

(2014) 03 BOM CK 0102

Bombay High Court (Aurangabad Bench)

Case No: Second Appeal No. 344, 345, 346 of 1997

State of Maharashtra and
Sub-Divisional Officer

APPELLANT

Vs

Bhikulal Mahadeo Agrawal, Smt.
Banarasbai Bhikulal Agrawal and
Others

RESPONDENT

Date of Decision: March 13, 2014

Acts Referred:

- Bombay Revenue Jurisdiction Act, 1876 - Section 11

Citation: (2014) 3 ABR 321 : (2015) 2 ALLMR 282 : (2014) 4 BomCR 624 : (2015) 2 MhLj 867

Hon'ble Judges: A.B. Chaudhari, J

Bench: Single Bench

Advocate: Kalyani Deshpande, Asstt. Govt. Pleader, for the Appellant; S.C. Mehadia and legal heirs from Sr. Nos. 1 to 5, for the Respondent

Final Decision: Allowed

Judgement

A.B. Chaudhari, J.

The State of Maharashtra had filed these three Second Appeals against the respective respondents, who are the heirs of original plaintiff late Shri Bhikulal Mahadeo Agrawal being aggrieved by the common Judgment and Decree dated 2nd May, 1997 passed by learned Second Additional District Judge, Buldana, in Regular Civil Appeal Nos. 105, 126 and 127 all of 1990, arising out the common Judgment and Decree dated 17th August, 1990 passed by learned Second Joint Civil Judge [Senior Division], Buldana, in Regular Civil Suit Nos. 134 and 135 both of 1987, so also the order allowing the Cross-Objection filed by the Plaintiff in Regular Civil Appeal No. 127 of 1990. In support of the Second Appeals, learned Asstt. Govt. Pleader for the appellant-State vehemently argued that the suits filed by the respondent-original plaintiff in all these cases were barred in the light of Section 11 of the Bombay Revenue Jurisdiction Act, 1876. The learned Asstt. Govt. Pleader

further contended that the Civil Court did not have the power to give a direction to the Govt. to grant fresh leases or permanent leases of lands after expiry of the original periods of leases by efflux of time and, therefore, the suits ought to have been dismissed.

2. Per contra, learned Adv. Mr. Mehadia for the respondents in all these appeals supported the impugned Judgments and Decree. He argued that the subject-matter of the suits does not at all fall within the parameters of Section 11 of the Bombay Revenue Jurisdiction Act, 1876, and at any rate, the said issue about the jurisdiction was not raised by the Appellant-State. In the alternative, he argued that the respondent-plaintiff had applied for renewal of lease of land which was in his possession and also for grant of permanent lease, as was done in the cases of other land holders and, therefore, there was a hostile discrimination by adopting a different yardstick by the appellant-State, in which case the Civil Court was also entitled to make the order directing issuance of temporary or permanent leases. He, therefore, contended that at any rate, it was obligatory on the part of the Collector of the district to decide the applications which were admittedly pending and having failed to do so, even now a direction can be issued to the Collector of the district to decide those applications in accordance with law.

3. Upon hearing learned counsel for the rival parties and upon perusal of the impugned Judgments, so also relevant provisions of law, what this Court finds is that the issue about jurisdiction can be raised before this Court if there is a basic lack of jurisdiction of the Civil Court. That being so, I proceed to frame the following two Substantial Questions of Law:-

[a] Whether the jurisdiction of Civil Court by virtue of Section 11 of the Bombay Revenue Jurisdiction Act, 1876, to entertain a suit in the facts of the case in the subject-matter of grant of temporary/permanent lease was barred by law?...Yes.

[b] Whether the Civil Court could issue a direction to the Govt. to grant fresh leases or permanent leases to the plaintiff, when admittedly, the original leases which were granted to the plaintiffs, had already expired?...No.

4. Section 11 of the Bombay Revenue Jurisdiction Act, 1876 reads thus:-

11. Except as otherwise expressly provided in the Maharashtra Land Revenue Code, 1966, no Civil Court shall entertain any suit against the Government, on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

5. Upon reading of the above provisions, it is amply clear that if the act or omission on the part of a Revenue Officer of the Govt., is alleged in a civil suit, unless the remedies provided by the Maharashtra Land Revenue Code are exhausted,

jurisdiction of Civil Court is barred. In the present case, it was the case of the respondent-plaintiff throughout that initially he got lease for a temporary period and he applied for renewal thereof or continuation, and not only that he also applied for grant of permanent lease. It is an admitted position that the period of lease had already expired, and the applications made by the plaintiff before the Collector of the district for renewal of lease or for grant of permanent lease remained pending, and were not decided. Thus, the respondent-plaintiff alleged omission on the part of Revenue Officer in not deciding his applications for renewal of lease or grant of leases. Such matter squarely falls within the ambit of Section 11 of the Bombay Revenue Jurisdiction Act and, therefore, the Civil Court could not have entertained the suits. Hence the first Substantial Question of Law will have to be answered in affirmative.

6. As to the second Substantial Question of Law, I find that grant of temporary or permanent lease is clearly regulated by the provisions of the Maharashtra Land Revenue Code and the Maharashtra Land Revenue (Disposal of Govt. Lands) Rules, 1971. These provisions are self-contained code by themselves. Merely because the Revenue Officer did not decide the applications filed by the respondent-plaintiff for grant of temporary or permanent leases, as the case may be, the respondent-Plaintiff could not have approached the Civil Court to ask for a direction, since he could have easily approached the authorities provided under the provisions of the Maharashtra Land Revenue Code, or the High Court having extraordinary writ jurisdiction. The jurisdictions of the Civil Court cannot be widened to enable it to issue directions to the Govt. to grant temporary or permanent leases. That is purely a governmental function governed by the provisions of the Maharashtra Land Revenue Code and the Rules thereunder. Civil Court could not have directed that the Collector should grant temporary leases or permanent leases to the respondent-plaintiff even on the ground that others were granted. Therefore, in my opinion, the Civil Court could not have issued a direction to grant permanent or temporary leases, which had already expired by efflux of time and the period of leases did not exist at the time when the judgment was delivered by the Civil Court. That being so, second Substantial Question of Law will have to be answered in negative. The matter should not end here. In my opinion, since the plaintiff had made applications to the Collector for renewal of his leases, either temporarily or permanently, the concerned officer ought to have decided the said applications or representations in accordance with law. The heirs of original plaintiff, who are respondents herein, are occupying the sites for several years, as submitted by learned Adv. Mr. Mehadia for the respondents and, therefore, in my opinion, the concerned Collector of the district should decide the applications for grant of temporary or permanent leases made by the respondent strictly in accordance with law. If the applications are not found on record of the Collector, the respondents may be given liberty to file copies thereof, or fresh applications. That being so, it is expected of the Collector of the district to dispose of the applications of the

respondents-plaintiff in accordance with law. With the above observations, the following order will have to be passed:-

ORDER

[a] Second Appeal Nos. 344, 345 and 346 all of 1997 are allowed.

[b] The impugned Judgments and Decree passed by the Courts below are set aside.

[c] The direction given by this Court in foregoing para 8 to decide the applications made by the respondent-plaintiff shall be followed by the Collector of the district, as expeditiously as possible, if necessary, after hearing the concerned parties and strictly in accordance with law, within a period of six months from the date of receipt of Writ of this Court.