

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6348 OF 2017

Shri Ashok Namdev Kamble	..	Petitioner
vs.		
State of Maharashtra & Ors.	..	Respondents

Mr. R. C. Barge for Petitioner.
Mr. S. D. Rayrikar - AGP for Respondent Nos. 1 to 3.

CORAM : M. S. SONAK, J.
DATE: 13 SEPTEMBER 2017

ORAL JUDGMENT:

- 1] Not on board. In view of urgency, taken on production board.
- 2] Heard Mr. Barge for the petitioner.
- 3] Time for replacing Exhibit 'B' is extended upto 15th September 2017.
- 4] The challenge in this petition is to the order dated 24th January 2017 made by the Hon'ble Minister (Revenue) recalling of order dated 3rd July 2014, in terms of which, the remark '*Devasthan Inam Warag III*' in the revenue records, in relation to the suit property was ordered to be deleted.
- 5] The petitioner, had applied to the Hon'ble Minister for deletion

of the aforesaid remark. This deletion was ordered by the Hon'ble Minister (Revenue) by order dated 3rd July 2014. To this application, the Western Maharashtra Devasthan Committee, was not even impleaded as a respondent. Though, the Collector is shown to be impleaded as a party respondent, there is nothing on record that the Collector, was afforded any opportunity of hearing before the order dated 3rd July 2014 was made. At the highest, some sort of report was called for and on the said basis, the deletion was ordered.

6] The Collector, in his capacity as the President of the Western Maharashtra Devasthan Committee applied for review / recall of the order dated 3rd July 2014, primarily on the ground that the Committee was a necessary party and in the absence of the Committee, no such order of deletion of the remark, of which, would have a very serious effect upon the rights of the Devasthan could have been made. It is on this application that the impugned order dated 24th January 2017 has been made by the Hon'ble Minister (Revenue) recalling the earlier order dated 3rd July 2014.

7] Mr. Barge, learned counsel for the petitioner submits that the Minister (Revenue), lacks powers of review and therefore, the impugned order is in excess of jurisdiction. In the alternate, he submits that if the impugned order is held to be relatable to the exercise of powers under Section 258 of the Maharashtra Land

Revenue Code (MLRC) then, the review petition was required to be instituted within a period of 90 days from the date of passing of the order. In this case, since the review petition was instituted beyond the period of 90 days, and the same was not accompanied by any application for condonation of delay, the Hon'ble Minister (Revenue), lacked jurisdiction to entertain the same. On these two grounds, Mr. Barge submits that the impugned order is required to be set aside.

8] In this case, we are concerned with the property belonging to Devasthan. Devasthan, which is in the nature of a public trust. In regard to such properties, the Hon'ble Supreme Court, in the case of **Chenchu Rami Reddy & Anr. vs. Government of Andhra Pradesh & Ors.**¹ has made the following observations :

“More often than not detriment to what belongs to 'many', collectively, does not cause pangs to 'any', for no one is personally hurt directly. That is why public officials and public minded citizens entrusted with the care of 'public property' have to show exemplary vigilance. What is true of 'public property' is equally true of property belonging to religious or charitable institutions or endowments. (see para 1)

“We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a large segment of the community has beneficial interest in it (that is the raison 'd'etre' of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the

1 (1986) 3 SCC 391

closest-and-best-attention approach to guard against all pitfalls. (see para 10)."

9] In this case, the petitioner, without impleading the Temple Committee, almost succeeded in effecting changes in the revenue records, which changes, would have seriously prejudiced the interest of the Devasthan. Fortunately, the District Collector, who is in his capacity as the *ex officio* President of the Devasthan Committee instituted an application for recall of the order dated 3rd July 2014, *inter alia* on the ground that the order was made without impleading necessary party i.e. the Western Maharashtra Devasthan Committee. In the impugned order, the Hon'ble Minister (Revenue) has accepted the position that the earlier order was made without impleadment of the necessary party and on the said basis, recalled the earlier order dated 3rd July 2014.

10] There is no substance in the contention of Mr. Barge that in the circumstances, the Hon'ble Minister (Revenue) lacked powers of review. This is strictly speaking not a case of review but a case of recall of the earlier order after record of due satisfaction that the earlier order was made in breach of principles of natural justice. In any case, the exercise undertaken by the Hon'ble Minister (Revenue) is in the nature of a procedural review. The Hon'ble Minister (Revenue), should be considered to be endowed with such powers as are necessary to discharge his functions effectively for

the purposes of doing justice between the parties and this would include the power to recall the order made without compliance with the principles of natural justice.

11] In the case of ***Grindlays Bank Ltd. vs. Central Government Industrial Tribunal & Ors.***², the Hon'ble Supreme Court has held that the expression 'review' is used in two distinct senses, namely, (i) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (ii) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. The principle that the power of review is never inherent but is required to be specifically conferred by statute applies to the later category of cases. Obviously when a review is sought due to procedural defect, the inadvertent error committed by the Tribunal, the same must be corrected *ex debito justitiae* to prevent the abuse of its process and such power inheres in every court or Tribunal.

12] Thus, construed, it is quite apparent that the Hon'ble Minister (Revenue), who has basically exercised the power of recall and further has acted *ex debito justitiae* cannot be said to have exceeded jurisdiction vested in him.

2 1980 (Supp) SCC 420

13] That apart, Section 258 of the MLRC specifically confers powers of substantive review. In this case, since, the impugned order, does not appear to relate to the exercise of powers of substantive review, there is no reason to advert to the provisions in Section 258 of the MLRC. The period of limitation prescribed therein will basically apply to case of substantive review. In any case, there is no necessity to decide on the said issue in the peculiar facts and circumstances of the present case.

14] The jurisdiction under Articles 226 and 227 of the Constitution of India is to promote substantial justice. Interference in exercise of its jurisdiction is discretionary and not mandatory upon the petitioner, making out some legal point in support of the petition. *[See: Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur & Ors. (2013)5 SCC 427]* In the peculiar facts and circumstances of this case, there is no reason to interfere with the impugned order on the ground that what was filed by the respondent was a petition for review under Section 258 of the MLRC and further, the same was not accompanied by any application for condonation of delay. The facts in this case are quite eloquent and there was ample cause shown for the delay, if any, in instituting the petition for review. As noted earlier, this is a case of

procedural review and therefore, not relatable strictly speaking to the exercise of powers under Section 258 of the MLRC.

15] In **Roshan Deen vs. Preeti Lal**³, dealing with an order passed by the High Court setting aside an order of the Commissioner for Workmen's Compensation, the Supreme Court stated: *"Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."*

16] In the case of **M. P. Mittal vs. State of Haryana & Ors.**⁴, in the context of doctrine of substantial justice, the Supreme Court observed thus :

"The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High

3 (2002) 1 SCC 100

4 (1984) 4 SCC 371

Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail”.

17] Thus, it is settled position in law that the power conferred upon the High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not thwart it. The High Court in exercise of such jurisdiction must not be on the look out to merely pick out any error of law through an academic angle, but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law. Article 226 of the Constitution of India provides for an extra ordinary remedy which essentially discretionary though founded on legal enquiry. In the exercise of such jurisdiction, it is permissible for the Court to either give or withhold relief in furtherance of public interest. Accordingly, the granting or withdrawing of relief may properly be dependent upon considerations of public interest.

18] However, the impugned order does not indicate as to what is

to happen about the petitioner's original application seeking deletion of the remark. Since, the earlier order dated 3rd July 2014 has been recalled on account of failure to implead and notice the Western Maharashtra Devasthan Samiti, it is only appropriate that the petitioner's application seeking deletion is now directed to be considered afresh by the Hon'ble Minister (Revenue) after ensuring that the Western Maharashtra Devasthan Samiti is duly impleaded as a respondent.

19] Accordingly, if the petitioner, within a period of four weeks from today, effects the necessary amendments to his original application seeking deletion of the remark, the Hon'ble Minister (Revenue) is requested to take up for consideration the application of the petitioner and dispose of the same in accordance with law and on its own merits. No doubt, suitable opportunity of hearing should be afforded not only to the petitioner but also to the Western Maharashtra Devasthan Samiti as well as the District Collector.

20] This Court has not adverted to the merits of the matter and therefore all contentions of all parties are left open for consideration by the Hon'ble Minister (Revenue).

21] With the aforesaid directions and liberty, this petition is disposed of. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka