

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 365 OF 2015

Shri Malgonda Sidhhu Pujari & Anr. .. Petitioners
vs.
Smt. Parvati Ganu Chougule & Ors. .. Respondents

Mr. Akshay Shinde for Petitioner.
Mr. N. J. Patil i/b. Amey N. Patil for Respondent Nos. 3A to 3D and
3F to 3H.

CORAM : M. S. SONAK, J.
DATE: 17 OCTOBER 2016

P.C :

- 1] Heard learned counsel for the parties.
- 2] The challenge in this petition is to the order dated 28 April 1992 made by the Maharashtra Revenue Tribunal (MRT), Kolhapur, dismissing the revision application instituted by the respondent no. 1 questioning the SDO's order dated 4 April 1986.
- 3] In this petition, we are concerned with the property bearing Gat No. 1272 admeasuring 0.77 Hecter and 50 R situated at Mouje Pattankodoli, District Kolhapur (suit property). The petitioners, by registered sale deed dated 14 May 2012 claim to have acquired the right and title to the suit property from the respondent no. 1. The respondent no.1 claims to have acquired right and title to the suit

property vide gift deed dated 18 December 1969, which has already been set aside by the SDO on 4 April 1986 and thus order of the SDO stands confirmed by the impugned order dated 28 April 1992 made by the MRT.

4] Ramu Krishna Delekar, a predecessor-in-title of respondent nos. 3A to 3H applied to the Special Land Acquisition Officer (Tahsildar) on 11 January 1983 for declaration that the gift deed dated 18 December 1969 is void on grounds of breach of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act). The Tahsildar, rejected such application. As against the same, the respondent no.3 instituted a revision petition before the Sub Divisional Officer (SDO), who by order dated 4 August 1986, allowed the revision application, set aside the Tahsildar's order and declared the said gift deed as null and void, being in breach of Section 43 of the said Act.

5] The respondent no. 1, instituted revision application no.MRT-KP-111 of 1986 before the MRT in order to question the SDO's order dated 4 April 1986. The MRT, by the impugned judgment and order dated 28 April 1992 dismissed the revision application, thereby, confirming the SDO's order dated 4 April 1986. The respondent no. 1, did not take out any further proceedings against

the MRT's judgment and order dated 28 April 1992.

6] The petitioners contend that when they applied for mutation on the basis of sale deed dated 14 May 2012 in the revenue records, the legal representatives of the respondent no. 3 produced MRT's order dated 28 April 1992. The petitioners contend that such order is a nullity and in any case soon after such order was produced before the revenue authorities, the petitioners on 26 March 2014 have instituted the present petition. On these basis, the petitioners contend that the petition is not barred by delay or laches.

7] Mr. Akshay Shinde, learned counsel for the petitioners submits that the aforesaid explanation, which is pleaded in paragraph 3 of the petition is sufficient, to entertain the present petition, even though, the impugned order was made way back on 28 April 1992. He further submits that the very application dated 11 January 1983 which was made by respondent no. 3 to question the gift deed dated 18 December 1969 before the Tahsildar was hopelessly barred by limitation and the same ought to have been rejected on the ground of limitation alone. He submits that where no period of limitation has been prescribed, exercise of power has to be within the reasonable period. For this proposition, he relies upon the decision in the case of **Mohamad Kavi Mohamad Amin**

vs. Fatmabai Ibrahim¹. He submits that this position has been followed in the case of **Waman Atmaram Lavand & Anr. vs. Dattatraya @ Dattu Baba Lavand & Ors.**² and **Appa Dadu Patil vs. State of Maharashtra & Anr.**³, by two learned Single Judges of this Court. He also submits that the impugned judgment and order dated 28 April 1992 made by the MRT is a nullity and therefore, no period of limitation as such applies, in the matter of challenge of nullities.

8] Mr. Patil, the learned counsel who appears for some of the legal representatives of respondent no. 3 submits that the petition is barred by inordinate delay and laches. The petitioners, have purported to purchase the suit property either without verification of the title of the respondent no. 1 or, with the full knowledge that the title of the respondent no. 1 is defective. He submits that since the orders made by the SDO and MRT have attained finality, such finality cannot be disturbed by the petitioners who are only subsequent purchasers and whose *bona fides* are not free from doubt. He submits that there is no legal infirmity whatsoever in the orders made by the SDO and the MRT, particularly, since, adequate explanation was furnished for filing application in the year 1983 and such explanation was accepted by the two authorities. He submits

1 (1997) 6 SCC 71

2 2009 (5) Mh. L. J. 442

3 2011 (2) Mh. L. J. 739

that there is nothing like absolute nullity and parties who are affected must take out proceedings to obtain a declaration of nullity. For all these reasons, Mr. Patil submitted that there is no case made out to interfere with the impugned order.

9] Rival contentions now fall for determination.

10] In this case, the delay is inordinate and unexplained. The impugned order was made on 28 April 1992. The respondent no. 1 was very much a party to the proceedings before the MRT. There is no explanation in the petition as to what prevented the respondent no. 1 from instituting petition within reasonable period for challenging the MRT's order dated 28 April 1992. If at this stage, the respondent no. 1 were to have instituted this petition, obviously, the same would be barred by inordinate delay and laches. Merely because, the respondent no. 1 has purported to sell the suit property to the petitioners herein on 14 May 2012, the position of such subsequent purchasers – petitioners, in the matter does not improve. The petitioners, can under no circumstances, claim any additional or better rights than which the respondent no. 1 would possess or claim to possess. Accordingly, the explanation in paragraphs 3 or 4 of the petition is hardly any explanation making out sufficient cause or good reason to entertain the present petition

which has been instituted virtually 22 years after the making of the impugned order.

11] If the registered sale deed, on basis of which the petitioners claim title to the suit property is perused, the same, does not inspire much confidence or in any manner cannot convert the explanation furnished in paragraphs 3 and 4 of the petition to the status of '*sufficient cause*'. The sale deed, states that consideration of Rs.10,01,000/- has been paid by the petitioners to respondent no. 1, who is stated to be 81 years of age and in failing health. In clause 3 it is stated that consideration of Rs.9,00,000/- has been received by the respondent no. 1 from time to time towards daily and medical expenses and therefore, there is no question of issuing any receipt for the same. Balance consideration of Rs.1,01,000/- is claimed to have been received in cash, and therefore, there is again no question of any receipt in that regard as well. In paragraph 7 of the petition, although the petitioner has averred that he is a *bona fide* purchaser of the suit property without notice, at least the material on record, hardly supports such an averment. In any case, orders made by statutory authorities cannot be defeated by parties selling the property in question to some third party and such third party thereafter claiming ignorance and seeking to challenge such statutory orders after inordinate delay of 22 years. This petition is

therefore barred by inordinate delay and laches.

12] In *Mohamad Amin* (supra), the Hon'ble Supreme Court has held where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time, such power has to be exercised within a reasonable time. There is no material to indicate that the Tahsildar, who rejected the application made by respondent no. 3 in the year 1983, rejected the same on the grounds of limitation. In any case, the SDO and the revisional authority, upon due consideration of the facts and circumstances have held that a case was made out to interfere with the Tahsildar's order. The issue of exercise of power within reasonable period has also been considered. The reasonable period, in every case, does not have to be construed from the date of execution of the deed in question. There are several factors including the date of knowledge as well as the date on which the party who applied for reliefs was in fact, affected. There is no case made out to interfere with the concurrent decisions of the SDO and the MRT, more particularly when the SDO decided the matter in the year 1986 and the MRT in the year 1992. This petition, as noted earlier, came to be instituted in the year 2014. The petitioners contention that the impugned order is void is not at all well founded. In any case, the petitioners or so-called predecessors-in-title failed to take out any proceedings for

22 years to set aside the impugned order or to declare the same as a nullity.

13] In the case of ***Krishnadevi Malchand Kamathia & ors. vs. Bombay Environmental Action Group & Ors.***⁴ the Supreme Court emphatically ruled that it is settled position in law that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In paragraphs 16 and 19, the Supreme Court has observed thus :

*“16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. [In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil](#) AIR (1996) 1 SCC 435; AIR 1996 SC 906; *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.* (1997) 3 SCC 443; AIR 1997 SC 1240, *M. Meenakshi v. Metadin Agarwal* (2006) 7 SCC 470, and [Sneh Gupta v. Devi Sarup](#), (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.*

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is

4 (2011) 3 SCC 363

not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.”

14] In case of **State of Rajasthan & Ors. vs. D. R. Laxmi & Ors.**⁵ The following observations of the Supreme Court may be apposite in the context :-

“10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances.”

5 (1996) 6 SCC 445

15] For all the aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is barred by inordinate delay and laches. This petition is therefore dismissed.

16] There shall however be no order as to costs.

17] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka