

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 157 of 2018

1. Smt. Radhabai Vitthal Pund, age 70 years,
2. Rajendra S/o Vitthal Pund, age 50 years ,
3. Sanjay S/o Vitthal Pund, age 48 years ,
4. Vijay Vitthal Pund, age 46 years ,
5. Ajay S/o Gorakshanath Pund, age 40 years

No.1 household and Nos. 2 to 5 agriculturists
by occupation and all R/o Kothi road, Ahmednagar
Taluka and District Ahmednagar

...Applicants

(Original judgment debtors No.1 to 5)

VERSUS

1. Smt. Gulabbai Devichand Gandhi,
age major occupation household
R/o Pange Galli, Manik Chowk,
Ahmednagar District Ahmednagar
2. Mohan S/o Devichand Gandhi,
age major occupation business R/o as above.
3. Sau. Maya Dilip Gugale,
age major occupation household
R/o C/o Sonali Dresses, Kapad Bazaar,
Baramati Taluka Baramati District Pune.
4. Sau. Sharda Rajendra Bora,
age major occupation household
R/o Venus Co-op. Housing Society Ltd.,
Opposite Atlas Copco Ltd., 6/14,
at post Dapodi District Pune.
5. Sau. Jyoti Nitinkumar Katariya,
age major occupation household
R/o LIC Colony, Paud Fata, Kothrud road Dist. Pune

...Respondents

(Original Decree holder)

Mr. R.R. Mantri, Advocate, holding for Mr R. R. Sancheti, *Advocate for applicants*
Mr. S. S. Kulkarni, *Advocate for respondents.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th October, 2018

J U D G M E N T:

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.
2. Present civil revision application has been moved by legal representatives of original defendants No.5 and 6 against judgment and order dated 6th August, 2018 passed by the 6th Joint Civil Judge (Senior Division), Ahmednagar on Exhibit – 40 in regular *darkhast* No. 15 of 2016.
3. Succinctly referred to case pleaded on behalf of applicants in present civil revision application by learned advocate Mr R.R. Mantri is that, applicants' ancestors have been agricultural tenants over disputed land from a long time as could be gathered from 7/12 extracts annexed. The trial court while deciding regular civil suit No. 253 of 1989 has referred to the same. Since they are tenants of agricultural land, suit for eviction against them under the provisions of the Maharashtra Rent Control Act, 1999 or for that matter erstwhile, Bombay Rents,

Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "Bombay Rent Act") would not be maintainable and the proceedings and decision thereunder are not binding on and executable against them. He also submits that the case put up against them, had been that of successor-in-title of their ancestors. Trial court had found that plaintiff has failed to prove that applicants are tenants and had found that applicants were trespassers. He submits that in the scenario, the suit under provisions of the Bombay Rent Act for eviction of petitioners would not be possible and decree against them is in-executable for want of jurisdiction under the Bombay Rent Act. He submits that he is amply supported by several decisions of the Apex Court as well as this Court. It is well settled position of law that question of jurisdiction of a court can be raised at any time, even in execution proceedings and the same will have to be decided upon.

4. He submits that while the court functions under Bombay Rent Act, it suffers inherent lack of jurisdiction to entertain a matter governed by Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "Tenancy Act").

5. During the course of submissions, learned counsel Mr Mantri has submitted that applicants being residents of dwelling

house in the agricultural land and having regard to section 16 of the Tenancy Act, there is bar to eviction of tenant in occupation of the dwelling house and matter in respect of the same can be decided only by the authorities under the said Tenancy Act and not by the civil court.

6. It would not even be a case that a decree can be passed against trespasser by a court functioning under Bombay Rent Act. Such a decree would not have any efficacy. While dealing with the matter under the Bombay Rent Act, the judge would not be able to exercise power as civil court in such matters.

7. He submits that while the executing court has rejected applications Exhibit – 40 and 112, it has cursorily dealt with the matter and had been overwhelmed by the past proceedings upto the Supreme Court and, as such, has committed error in ignoring the contents of the application. He further purports to contend that while it had not been the case during the trial of the suit, yet, it has been observed being submission made before it that the applicants are neither tenants nor occupants and they have been working as watchmen, and thus, had no independent right to the possession.

8. Learned counsel for applicants refers to a decision in the case of *Chandrika Misir and another Vs. Bhaiyalal*, reported in

AIR 1973 Supreme Court 2391 to support the submission about question of inherent lack of jurisdiction; and plea as to jurisdiction of court may be raised at any stage, even if it was not raised in trial court.

9. He refers to section 11 of the Civil Procedure Code. In support of his submission, he relies on a decision of the Supreme Court in the case of *Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) through his LRS*, reported in [(1990) 1 SCC 193], wherein it has been observed that even if the decision has been rendered on merits by the courts *hitherto* in rent proceedings, a question relating to interpretation of a statute touching the jurisdiction of a court, unrelated to questions of fact or law or mixed questions, does not operate as *res judicata* even between the parties or persons claiming under them. The Supreme court has observed, pure question of law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of *res judicata* is a facet of procedure and not of substantive law. He submits, plea of constructive *res judicata* in the facet of jurisdiction would not be applicable in the present matter.

10. He has referred to a decision in the case of *Kiran Singh Versus Chaman Paswan* reported in *AIR 1954 SC 340* to give stress on

that decree passed by trial court and confirmed upto the highest court without jurisdiction is nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of subject matter of action, strikes at the very authority of court to pass any decree and such a defect cannot be cured even by consent of parties. He purports to deal with the situation of an argument that the rent control court is a civil court as well, would not make a difference for, as right of possession against trespasser would be outside jurisdiction of the court under section 28 of the Bombay Rent Act and thus, decree in the suit under the Rent Act against defendant No.1 and also against defendant No.2, who are trespassers, has to be considered to be nullity.

11. He refers to decision of Supreme Court in the case of *Lal Jain Versus Man Mal* reported in 1970 DGLS (SC) 134 = 1970 AIR (SC) 794, wherein the suit had been filed for eviction against defendants No.1 and 2. Defendant No.1 was the tenant and defendant No.2 was sub-tenant. Compromise had been entered into by the landlord with defendant No.1 and on the basis of that compromise, decree was passed by the court. The compromise had not referred to any sub-lease and the suit was decreed in

terms of compromise for ejectment against defendants. Defendant No.1 had been given time of four years from the date of the compromise decree for delivering possession of the suit premises. However, while at the end of said period of four years, the appellant attempted to execute the decree, at that stage, the second respondent-defendant No.2 resisted the execution, contending that he is not bound by the compromise decree. Thereafter settlement had been entered into between landlord and second respondent and the second respondent had been given time to vacate the premises. However, he did not vacate the premises. The decree had been questioned on various grounds, one of which had been that it being in contravention of section 13 of the Delhi and Ajmer Rent (Control) Act, 1952, the same is nullity and, as such, it is not executable. This contention was accepted by the executing court and the appellate court as well as by the High Court and the Apex Court considering the facts.

12. Learned Counsel Mr. S.S. Kulkarni for the respondents, on the other hand, submits that applicants were not parties to the suit and have been subsequently impleaded while they were found to be in possession of portion of the property and the suit had been decreed. The applicants, by their choice, had neither filed written statement nor had participated in the suit.

Their lawyer had given “no instructions pursis” and the suit was decreed, whereas, applicants had not challenged it. Appeal was filed by only defendants No.1 and 2 and in the same, cross objection had been purportedly filed on behalf of present applicants. The appellate court had dismissed the appeal and confirmed the decree passed by trial court. Three civil revision applications were preferred before this court against aforesaid appellate decision, one by defendants No.1 and 2, other by present applicants and the third by other persons, who were claiming to be in occupation of the premises and those three civil revision applications were dismissed by the high court passing orders on merit.

13. He submits that applicants had never raised any question about jurisdiction of the court. He further submits that the special leave petition filed before the Apex Court against decisions in the suit, appeal and civil revision applications had also failed as the same had been dismissed by the Apex Court. He, therefore, submits that applicants are now estopped from raising a plea of inherent lack of jurisdiction of court to deal with the matter before it against present applicants.

14. He submits that having regard to the facts and circumstances, such an objection ought to have been raised at

the earliest stage when they were impleaded as parties to the suit. They have, in fact, tried to prosecute proceedings further atleast during the course of regular civil appeal filed by defendants No.1 and 2 by filing cross appeal and subsequently by filing independent civil revision application before this court.

15. In all the courts including the Apex Court, applicants have failed and, as such, proceedings *hitherto* operate as constructive *res judicata* and no plea, as sought to be raised by applicants could be raised.

16. He submits that record sufficiently bears that the claim of applicants' possession as agricultural tenants is not borne out by any document placed before trial court. He submits that it is equally pertinent to see that the applicants had not asserted at any point of time their claim of tenancy during trial. Their status of claiming possession had never been adverted to during the trial and the same is now being sought to be asserted before executing court referring to some documents to submit that the trial court, had no jurisdiction to pass decree against present applicants, who now claim to be agricultural tenants and contend about proper forum concerned, it would be under the Maharashtra Tenancy and Agricultural Lands Act and no other forum.

17. He submits that as of now there is no credible

material made available about applicants being tenants which could be taken into account by the court. Without there being any basis for applicants for taking such stand and while question of jurisdiction has to be raised at the earliest stage of matter, the same having not been raised, with reference to the contentions now being taken, it is outside the powers, authority and jurisdiction of executing court to embark upon an exercise to find out as to whether applicants are tenants or not. Even otherwise, such an aspect, according to contentions on behalf of applicants is not in the jurisdiction of court. He further submits that executing court is not supposed to go beyond the decree and reopen the matter on merits. He, therefore, submits that the civil revision application does not carry any substance and same deserves to be dismissed with costs.

18. One may have to look into that present civil revision application is filed questioning the propriety and legality of order passed by the executing court. Perusal of application Exhibit – 40 shows that with reference to the contentions and certain documents alongwith application, a claim of being agricultural tenants is sought to be raised by applicants. It does not appear that as on the date, as yet, there is any declaration about the applicants being tenants of the agricultural land nor has anything been produced before the court. It is submitted that with

reference to documents, an inference be drawn that applicants are tenants of agricultural land. It may have to be adverted to that a civil court or for that matter, much less, executing court would be able to embark upon and exercise power to find out as to whether from the material placed on record an inference can be drawn about applicants being tenants of agricultural lands.

19. Further, it may also have to be adverted to that as on the date land concerned is in the Municipal Corporation limits of Ahmednagar. It has also emerged that the landlord has not accepted applicants to be tenants over agricultural land. Further, while much stress has been laid on the observation of the trial court about possession of present applicants being that of trespasser, the appellate court in paragraph No. 43 of its judgment has considered that it is amply borne out from the evidence that suit premises are not being used by defendants for more than six months or from years together and the tin-shed premises had been kept locked since long and it can be said that defendants No.3 to 7 are occupying the premises for and on behalf of defendants No.1 and 2 and not independently. The high court in paragraph No.33 of the decision in civil revision applications No. 112 of 2012, 113 of 2012 and 114 of 2012 dated 20th July, 2015 has observed that while third person other than tenant is found in possession, in absence of the occupier showing

nature of possession, necessary conclusion would be that premises are sub-let to the occupier. This finding, appears to have been confirmed by this court in the first round of civil revision applications challenging the decision rendered by the District Judge on merits. It would be pertinent to refer to that the decisions of the trial court, appellate court and the revisional court had been subjected to scrutiny by the highest court and there as well challenge to the decisions upto High Court had not been sustained and observations had not been disturbed.

20. In the circumstances, for all aforesaid reasons although the question of lack of jurisdiction is being raised before this court, it does not appear that in the background, it would carry any water.

21. In view of aforesaid, civil revision application is not being entertained and the same is dismissed.

22. Rule discharged.

**(SUNIL P. DESHMUKH)
JUDGE.**