

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 1027 OF 2012

**The Administrator,
Union Territory of Daman & Diu**

..... Appellants

VERSUS

Abdulhabib Valimammad & Anr.

..... Respondents

Mr. Shrishailya Deshmukh for the Appellants.

Mr. Aspi Chinoy, Senior Advocate, a/w. Mr. Darshan Mehta, Ms. Nirali Sanghavi,
i/b. Dhruve Liladhar & Co. for the Respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 5th DECEMBER, 2016

P.C.

By this appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellants impugned the judgment and decree dated 25th April, 2011 passed by the learned District Judge, Diu dismissing the Regular Civil Appeal No.1 of 2005 filed by the appellants herein. The appellants in the said regular civil appeal had impugned the judgment and decree dated 18th July, 2003 passed by the learned Civil Judge, Senior Division, Diu in Regular Civil Suit No.12 of 2001 thereby declaring that the decision of the defendant no.4 and/or his superior officer to seek review the main order dated 8th August, 1988 was illegal, arbitrary and without the authority of law and granting other reliefs as prayed. Some of the relevant facts for the purpose of deciding this second appeal are as under :-

2. The dispute pertains to the piece of land bearing No.PTS/10/1 admeasuring 26890 sq.mtrs., PTS 4/1 admeasuring 45442 sq.mtrs. and PTS 4/1 (Part) admeasuring 1305 sq.mtrs. in all 73627 sq.mtrs. situated at Ghoghla, Diu. The

Collector had initiated inquiry under section 14(3) of the Goa, Daman and Diu Land Revenue Code, 1968 and Rules in respect of the suit property. The Collector found the respondent (original plaintiff) in occupation of the suit property and passed an order on 8th August, 1988 declaring that the occupancy rights were vested in the respondent. The respondent herein continued to be in possession and enjoyment of the suit property.

3. On 15th February, 1999, the Collector issued show cause notice to the respondents under section 193 of the Goa, Daman and Diu Land Revenue Code, 1968 for initiating review proceedings in respect of the previous order dated 8th August, 1988 passed by the learned collector. In view of the said show cause notice issued by the collector after a period of 10 years from the date of passing of the said order dated 8th August, 1988, the respondent no.1 filed a suit (12 of 2001) in the Court of learned Civil Judge, Senior Division, Diu inter alia praying for a declaration that the action on the part of the collector to seek review of the order dated 8th August, 1988 was illegal, arbitrary and without the authority of law and for various other reliefs. The suit was resisted by the appellants on various grounds. During the pendency of suit, part of the suit property was transferred to respondent no.2.

4. The learned trial judge framed five issues. After considering the evidence, pleadings and arguments of both the parties, the learned trial judge held that the show cause notice issued by the appellants after 10 years was illegal and was not maintainable.

5. Being aggrieved by the said order and judgment dated 18th July, 2003, the appellants herein preferred an appeal (Regular Civil Appeal No.1 of 2005) before

the learned Principal District Judge at Diu. The learned Principal District Judge, Diu passed a judgment and decree dated 25th April, 2011 and after recording the detailed reasons, dismissed the said appeal filed by the appellants. The appellants have impugned the said judgment and decree in this second appeal.

6. Learned counsel for the appellants submits that the order dated 8th August, 1988 passed by the Collector declaring that the plaintiff was found to be in occupation of the suit property and occupancy and that the rights were vested in him was ex-facie, illegal and thus the action of the collector under section 193 of the Code for seeking review of the said order was justified though belated. He submits that since the order passed by the Collector on 8th August, 1988 itself was illegal, null, there was no bar for seeking review of the said order under section 193 of the Goa, Daman and Diu Land Revenue Code, 1968 even after 10 years.

7. Learned counsel for the appellants invited my attention to Rule 193 of the Code and would submit that the learned trial judge as well as the first appellate court have erroneously set aside the show cause notice itself issued by the Collector.

8. Learned counsel for the appellants however could not point out any material on record to show that the government had granted any permission to seek review of the earlier order passed by the Collector on 8th August, 1988.

9. Mr.Chinoy, learned senior counsel for the respondent no.2 on the other hand invited my attention to the findings rendered by the learned trial judge as well as the first appellate court. He submits that even if the Government could seek review under section 193(3) of the Code, it ought to have been initiated within the

reasonable period of time and not within the period of 10 years. He submits that it was not the case of the collector that the respondent no.1 (original plaintiff) had committed any fraud. He submits that during the period of 10 years, the respondent no.1 had taken several steps. He submits that the collector in the year 2000 had granted permission to register conveyance which was not challenged by the Government.

10. My attention is also invited to the notice issued by the collector earlier before passing the order dated 8th August, 1988 and would submit that the said notice admittedly was issued to all the concerned authority before passing the said order. He submits that authority was fully aware of the order passed by the collector. He submits that there was no explanation rendered by the appellants before the learned trial judge as to why the authority took 10 years to take the decision to seek review of the order passed by the collector.

11. It is not in dispute that the collector had passed an order dated 8th August, 1988 holding that the occupation rights was vested in the respondent no.1 (original plaintiff). The said order was passed by the collector which was to the knowledge of the authority since the date of passing of the said order. The collector had followed the procedure before passing the said order dated 8th August, 1988.

12. It is not in dispute that the collector issued show cause notice dated 15th February, 1999 under section 193 of the Code seeking review of the said order dated 8th August, 1988. A perusal of the record clearly indicates that though the plaintiff had raised various issues in the plaint including the delay and there being no justification on the part of the collector to seek such review after 10 years and had impugned the permission if any granted by the Government for seeking such

review under section 193, the collector could not produce any material before the learned trial judge for seeking review as well as could not produce permission if any granted by the Government which was mandatory for seeking review under section 193 of the Code.

13. The learned counsel for the appellants sought to contend before this court that such permission was granted by the Government. It is not in dispute that no such alleged permission alleged to have been granted by the Government was produced before the learned trial judge or even before the first appellate court. The Government also could not produce any justification and material which was considered by the collector before issuing any such show cause notice to the plaintiff. Learned counsel could not dispute that it was not the case of the Government that any fraud was committed by the plaintiff upon the Government in obtaining the order dated 8th August, 1988 passed by the Collector.

14. It is not in dispute that during the period of 10 years when the collector issued a show cause notice, several steps were already taken by the plaintiff in respect of the suit property. The Government itself had granted permission to the plaintiff to register conveyance in respect of the suit property. The learned trial judge has considered all these aspects in a great detail in the impugned judgment and decree and has rightly passed a decree on 18th July, 2003.

15. A perusal of the decree passed by the first appellate court clearly indicates that the first appellate court also has rendered a detailed reasons while holding that the review was not maintainable after lapse of more than 10 years although no time limit was prescribed for initiating such action. The first appellate court adverted to the judgment of Supreme Court and rightly held that no such review

could be maintainable after unreasonable period of 10 years.

16. In my view the findings of fact rendered by the two courts below being concurrent and not being perverse, cannot be interfered with by this court in this appeal filed under section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in this appeal. The appeal is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D.DHANUKA, J.)