# Dadgonda Mahadgonda Patil Vs Bhay Satyappa Gundaje

**Court:** Bombay High Court

**Date of Decision:** Jan. 22, 1958

**Acts Referred:** Constitution of India, 1950 â€" Article 227

**Citation:** (1958) 60 BOMLR 594

**Hon'ble Judges:** Gokhale, J; Dixit, J

**Bench:** Division Bench

**Final Decision:** Allowed

## Judgement

Gokhale, J.
In this Special Civil Application, Mr. Paranjpe has raised a short point about the competence of the Bombay Revenue

Tribunal to admit only in part a revision application preferred u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948. The petitioner is

the owner of survey Nos. 78/1-2A, 78/2B, and 315/1 situated at Kupwad within the District of South Satara and he leased the said lands from the

year 1947-48 to opponent No. 1. The tenant committed defaults in payment of rent for the years 1950-51 to 1954-55, and on June 17, 1955, the

petitioner served a notice terminating his tenancy on account of defaults in payment of rent for the said five years. In pursuance of that notice the

petitioner filed an application for possession u/s 29 of the Tenancy Act on December 25, 1955. That application was disposed of by the

Mamlatdar of Miraj on October 15, 1956, The Mamlatdar held that though the tenant had committed defaults by reason of his failure to make

punctual payment of rent, those defaults were not intentional or wilful. On that ground the Mamlatdar exercised his discretion in favour of the tenant

and held that the landlord was not entitled to possession of the lands. This decision of the Mamlatdar was confirmed in appeal filed by the

petitioner to the District Deputy Collector who held that the tenant had not caused deliberate delay in payment of rent and, therefore, was entitled

to be relieved against forfeiture. The appellate authority, therefore, confirmed the decision of the Mamlatdar and dismissed the petitioner''s appeal.

Against that decision the petitioner filed a revision application to the Revenue Tribunal and that application was heard for admission by the Tribunal

on September 11, 1957. The Tribunal was of the opinion that the District Deputy Collector i.e. the Prant Officer, had exercised his discretion in

favour of the tenant and that it was not, therefore, entitled to interfere. But it also found that when the discretion was exercised by the Prant Officer,

no order had been passed for the payment of rent for the year 1955-56, although the suit of the landlord had been decided by the Mamlatdar on

October 15, 1956. The Revenue Tribunal, therefore, admitted the revision application for the limited purpose regarding the passing of an order for

payment of rent for the year 1955-56 and, in effect, rejected the revision application of the landlord regarding the other grounds raised in his

application. That is why the landlord has come by way of this Special Civil Application under Article 227 of the Constitution.

2. Mr. Paranjpe contends that this order of the Tribunal admitting his client''s revision application for a limited purpose is without jurisdiction. The

Revenue Tribunal has jurisdiction to entertain a revision application u/s 76 of the Tenancy Act, and Mr. Paranjpe contends that neither this section

nor the rules which have been framed regarding the procedure to be followed by the Bombay Revenue Tribunal warrant such an order as has been

passed by the Tribunal. In support of his contention Mr. Paranjpe has relied on the principle enunciated in Krishnaji v. Madhusa (No. 2) (1933)

36 Bom. L.R. 451 where a Full Bench of this, Court held that under Order XLI, Rule 11, of the Civil Procedure Code, 1908, if an appeal is

severable, it is open to the Judge to dismiss the appeal in part and admit it in part. It is not, however, open to the Judge to admit an appeal and at

the same time to restrict the grounds on which the appeal is to be heard. Mr. Paranjpe contends that the principle of this ruling would be applicable

to the provisions of Section 76 of the Tenancy Act and the Revenue Tribunal would not be competent to admit a revision application only to a

limited extent restricting the grounds on which the revision application is to be heard at the time of final hearing.

3. In order to appreciate this contention, it would be necessary to examine the provisions of Section 76 of the Tenancy Act and some of the rules

framed regarding the procedure to be followed by the Revenue Tribunal. u/s 76(1) an application for revision may be made to the Bombay

Revenue Tribunal against any order of the Collector on three grounds only viz. (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 the Act,

which has resulted in miscarriage of justice. Sub-section (2) to Section 76 provides that in deciding applications under this Section the Bombay

Revenue Tribunal shall follow the procedure which may be prescribed by Rules made under the Act. Rule 8 of the Rules framed under this Act is

relevant for the purpose of the present application. Under Rule 8(1) where an appeal or application has been registered, the Registrar shall, as

soon thereafter as possible, submit it to the President or a designated member, who shall, go through the papers, and if he is of opinion that there is

substance in the appeal or application, he shall admit it. Under Sub-rule (2) of Rule 8, the President or the designated member may direct that it be

placed before a bench of the Tribunal constituted under Rule 22 for preliminary hearing of which notice shall be given to the appellant or applicant.

If the appeal or application is rejected, the Tribunal shall give reasons for doing so. Now, there is no dispute that on September 11, 1957, the

present revision application was heard for admission and Mr. Paranjpe contends that under this Rule the Tribunal could have either admitted the

application or could have rejected it wholly, but they could not reject the application in part and admit it only with reference to one of his

grievances that no order had been passed for the payment of rent for the year 1955-56. In our judgment, this contention of Mr. Paranjpe must be

accepted. It is clear from the record that the Mamlatdar found as a fact that the payment of rent had to be made by the tenant in this case on or

before March 20, of each year. The landlord had made his application for possession on the ground that the tenant had committed defaults for the

years 1950-51 to 1954-55. But when the Mamlatdar decided the application on October 15, 1956, even the rent for the year 1955-56 had fallen

due on March 20, 1956, and Mr. Paranjpe contends that when the Mamlatdar passed his order, exercising his discretion u/s 29(3) of the Tenancy

Act, he should have also passed an order that the relief to the tenant would be conditional on his paying to the landlord the rent for the year 1955-

56 also and this fact was not taken into consideration by the District Deputy Collector when he confirmed the decision of the Mamlatdar. In its

judgment rejecting a part of the revision application, the Revenue Tribunal has refused to interfere with the decision of the two lower Courts on the

ground that they had exercised their discretion which was vested in them to give relief to the tenant. But then it further observed that when the

discretion was exercised by the Prant Officer, no order had been passed for the payment of rent for the year 1955-56, although the suit had been

decided on October 16, 1956. It would, therefore, be clear that even, in the view of the Revenue Tribunal, it was open to the Prant Officer to pass

a conditional order that the tenant must pay rent for the year 1955-56 before he would be entitled to relief against forfeiture of his tenancy. But by

rejecting a part of the revision application regarding the contention of the landlord that relief should not have been granted, the landlord has been

prevented from arguing before the Revenue Tribunal at the time of the final hearing that the order of the Prant Officer was erroneous in that behalf.

4. Mr. Kulkarni, who appears on behalf of the tenant, has, in the first instance, contended that at the time of the final hearing, it would be open to

the petitioner to argue that the order of the Revenue Tribunal restricting the admission of the revision application for a limited purpose is erroneous.

We cannot accept this argument. It is clear from the judgment of the Revenue Tribunal that it went into the question raised by the landlord that the

discretion exercised by the Prant Officer was improper and decided against the landlord with regard to that contention. Notice, therefore, would

be issued in the revision to the tenant only with regard to the ground that was left open, viz. as to whether the Prant Officer erred in not passing an

order for the payment of rent by the tenant for the year 1955-56.

5. Mr. Kulkarni has also drawn our attention to Rule 25 of the Rules framed under the Tenancy Act, Now, under Rule 25 the Tribunal shall, in its

judgment, state at the end, whether the appeal or application is dismissed or allowed wholly or in part and mention the relief, if any, granted to the

appellant or applicant. In our opinion, this Rule has nothing to do with the procedure at the preliminary hearing dealt with under Rule 8(2) and does

not empower the Tribunal to reject a revision application in part and admit it in part limiting the grounds on which it is to be heard at the time of

final hearing. As we have already pointed out, Rule 8 provides for preliminary hearing of the appeal or application and that rule says that if the

appeal or application is rejected, the Tribunal shall give reasons for doing so. But neither Sub-rule (2) of Rule 8 nor Rule 25 would justify the

Revenue Tribunal, at the preliminary hearing, in rejecting a part of the revision and admitting it in part restricting the revision to certain grounds.

6. Then Mr. Kulkarni contends that the question of the payment of rent for the year 1955-56 is independent of the order passed by the two lower

authorities dismissing the landlord''s application for possession. He says that the order of the Prant Officer is severable into two parts (1) dealing

with his discretion exercised u/s 29(3) of the Tenancy Act and (2) his failure to pass a proper order regarding the payment of rent for the year

1955-56, and he contends that if the order of the District Deputy Collector is severable, then the Revenue Tribunal would be competent to admit

the revision only with regard to that part about which, in its opinion, something could be argued in favour of the landlord. We cannot accept this

argument. The principle on which relief is normally to be granted to a tenant when he has committed default in payment of rent for three years or

more is that the Court must be first satisfied that the tenant has fully paid the rent payable by him to the landlord. It is only on its being thus satisfied,

that discretion can be exercised by the relevant authority u/s 29(5) of the Tenancy Act, In this case it is obvious that when the Mamlatdar decided

on October 15, 1956, the landlord"s application, even the rent for the year 1955-56 had fallen due and the Mamlatdar, while exercising his

discretion, should have passed an order directing the tenant to pay rent for the year 1955-56 before granting him relief. That aspect of the matter

was lost sight of by the Mamlatdar, and the District Deputy Collector in confirming the decision of the Mamlatdar also lost sight of the fact that rent

for the year 1955-56 was alleged by the landlord to have been not paid. Even the Revenue Tribunal has stated in its judgment that when the

discretion was exercised by the Prant Officer, no order had been passed for the payment of rent for the year 1955-56. In our opinion, therefore,

the contention that the failure of the Prant Officer to make an order regarding the payment of rent for the year 1955-56 would not affect the other

part of the order is not well founded. It was urged by Mr. Kulkarni that even regarding the rent for the year 1955-56 there was no default on the

part of the tenant and that rent has been paid. No such statement has been made by his client in the affidavit filed by him in reply to the petitioner"s

application. We, however, express no opinion on the question as to whether the discretion vested in the District Deputy Collector was properly

exercised and whether the tenant has in fact paid the rent for the year 1955-56.

7. In that view of the matter, this application will have to be allowed, the order of the Revenue Tribunal will have to be set aside and the Tribunal

will be directed to hear the revision application as a whole without restricting the applicant to any of the grounds raised in his application. In the

circumstances of this case, there will be no order as to costs.