedings and as to how the proceedings are to commence. Section 102 thereafter deals with the procedure. Section 100 deals with the duties of the Tahsildar and it is one of the duties that the Tahsildar is to decide an application for possession u/s 36 of the Act. After adjudication of the application he has to pass

an order deciding the controversy. Section 106 (2) reads as under:

106 (2) An order of the Tahsildar or the Tribunal awarding possession or restoring the possession or use of any land shall be executed in the manner provided in section 21 of the Mamlatdar Courts Act, 1906, as if it was the decision of the Tahsildar under the said Act:

Provided that such order shall not be executed till the expiry of the period of appeal as provided in section 114.

Thereafter section 107 makes a provision for filing an appeal against the order of Tahsildar before the Collector. Then comes section 110 which reads as under:

110(1) Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Commissioner or the State Government, at any Time;-

(a) call for the record of any inquiry or the proceedings of any Tahsildar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Tahsildar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Tahsildar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

(2) Where any order u/s 81 is made by an Assistant or Deputy Collector performing the duties or exercising the powers of the Collector or by an officer specially empowered by the State Government to perform the functions of the Collector under this Act, such order shall be subject to revision by the Collector and the provisions of sub-section (1) shall apply to the proceedings of the Assistant or Deputy Collector or officer concerned, as they apply to the proceedings of a Tahsildar or Tribunal.

Then comes section 111 conferring jurisdiction upon the Maharashtra Revenue Tribunal to entertain revision against the order of the Collector. Section 111 of the Tenancy Act reads as under:

111(1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made to the Maharashtra Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only:-

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal.

Section 114 provides for period of limitation for filing of an appeal or application for revision under the Act, namely, within a period of sixty days, from the date of the order of the Tahsildar, Tribunal or Collector as the case may be. Therefore, from the scheme of the Act it is quite clear that a specific right has been conferred upon the parties to the dispute to challenge the orders of various authorities. Section 110 comes into operation where no appeal has been filed within the period provided for by the Act, against an order passed by the Tahsildar. It empowers the Collector to call for the record of any inquiry or the proceedings of any Tahsildar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by and as to the regularity of the proceedings of such Tahsildar or Tribunal, as the case may be, and then pass such order thereon as he deems fit. The proviso to section 110 (1) (b) then lays down that no such record shall be called for after the expiry of one year from the date of such order and no order of such Tahsildar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard. Apart from the exercise of suo motu powers by the Collector he can exercise his revisional power on a reference made in this behalf by the Commissioner or the State Government. It is no doubt true that in a given case the Collector can exercise his revisional powers on an application filed by the parties, but still a decision to exercise the said power is to be taken by the Collector. It is no doubt that this discretion will have to be exercised judiciously. As observed by the Supreme Court in *The Everest Apartments Co-operative Housing Society Ltd. v. The State of Maharashtra* 1966 Mh. LJ 643 a party may draw attention of the Tribunal for exercising such a power by filing of an application. While construing section 154 of the Maharashtra Co-operative Societies Act the Supreme Court observed:

There is no doubt that section 154 is potential but not compulsive. Power is reposed in Government to intervene to do justice when occasion demands it and of the occasion for its exercise, Government is made the sole Judge. This power can be exercised in all cases except in a case in which a similar power has already been exercised by the Tribunal u/s 149 (9) of the Act. The exception was considered necessary because the legality or the propriety of an order having once been considered, it would be an act of supererogation to consider the matter twice. It follows, therefore, that a Government can exercise its powers u/s 154 in all cases with one exception only and that the finality of the order u/s 23 (3) does not restrict the exercise of the power. The word "final" in this context means that the order is not subject to an ordinary appeal or revision but it does not touch the special power

legislatively conferred on Government. The Government was in error in considering that it had no jurisdiction in this case for it obviously had.

"There remains the question whether a party has a right to move Government. The Tribune Trust case is distinguishable and cannot help the submission that Government cannot be moved at all. The words of the two enactments are not materially equal. The Income Tax Act used the words "suo motu" which do not figure here. It is, of course, true that the words "on an application of a party" which occur in section 150 of the Act and in similar enactments in other Acts, are also not to be found, But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action, unless it thinks fit, the party who moves Government cannot claim that he has a right of appeal or revision. On the other hand. Government should welcome such applications because they draw the attention of Government to cases in some of which, Government may be interested to intervene. In many statutes, as for example the two major procedural Codes, such language has not only not inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done, it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right to relief as is an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matters is to err, and that is what Government did in this case.

In the said case the Supreme Court made a reference to a decision of Privy Council in *The Commissioner of Income Tax, West Punjab v. The Tribune Trust, Lahore* (1948) 28 TR 213 PC. If the provisions of the Tenancy Act are read in this context it is quite clear that section 110 does not create an absolute right in a party to get a relief. It does provide for the exercise of the power by the Collector suo motu, but that power is also curtailed in cases where an appeal has been already filed against the order impugned. There is further rider to the exercise of the said power in view of the proviso to sub-section (1) of section 110 which lays down that the Collector is not empowered to call for the record after the expiry of one year from the date of such order and no order of such Tahsildar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard. In the present case the landholder has not filed any appeal before the Special Deputy Collector, neither the Special Deputy Collector thought it expedient to exercise its power u/s 110 of the Tenancy Act. Even if it thought it expedient to exercise the said power there were fetters in his way. Further it was not open for the Special Deputy Collector to have exercised the power u/s 110 of the said Act without giving any opportunity to the tenant who was the interested party. In these circumstances, in my a pinion, the landholder cannot be allowed to secure the same

relief indirectly which he could not have received or gained directly. It is an established principle of law that a party is not permitted to achieve or gain the relief indirectly which it is not entitled to get directly. What is sought to be done by the landholder in the present case is to get the same relief which he could not get directly either u/s 107 or section 110 of the Tenancy Act as he has not filed any appeal against the order of the Naib-Tahsildar, nor has moved the Collector to exercise his power u/s 110. In this view of the matter, in my opinion, it was not open for the landholder to have filed a revision application u/s 111 the Tenancy Act against the order of the Special Deputy Collector.

9. It is apparent from the record that the landholder had acquiesced and had accepted the order passed by the Tenancy Naib-Tahsildar. He was content with the said order, and therefore, he had not filed further appeal or revision. The order passed by the Tenancy Naib-Tahsildar became final because of this acceptance or acquiescence. Having lost the remedies either u/s 107 or section 110 of the Tenancy Act, the landholder has sought the same relief u/s 111 of the said Act by filing a revision application before the Maharashtra Revenue Tribunal. Section 111 of the Act confers jurisdiction upon the Revenue Tribunal to interfere with the order passed by the Collector or an application filed by the aggrieved party. The revision application u/s 111 of the Act lies against the order of the Collector only. Maharashtra Revenue Tribunal has not been given power to interfere with the orders of the authorities below suo motu. A limited jurisdiction has been conferred u/s 111 of the Tenancy Act on the Revenue Tribunal, and therefore, it was not open for the Maharashtra Revenue Tribunal to pass an order in favour of the landholder, who had not chosen to challenge the order of the Tenancy Naib-Tahsildar by filing an appeal or revision u/s 110 of the Tenancy Act. Such a principle has been well recognised by the decisions of this Court. In *Damodar v. Maharashtra Revenue Tribunal, Nagpur Spl. Civil Appln. No. 873 of 1965* decided on 19th August 1966, a landholder had filed an application for resumption of land u/s 39 of the Tenancy Act. The Naib-Tahsildar after considering all the contentions raised directed that the applicant will be entitled to possession of half the area of land in occupation of the tenant. Against this order of the Naib-Tahsildar no appeal was filed by the applicant, but an appeal was filed by the tenant Mahadeo. The appellate authority not only dismissed the appeal of the tenant, but also modified the order of the Naib-Tahsildar in favour of the applicant-petitioner granting the applicant-petitioner right to resume the whole of the land. Against this order the tenant had filed revision application. In this context it was observed by this Court: But the Tribunal was certainly right in restoring the order of the Naib-Tahsildar inasmuch as the appellate authority while entertaining appeal at the instance of the tenant could not give relief to the landholder when the latter had not challenged the order of the Naib Tahsildar granting him possession of only half area.

Similar view seems to have been taken by this Court in *Laxmibai B. Ambike v. Rama Sadhu Patole* Spl. Civil Appln. No. 1133 of 1967 dated 6-4-1971 TLR Vol. 20, p. 56. In that case also a similar contention seems to have been raised. While answering such a contention this Court observed:

The learned advocate for the petitioner, however, contends that the opponents have not preferred any remedy against the order of the Revenue Tribunal and when they have themselves acquiesced in the said order, they cannot insist on the setting aside the order of the Maharashtra Revenue Tribunal, which is in favour of the petitioner. I think this contention shall have to be accepted.

Similar view is taken by this Court in *Purushottam v. Dayaram* 1971 Mh. LJ 1070.

10. It is well established principle of law that no order can be passed to the prejudice of a party in his own cause. In an appeal filed by the tenant it was not open for the Special Deputy Collector to have passed an order to his prejudice of the tenant by allowing resumption of the whole land. Such a modification in favour of the landholder is not contemplated in an appeal filed by the tenant when the landholder has not chosen to challenge the said order of the Naib-Tahsildar, and said order so far as landholder is concerned, has by acceptance and acquiescence become final. More so when the Special Deputy Collector has also not thought it fit to exercise suo motu powers u/s 110 of the Tenancy Act- In this view of the matter, it was not open for the Maharashtra Revenue Tribunal to have interfered with the first order of the Tenancy Naib-Tahsildar which was acquiesced and accepted by the landholder. Therefore, the order passed by the Maharashtra Revenue Tribunal permitting resumption of the area in excess of the half the area of survey number 11, namely, more than 7 acres 33 gunthas of land, was obviously without jurisdiction and is liable to be quashed.

11. It is obvious that the tenant has not challenged the order of the Special Deputy Collector by filing a revision application before the Maharashtra Revenue Tribunal. Obviously, therefore, the tenant was also contented with the order of the Tenancy Naib-Tahsildar as confirmed in appeal by the Special Deputy Collector. The said order became final because of acceptance and acquiescence on the part of the tenant also.

12. However, it was contended by Shri Deshpande that the powers of this Court under Article 227 of the Constitution of India are wide and this Court can set aside the first order passed by the Tenancy Naib-Tahsildar itself, which is obviously vitiated by an error apparent on the face of record.

13. Howsoever wide power Article 227 of the Constitution might confer upon this Court, the said power is discretionary. The power under the Article is an extraordinary one and is intended to be used only in exceptional cases and not as a substitute for ordinary revisional or appellate powers. Ordinarily the power is not to be exercised for the purpose of getting round the provisions of law, where and

order has become final because of acceptance or acquiescence. In my opinion, this is not a fit case wherein exercise of extraordinary power of this Court is called for, when the landholder himself has allowed the order passed by the Tenancy Naib-Tahsildar to become final, because of his own conduct, acceptance and acquiescence.

14. In the result, Special Civil Application No. 1280 of 1939 filed by the tenant is allowed. The order passed by the Maharashtra Revenue Tribunal in Revision Application No. 813 of 1968 dated 12-8-1969 is set aside and that the order passed by the Tenancy Naib-Tahsildar in Revenue Case No. 72/59 (10-F)/1961-62 dated 31-12-1963 as confirmed by the Special Deputy Collector in Revenue Appeal No, 70/59 (10-F)/66-67 dated 30-4-1968 is restored. Consequently, the landholder is entitled to resume 7 acres 33 gunthas of land from survey number 11 situated at village Matoda tahsil Murtizapur, district Akola. So far as Special Civil Application No. 211 of 1970 filed by the landholder is concerned, the same is dismissed. However, in the circumstances of the case there will be no order as to costs in both the petitions.