

(1984) 06 BOM CK 0032

Bombay High Court

Case No: Writ Petition No. 1032 of 1984

Kadarbhai Noorali Bohari and
Others

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: June 11, 1984

Acts Referred:

- Bombay High Court (Appellate Side) Rules, 1960 - Rule 21, 22, 23, 24
- Civil Procedure Code, 1908 (CPC) - Section 39

Citation: AIR 1985 Bom 247 : (1985) 1 BomCR 104

Hon'ble Judges: B.C. Gadgil, J

Bench: Single Bench

Advocate: C.R. Dalvi and P.N. Karlekar, for the Appellant; R.D. Rane, Asst. Govt. Pleader, Narendra V. Walawalkar and P.M. Pradhan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioners (who are Opponents Nos. 3A to 3D in Regular Darkhast No.13 of 1983 on the file of the Civil Judge, Junior Division, Amalner) are challenging the orders passed in the said Dakhast whereunder it was directed that the property in question should be delivered in possession of the original applicant-decree-holder.

2. It would be convenient to refer to the parties by their names and not as applicants-opponents or petitioners-respondents. City Survey No. 813/A/14 situated at Amalner (which is now final plot No. 215/A) was originally an Inam property of Class VI-B. The property was owned by respondents 4 to 7 (hereinafter referred to as "Bhirodes"). On account of the Inferior Village Watan Abolition Act, 1958 the said Inam was abolished and the question arose as to whom the land should be regranted. The concerned revenue authorities initially regranted the land to Bhirodes. They applied for conversion of regranted tenure from new tenure to the

old tenure. This prayer was also granted some time in the year 1965. Thereafter Bhirodes sold the land to Bagul (respondent 3) under the two sale deeds of 1965 and 1966.

3. The Collector felt that the regrant in favour of Bhirodes may not be lawful and hence a suo motu proceeding or inquiry was started. On 26.11.1966 the Collector set aside the regrant in favour of Bagul and directed a fresh inquiry. The matter went to the Sub-Divisional Officer. After making inquiries he passed an order of regrant in favour of Kadarbhai (the predecessor in title of the present petitioners). This order was challenged by Bagul. He took various proceedings such as appeals etc. and finally he filed writ petition No.946 of 1979 in this Court. On 23-1-1984 the Court granted rule and passed an order that the regrant in favour of Kadarbhai should be set aside and that the regrant in favour of Bhirodes should be restored. It is this order passed by this Court in writ petition 946 of 1979 that was put in execution by Bagul by filing regular Darkhast No.13 of 1983 in the Court of the Civil Judge, Junior Division, Amalner. Certain objections to the execution were raised. For example, it was contended that the execution was not tenable as the order passed in the writ petition has not been transmitted to the Civil Court under S. 39 of the Civil P.C. It was also contended that the said order in the writ petition did not contemplate an order directing the delivery of possession to Bagul. There were certain other contentions as well. The executing Court rejected all these contentions and passed an order that the regranted property should be handed over to Bagul. It is this order that is being challenged before me.

4. Shri Dalvi, for the petitioners, made a number of submissions. It is not, however, necessary to deal with all these contentions inasmuch as the petition succeeds on a short point viz. the execution petition in the Court at Amalner is not tenable in the absence of a transfer by this Court as contemplated by S. 39 of the Civil P.C.

5. The Bombay High Court Appellate Side Rules have made various provisions as to how the writ petitions under Arts. 226 and 227 and the orders passed thereunder should be dealt with. Rr.21 to 24 (Chap. XVII) provide for the execution of the orders in such writ matters. They read as follows:

"21. Every order passed on Civil Applications under Art. 226 of the Constitution including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree in the manner provided in the Civil P.C.

22. (i) Applications u/s 82 of the Civil P.C. for making a report of non-satisfaction to the State Government of any order or decree passed in any Civil Application under Art. 226 of the Constitution shall be supported by an affidavit of the applicant, and shall be accompanied by a certified copy of the decree or order.

(ii) Applications under the above sub-rule shall be heard and disposed of by the Registrar.

(iii) If the Registrar is satisfied that the order or decree is not satisfied within the time specified therein and that the execution of the order or decree is not barred by any provision of law, he may make a report of non-satisfaction to the State Government.

23. Any order or decree in a Civil Application under Art. 226 of the Constitution passed on the Appellate Side and the non-satisfaction of which has been reported to the State Government under the preceding rule may be transmitted to the Original Side of this Court for execution and, if so transmitted, shall be executed in accordance with the procedure prescribed for execution of decrees and orders passed in the exercise of the Ordinary Original Civil Jurisdiction of this Court.

24. (i) Every application for transmitting the order or decree to the Original Side of this Court for execution or for transmitting the order or decree to any other Court for execution under S. 39 of the Civil P.C. shall be supported by an affidavit of the applicant and shall be accompanied by a certified copy of the order or decree.

(ii) Applications under the above sub-rule shall be heard and disposed of by the Registrar.

(iii) The Registrar, when transmitting the decree or order, shall send all the documents necessary to be sent under the provisions of O. XXI, R. 6 of the Civil P.C. and such other documents as he may deem necessary to the Court to which the decree or order aforesaid is transmitted for execution. Such documents, except when the transmission is to the Original Side of this Court, may be sent directly by registered post to the Court concerned".

As laid down by R.24 it was incumbent upon a successful writ petitioner to make an application for (a) transmitting the order to the Original Side of this Court for execution or (b) transmitting the order to any other Court for execution under S. 39 of the Civil P.C. According to him in the absence of an order under S. 39 of the Civil P.C. the Court of the Civil Judge, Junior Division, Amalner, would have no jurisdiction to execute the order passed in a writ petition. Shri Pradhan, appearing on behalf of Bagul (Respondent 3) contended that the scope of R. 24 was a limited one and that rule applies only when the writ order is directed against the State Government. Shri Pradhan relied upon Rr.22 and 23. It is true that these rules provide certain things when a writ had been issued against the State Government. Under R.23, after obtaining a report of non-satisfaction the successful party has to make an application for transmitting the writ to the Original Side for execution and in that case the writ has to be executed by the Original Side in accordance with the procedure prescribed for execution of decrees on Original Side. Shri Pradhan, therefore, contended that R.24 also deals with such writ orders against the Government and in that case only an application for transmission of an order for execution under S. 39 of the Civil P.C. would be necessary. In my opinion, a plain reading of all these rules together would show that the execution of a writ issued by

this Court has to be done either by the Original Side or by any other Court where the property in question is situated. All that is provided by R.24 is that an application would be necessary for transmitting the order to the Original Side or to the other concerned Civil Courts under S. 39. It is material to note that R.21 provides that the order passed in writ matters shall be drawn up as if it were a decree and such orders shall be executed in the manner provided in the Civil P.C. Section 38 of the Civil P.C. states that a decree can be executed either by the Court which passed it or by the Court to which it is sent for execution. S. 39 has made a provision for transfer of a decree to other Court for execution. It will be very difficult to accept the contention of Shri Pradhan that a writ order can be said to be a decree passed by the Amalner Court. It will be like a decree passed by this Court and such a decree can be executed by any other Court only when that decree is transferred to that Court under S. 39 of the Civil P.C. This exactly is provided by R. 24 of the Bombay High Court Appellate Side Rules.

6. It is not disputed before me that no order under S. 39 of the Civil P.C. has been passed by this Court for transmitting the said writ order to the Court of the Civil Judge, Junior Division, Amalner, for execution. Consequently in the absence of such order the Civil Judge, Junior Division, Amalner, would have no jurisdiction to entertain the execution petition for executing the order in writ petition.

7. The petition, therefore, succeeds. It is, however, made specifically clear that rest of the objections raised by the petitioner have not been considered by me in this judgement and they have been left open. These objections include a contention that writ order of this Court does not direct any delivery of the regranted land to Bagul, and that that order is only a declaratory order which needs no execution.

8. The rule is made absolute by quashing the impugned order on the ground that the executing Court has no jurisdiction to entertain the execution petition in the absence of an order u/s 39 of the Civil P.C. Parties to bear their own costs.