

## Damodhar Bapuji Karekar Vs Bombay Revenue Tribunal

**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** July 2, 1957

**Acts Referred:** Constitution of India, 1950 Article 226

**Citation:** (1958) 60 BOMLR 69 : (1960) NLJ 7

**Hon'ble Judges:** Tambe, J; Mudholkar, J

**Bench:** Division Bench

### Judgement

Mudholkar, J.

This order will govern Miscellaneous Petitions Nos. 512 of 1955, 75 of 1956 and 105 of 1956.

2. The common question involved in all these petitions under Article 226 of the Constitution is whether an order made by a revenue officer

rejecting an application of an ex-proprietor made under Rule 1 of the Rules for the reservation of land to ex-proprietors recorded as Bir, Chhota

ghas, etc. vesting in the State, framed u/s 91(1) of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, is appealable before the Board

of Revenue u/s 84 of the Madhya Pradesh Abolition Act.

3. In Gulab Bai v. State (1955) N.L.J. 624 the Madhya Pradesh Board of Revenue took the view that no appeal lay to it on the ground that the

rules aforementioned could not have been framed u/s 91(1) of the Madhya Pradesh Abolition of Proprietary Rights Act, that they have no force of

law but amount only to executive instructions and that, therefore, the order made under those rules is not appealable u/s 84 of the Act. Following

this decision the Board of Revenue refused to entertain the appeals of the petitioners in Miscellaneous Petitions Nos. 510 of 1955 and 512 of

1955 and dismissed the appeals of the petitioners in Miscellaneous Petitions Nos. 75 of 1956 and 105 of 1956.

4. It is contended before us on behalf of the petitioners, and accepted by the Special Government Pleader on behalf of the State of Bombay, that

the view taken by the Madhya Pradesh Board of Revenue is erroneous. Against the decision in the aforementioned case a writ petition was

preferred before the Madhya Pradesh High Court. That petition came up before Choudhuri J. who referred the question as to the maintainability of

an appeal before the Board of Revenue to a Division Bench. The decision of the Division Bench is reported in Gulab Bai v. The Board of

Revenue, M.P. (1957) N.L.J. 134 in which it is held that the rules made by the State Government u/s 91(1) of the Madhya Pradesh Abolition of

Proprietary Rights Act have the force of law and consequently the order made in a proceeding by the revenue officer under the rules is appealable

u/s 84 of the Act, is also brought to our notice.

5. In the decision just referred to, the view which has been taken is that the rules framed by the Government of Madhya Pradesh are referable to

Sub-section (2) of Section 3 of the Madhya Pradesh Abolition of Proprietary Rights Act and, therefore, it was open to the Government to frame

them u/s 91(1) of the Act. In the course of their judgment, the learned Chief Justice and Chaturvedi J. who constituted the Bench observed (p.

135):

There is no doubt that in the property which vests in the State u/s 3(1) and Section 4 of the Act, a right can only be acquired either by succession

or under a grant or contract in writing made or entered into by or on behalf of the State. The question is whether the creation of occupancy rights in

the Central Provinces in ex-malguzari land in favour of the proprietors under the impugned rules can be said to be a grant by the State or not. If it is

a grant, then apparently rules can be made to regulate the conditions under which the grant is to come into operation.

Then, the learned Judges proceeded to observe (p. 135):

...Now, we take it that after the inquiry is made and the right in the grass lands is reserved with a patta granted to that effect, there is a grant by the

Government or, at any rate, on behalf of the Government by the Deputy Commissioner to the ex-proprietors. This obviously is a purpose within

Sub-section (2) of Section 3 of the Act, and making of rules is justified u/s 91(1) in view of the generality of the provision there.

With great respect to the learned Judges it seems to us that it is not correct to say that the powers to frame these rules could be traced to Sub-

section (2) of Section 3. Reading Sub-sections (1) and (2) of Section 3 of the Act together it would appear that the purpose of enacting Sub-

section (2) was to make it clear that no right could be acquired in or over the land which has vested in the State except in three circumstances; that

is, by succession or under a grant or contract in writing made or entered into by or on behalf of the State. That is to say, the object was to make it

clear that if a right was asserted in respect of the interest which had vested in the State otherwise than by succession, grant or contract it could not

prevail against the State. It was not the object, as is indeed conceded by Shri Siras, who appears for one of the petitioners, that the right to make

specific provision in Sub-section (2) of the Act was to enable the Government to make a grant of the interest acquired by the State or to enter into

a contract respecting that interest because the right to make a grant or the right to enter into a contract are the rights incidental to the ownership or

proprietorship of the property and as such no provision was necessary in the Act for permitting their exercise. It would, therefore, not be proper to

say that the rules above referred to have any connection with the provisions of Sub-section (2) of Section 3 of the Act.

6. At the same time we are clear that the rules do fall within the rule making power conferred by Section 91(1) of the Act on the State

Government. That provision reads thus:

The State Government may make rules to carry out all or any of the purposes of this Act.

The word "purposes" is a wide one. The learned Members of the Board of Revenue held in Guldb Bai's case (cit sup) that since the rules are not

referable to any particular provision of the Act they could not have been made u/s 91(1). They, however, admit that they are referable to the

preamble to the Act. But according to them, rules cannot be made under the rule making power conferred by a statute for carrying out a "purpose"

of the Act which is not covered by an express provision in the Act. With all deference to the Members of the Board we cannot accept this

limitation. It is indisputable that for ascertaining the purpose of the Act it is open to a Court to advert to the preamble to that Act. Similarly, in order

to determine whether rules could be made under the rule making power such as that conferred by Section 91(1) of this Act and to ascertain what

the purpose or purposes of the Act are, it is permissible to refer to the preamble. The preamble to the Act runs thus:

Whereas it is expedient to provide for the acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya

Pradesh and to make provision for other matters connected therewith;

It is hereby enacted as follows:...

The words "'to make provision for other matters connected therewith'" are, in our view, sufficiently wide to embrace within their compass a matter

such as adjustment of the rights of ex-proprietors in the matter of grazing their cattle. That being so, we are satisfied that the State Government

could make rules under which the petitioners had applied to the revenue officer.

7. Upon this view we hold that the orders challenged by each of the petitioners cannot be regarded to be merely executive orders but to be judicial

orders and as such appealable u/s 84 of the Act to the Board of Revenue. The Board of Revenue has ceased to exist by reason of the re-

organisation of States and its place has been taken by the Bombay Revenue Tribunal. Accordingly, while we quash the order of the Madhya

Pradesh Board of Revenue in each of the cases, we direct the Bombay Revenue Tribunal to entertain the appeals of each of the petitioners and

determine them on merits. We make no order as to costs. The outstanding amount of security deposited by the petitioner shall be refunded to

them.

Tambe, J.

8. I agree with my learned Brother that these petitions should be allowed and also in the final order proposed by him.

9. However, with respect to him, I do not agree that the present rules framed u/s 91(1) of the Madhya Pradesh Abolition of Proprietary Rights Act

are not referable to Sub-section (2) of Section 3 of the Act. No doubt it is true that ordinarily the right to make a grant or make a contract relating

to a property goes with the right of ownership of that property and that right need not be specifically conferred by a statutory provision. But when

a statute specifically says so and rules to give effect to those provisions are made, it cannot be said that the rules are merely administrative

instructions or are not referable to the statute.

10. Further, in my view in enacting Clause (2) of Section 3 of the Act the Legislature was not dealing with ordinary rights of an owner but was

dealing with such grants and contracts which were necessary to implement the purpose of the Act, In the instant case, the purpose of the Act is the

acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh and making provision for other

matters connected therewith.

11. Thus the purpose of the Act is not merely to vest certain properties in the State but also to provide for matters connected with it. And one such

matter obviously is to secure adequate facilities to the agriculturists to carry on their agricultural operation at least as before. It appears for

achieving this object it was in contemplation of the Legislature that the State Government might be required to part with certain rights in the

properties acquired by it under the Act. And this, in my view, is what is provided for in Section 3(2) of the Act. The rules in question undoubtedly

relate to one such matter.

12. For these reasons I am in agreement with the aforesaid decision of the Nagpur High Court.