

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6076 OF 1995

1. Pandurang Daji Dhundare,
2. Smt. Savitribai Daji Dhundare,
3. Smt. Indubai Pandurang Bharavase
All r/o. Rashivade, Taluka
Radhanagari, District Kolhapur

...Petitioners

Versus

1. State of Maharashtra
Through the Department of Revenue &
Forests, Mantralaya, Bombay - 32
2. The Additional Chief Secretary & Officer
on Special Duty (Appeals) Revenue &
Forests Department, Industrial
Assurance Building, First Floor, J. T.
Road, Bombay 20
3. The Additional Commissioner, Pune
Division, Pune
4. Additional Collector, Kolhapur
5. Assistant Collector, Shahuwadi,
Division Kolhapur
6. Tahsildar, Radhanagri, District
Kolhapur
7. Keshav Aba Patil
8. Ajit Aba Patil
9. Dilip Aba Patil
10. Smt. Tulsabai w/o Aba Patil
11. Vilas Aba Patil
12. Dhondiram Aba Patil
Respondent Nos.7 to 12 r/o Rashivade
Budruk, Taluka Radhanagari,
District Kolhapur.

...Respondents

Mr. Prashant Bhavake, for the Petitioners.

Mr. P. P. Pujari, AGP, for the State/Respondent nos.1 to 6.

Mr. Dilip Shinde, for Respondent nos.7 to 12.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 2nd April, 2019

PRONOUNCED ON: 10th April, 2019

JUDGMENT:-

- 1.** Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties heard finally.
- 2.** This petition impugns an interim order passed by the Government on 4th November, 1995, in the purported exercise of the power of review under Section 258 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'the Code', for short).
- 3.** By the impugned order, the Government professed to grant stay to the execution, operation and implementation of the order passed by the Government, in Revision No. RTS-3894/121/L-6/CR-101/94/A & R, dated 3rd March, 1995, dismissing the said revision petition, preferred by Respondent nos.7 to 12 herein, under Section 257 of the Code, and thereby confirming the orders passed by the Divisional Commissioner, Pune, the First Revisional Authority in RTS.KOP.No.183 of 1991 and Additional Collector, Kolhapur, the Second Appellate Authority in RTS Second Appeal No.50 of 1991, whereby the names of the Petitioners were directed to be entered in the revenue record as the tenants of the agricultural land bearing old Survey No.210/1A and 210/1B (now Gat No.322), situated

at village Rashivade Budruk, Taluka Radhanagari, District Kolhapur ('the suit land').

4. Though the dispute between the parties has a chequered history, in the backdrop of the nature of the impugned order and challenge thereto, a detailed reference to the previous proceedings, more than a dozen in number, is not strictly warranted. The factual backdrop, absolutely essential for the determination of this petition, can be summarised as under:

(a) The first step in the journey of unending litigation was taken by the Predecessor in title of the Petitioners, the deceased Daji Vithu Dhundare, who claimed to be a tenant, by instituting a suit for perpetual injunction against Respondent nos.7 to 12, bearing Regular Civil Suit No.46 of 1965. The learned Civil Judge, Junior Division, Radhanagari, dismissed the suit by passing a decree on 10th February, 1966. The deceased Daji preferred appeal bearing Regular Civil Appeal No.140 of 1966 against the decree. During the pendency of the Appeal, on 2nd December, 1967, the learned District Judge framed the issue, "as to whether the Plaintiff was the tenant of the suit land" and referred the same under Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Tenancy Act', for short). The Tahasildar returned a finding

against deceased Daji. The appellate authority, under the Tenancy Act, reversed the finding and order of the Tahasildar and declared that deceased Daji was the tenant of the suit land. The Respondents carried the matter before the Maharashtra Revenue Tribunal, in a revision. The Tribunal reversed the finding of the appellate authority and remitted the matter to the lower authority.

(b) Being aggrieved, deceased Daji approached this Court in Writ Petition No.3072 of 1980. By a judgment and order dated 17th January, 1989, this Court allowed the petition. The order of the Tribunal was set aside and the order of the appellate authority holding the deceased Daji to be the tenant, came to be restored. Thus, the finding that the predecessor in title of the Petitioners is a tenant in the suit land attained finality. Consequently, the learned District Judge allowed the appeal and restrained the Respondents by passing a decree for perpetual injunction restraining the Respondents from causing obstruction to the Plaintiff's possession over the suit property, by a judgment and decree dated 21st November, 1991. Second Appeal No.703 of 1992 thereagainst came to be dismissed by this Court on 9th February, 1995.

(c) The second round of litigation commenced with the Petitioners approaching the Revenue authority to mutate the names of the Petitioners to the revenue record of the suit land as tenants. The second round also took a similar path. The Tahasildar directed mutation of the names of the Petitioners by order dated 24th October, 1990. The Assistant Collector, in RTS Appeal No.133 of 1990, took a different view and held that a final decision has yet not been recorded by the District Court and, therefore, set aside the order of Tahasildar, on 31st December, 1990. The Petitioner preferred RTS 2nd Appeal No.50 of 1991, which was allowed by the Additional Collector, Kolhapur, by order dated 31st July, 1991, holding, *inter alia*, that the question as to whether the Petitioners were tenants has attained finality by the order passed by the High Court. Respondent nos.7 to 12 assailed the said order by preferring revision before the Additional Commissioner, Pune. The 1st Revisional Authority, dismissed the revision by order dated 11th November, 1991. Still aggrieved and dissatisfied, Respondent nos.7 to 12 approached the Government by a 2nd revision under Section 257 of the Code. It was dismissed on 3rd March, 1995.

5. True to their tenacity and disposition to leave no stone unturned, Respondent nos.7 to 12 again moved the

Government by a petition to the Hon'ble Minister (Revenue), dated 2nd November, 1995, wherein grievances were made about the unsatisfactory manner in which the second Revision No. RTS-3894/121/L-6/CR-101/94/A & R came to be dismissed by the Government. Respondent nos.7 to 12 sought stay to the execution and operation of the order dated 3rd March, 1995, passed by the Government, in the said second revision, and a direction to maintain *staus quo ante* till Respondent nos.7 to 12 moved the High Court by filing a petition against the said order and obtained orders therein. The impugned order reveals that the Government decided to entertain the said petition as a review petition and stayed the execution and operation of the order passed by the Government in the second revision on 3rd March, 1995.

6. In the meanwhile, pursuant to the order passed by the Government in second revision, the names of the Petitioners were mutated to the revenue record as tenants in the suit land. Thus, the Petitioners approached this Court invoking the writ jurisdiction. This Court by order dated 5th December, 1995 had stayed the effect and operation of the impugned order passed by the Government.

7. I have heard the Mr. Bhavake, the learned Counsel for the Petitioners, Mr. Pujari, the learned AGP for the State/Respondent nos.1 to 6 and Mr. Shinde, the learned Counsel for Respondent nos.7 to 12, at some length.

8. Mr. Bhavake, the learned Counsel for the Petitioners assailed the impugned order by raising a slew of challenges. Firstly, it was urged that the Government proceeded to stay the effect, execution and operation of the order passed by it, in the purported exercise of review jurisdiction under Section 258 of the Code, in a proceeding which was inchoate. In fact, according to the learned Counsel for the Petitioners, no proceeding was properly instituted by Respondent nos.7 to 12. Secondly, Respondent nos.7 to 12 never intended to assail the order passed by the Government in the revisional jurisdiction, even by way of review. On the contrary, the petition, which was entertained by the Hon'ble Minister, itself indicates that Respondent nos.7 to 12 were in the process of challenging the said order before the High Court and had sought stay in the intervening period. In the circumstances, the Government could not have treated it as a review petition. Thirdly, by staying the execution and operation of the order passed by the Government under Section 257 of the Code and the orders which were

thereby upheld by the Government, the findings which had attained finality, namely the Petitioners were the tenants in the suit land were sought to be set at naught. Unmindful of the jurisdictional limitation as well as the consequences which the impugned order would ensue, the Government passed impugned order as if it was an administrative matter, urged the learned Counsel for the Petitioners.

9. In contrast, the learned Counsel for Respondent nos.7 to 12 submitted that since the effect and operation of the impugned order has already been stayed, this Court can very well direct the Government to hear and decide the petition filed by Respondent nos.7 to 12, pending before the Government, in a time bound manner.

10. The aforesaid narration of facts and the prognosis of proceedings before the Revenue authorities as well as the Civil Courts, including this Court, in two rounds of litigation spanning more than half a century, indicate in a sense the vicissitudes of litigation. It is indubitable that a finding has been conclusively recorded that the Petitioners are the tenants in the suit land. The finding has attained finality. A decree for perpetual injunction is operating against Respondent nos.7 to 12 restraining them from causing obstruction to the peaceful

possession of the Petitioners over the suit land. Yet, over the matter of mutating the names as tenants, the litigation has been dragged for almost 30 years.

11. Undoubtedly, in view of the provisions contained in Section 258 of the Code, the State Government may exercise the review jurisdiction. The said power is, however, subject to the limitations incorporated in Sub-section (1) and Sub-section (2). It would be suffice to note Clause (iv) of the proviso to Sub-section (1) of Section 258 of the Code. It reads as under:

“Section 258: (1) The State Government and every revenue or survey officer may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit :

Provided that,

.....**(iv)** no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings, and no such application for review of such order shall be entertained unless it is made within ninety days from the passing of the order.”

12. Two limitations are self-evident. One, no order affecting any question of right between private persons can be reviewed by the Government *suo moto*. Such an order shall be reviewed only on an application of the party to the proceedings. Two, a limitation of 90 days is stipulated for making such an application.

13. In the case at hand, the petition filed by Respondent nos.7 to 12 before the Hon'ble Minister (Revenue) clearly indicates that the Petitioners did not seek a review of the order passed by the Government, in the second revision, under Section 257 of the Code. On the contrary, Respondent nos.7 to 12 were proposing to challenge the order of the Government before the High Court, in writ jurisdiction. Nor there was any prayer for review, even remotely. Indeed, stay to the execution and operation of the order passed by the Government under Section 257 of the Code was sought in the interregnum. However, it does not imply that Respondent nos.7 to 12 were seeking to invoke the review powers of the Government under Section 258 of the Code. In view of the express bar incorporated in Clause (iv) of the proviso to Section 258 of the code, the Government could not have assumed review jurisdiction even by treating the said petition as a review petition.

14. Secondly, the bar of limitation was also conveniently overlooked. The Government had decided the second Revision No. RTS-3894/121/L-6/CR-101/94/A & R, dated 3rd March, 1995. Respondent nos.7 to 12 filed the petition before the Hon'ble Minister (Revenue) on 2nd November, 1995. The said petition, even if construed to be a review petition, was, thus,

beyond the period of 90 days statutorily prescribed for invoking the review jurisdiction of the Government under Section 258 of the Code.

15. In the aforesaid view of the matter, the impugned order suffers from the vice of exercise of jurisdiction not vested in the authority. The Government committed a manifest error in staying the effect and operation of the order passed by it on 3rd March, 1995 in Revision No. RTS-3894/121/L-6/CR-101/94/A & R, whereby it upheld the orders passed by the lower authorities. The import of this action was not properly appreciated by the Government. It had the propensity to set at naught the orders passed by the competent Civil Courts, including the High Court, conclusively determining the rights of the parties.

16. The submission on behalf of Respondent nos.7 to 12 to dispose of the petition by directing the Government to decide the proceeding pending before it expeditiously does not deserve countenance for the plain reason that it has the potential to perpetuate the mischief further. As there are clear interdicts against entertaining the review petition under Section 258 of the Code, and from the own showing of Respondent nos.7 to 12 they had not at all invoked the review jurisdiction of the

Government, the very continuation of the proceedings before the Government would amount to abuse of the quasi-judicial process. Resultantly, I am persuaded to not only quash and set aside the impugned order but even the proceedings which were entertained by the Government in the purported exercise of review jurisdiction under Section 258 of the Code.

17. Resultantly, the petition stands allowed.

The impugned order passed by the Government dated 4th November, 1995 staying the execution and operation of the order passed by the Government in Revision No. RTS-3894/121/L-6/CR-101/94/A & R, dated 3rd March, 1995, stands quashed and set aside.

The proceedings entertained by the Government, on the basis of the petition of Respondent nos.7 to 12 dated, 2nd November, 1995, wherein the impugned order came to be passed, also stands quashed and set aside.

In the circumstances, there shall be no order as to costs.

18. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]