

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL REVISION APPLICATION NO.8 OF 2020**

GURUDAS NARAYAN SALGAONKAR (DEC)
THR. LRS.

... Petitioner

Versus

AUDUTA SAVLARAM ARAS

... Respondent

Mr. Gurudas N. Salgaonkar, Petitioner in Person.

Mr. M. B. D'Costa, Senior Advocate with Ms. Adv. Betquecar Karishma
Custa for the Respondent.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 26th February 2020.

ORAL ORDER:

The petitioners' father was the tenant, and the respondent is the landlord. The tenancy began long back. In 1987, the landlord filed eviction suit ARC/2N/32/87. It was on the grounds of rent default. Pending the suit, the tenant deposited the arrears of rent. So the Rent Controller dropped the eviction proceedings.

2. Later, in 1989, the landlord sought the eviction of the petitioners' father on three grounds: non-payment of rent, subletting, and change of user. It was on 13th February 1989, and the suit was No.AD/Review/14/89. On 30th July 2003, the Rent Controller dismissed the eviction suit. It was on the premise that there was no written lease as required under section 34 of the Rent Control Act. Though the landlord immediately filed the appeal, the matter travelled across different fora on account of jurisdictional

disputes and statutory changes. Eventually it reached the Appellate Board as Rent Appeal No.22/2013. Then, the Appellate Board, on 3rd January 2014, allowed the appeal: eviction was ordered in a suit of two and a half decade old, after the Board reversing a judgment a decade old.

3. In the meanwhile, the original tenant died. His legal representatives, that is the present petitioners, filed Writ petition No.64/2014. On 1st February 2018, this Court dismissed the writ petition. Dissatisfied, the petitioners filed Review Application No.3/2018. This Court dismissed that the next month. Undaunted, the petitioners filed Special Leave Petition No.21344/2018 (the petitioners claim it to be a Diary Number). But the Supreme Court, too, refused to interfere. On 10th August 2018, it dismissed the SLP in *limini*. Though the petitioners filed Review Application No.33414/2018. Later, he withdrew it on 11th September 2019.

4. As the landlord's judgment attained finality, he filed Execution Application No.28/2018/C. That was in December 2018. In March 2019, the petitioners, as the judgment debtors, raised a preliminary objection against the execution. On 17th December 2019, the Executing Court dismissed the preliminary objection. Eventually, on 15th February 2020, the Executing Court allowed the application and authorized the Superintendent to take possession of the suit premises.

5. Assailing the Executing Court's order, dated 15th February 2020, the petitioners have filed this Civil Revision Application.

6. As seen from the record, the original tenant has died leaving behind his wife and five children. One of those children is said to have died in 2016, that is before the landlord could take the eviction proceedings. At any rate, though there are six petitioners on record, the petitioner no.1(B), Vasant Gurudas Salgaonkar, alone has argued the writ petition *pro se*. He may not have any conflict of interest with the other petitioners, but it cannot be said that he has argued for the other petitioners as well. A co-petitioner or a co-respondent cannot be a counsel for the others; he may represent their interest as their agent under the law.

Submissions:

Petitioner No.1(B):

7. Shri Vasant Salgaonkar, arguing the case *pro se*, has submitted that the Executing Court ought not to have entertained the execution proceedings. To elaborate, he has submitted that under section 34 of the Goa, Daman & Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 (“the Rent Act”), the legislative mandate is unmistakable: There ought to have been a written lease deed between the landlord and the tenant.

8. To elaborate, Shri Salgaonkar has submitted that whenever a building was let out after 1968, when the Rent Act came into force, no tenancy gets created unless supported by a written deed. In this context, he has drawn my attention to section 54 of the same Act which talks about penalties. To be precise, section 54 (2) impose a punishment fine of

Rs.5000/- on any person contravening the provisions, other than sections 15 and 16 of the Act and the Rules as well.

9. In fact, Shri Salgaonkar has also laid emphasis on Rule 15 of the Rules, which speaks about the landlord sending a copy of the lease deed to the controller within 50 days from the date of his executing that deed.

10. As to the procedure, the Executing Court has adopted, Shri Salgaonkar has insisted that in terms of section 50 of the Rent Act, the provisions of CPC in toto apply to the execution of a decree passed by the Rent Controller. That accepted, the judgment debtor is entitled to raise all objections under section 47 of the C.P.C., he stresses.

11. To sum up his submissions, Shri Salgaonkar has insisted that the judgment and decree now the landlord has sought to execute is void because no Court could entertain a tenancy dispute under the provision of the Rent Act in the absence of a written instrument. Once the decree becomes void, according to Shri Salgaonkar, that issue can be raised collaterally and even in execution proceedings. He has relied on the following Judgments: (i) *Dr. H.S. Rikhy v. The New Delhi Municipal Committee*¹, (ii) *Shiv Kumar Chadha v. Municipal Corporation of Delhi*², (iii) *Laxmidas Morarji v. Miss Behrose Darab Madan*³, (iv) *Ferozi Lal Jain v. Man Mat*⁴, (v) *Harsha Chiman Lal Modi v. DLF Universal Ltd.*⁵, (6) *Sarup Singh v. Union of India*⁶, (7) *Sarwan Kumar v.*

¹ AIR 1962 SC 554

² 1993 (3) SCC 161

³ (2009) 10 SCC 425

⁴ (1970) 3 SCC 181

⁵ (2005) 7 SCC 791

⁶ (2010) 11 SCC 198

*Madan Lal Aggarwal*⁷, (8) *Sri Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvan*⁸, (ix) *Allahabad Development Authority v. Nasiruzzaman*⁹.

Respondent:

12. On the other hand, the learned Senior Counsel for the respondent-landlord has contended that the very same issue whether the landlord could seek the tenant's eviction based on an oral tenancy has been the principle issue in the eviction proceedings. According to him, the finding on that issue has attained finality, with the highest Court of law refusing to interfere. So, it cannot be re-agitated. He has also further submitted that, at any rate, it is the Rent Controller that is the competent authority. Even an assumed error in the procedure does not affect his jurisdiction. Therefore, it cannot be considered as a question of "subject matter" jurisdiction. Thus, he has urged this Court to dismiss the writ petition.

13. Heard Shri Salgaonkar pro se, the petitioner in person and Shri M.B. D'Costa, the learned Senior Counsel for the respondent.

Discussion:

14. The facts are not in dispute. The eviction proceedings began in 1989 and the matter has gone up to the Supreme Court. In the first instance, the Rent Controller dismissed the eviction proceedings on the premise that there ought to have been a written instrument in terms of section 34 of the Act. That very issue was taken up in appeal, first before the first appellate Court, later this Court. Both have held that in the absence of a written lease

⁷ 2003 (4) SCC 147

⁸ (2004) 1 SCC 497

⁹ (2004) 1 SCC 497

deed, the landlord can invoke the provisions of the Rent Act to evict the tenant. That issue remains undisturbed, because the Supreme Court has refused to interfere. Indeed, the tenants have done all they could to dislodge the judgment and decree. They have filed even review before this Court and before the Supreme Court. But without any success.

15. That said, the well-established proposition of law is that once the Court inherently lacked jurisdiction, that is subject matter jurisdiction, the order and judgment it renders becomes a nullity. And the nullity of a judicial order can be set at any stage or even collaterally. On the principle of nullity, even the Executing Court can go beyond the decree and rule on that count. In this regard, I must also note that there is any amount of distinction between an error of jurisdiction and an error in exercising that jurisdiction.

16. To bring home the distinction, I may note that the subject matter jurisdiction goes to the root, and by no measure can we confer jurisdiction on a particular forum which lacks it. For example, no civil court other than a Constitutional Court can adjudicate on the vires of a statute. On the other hand, a court may have jurisdiction, but the party may have been dis-entitled to invoke that jurisdiction. That is to say, the party may have failed to fulfill the eligibility criteria to approach the court. In that event, curing the defect allows the party to approach the court. In other words, the court has the jurisdiction all along, but the person approaching it may not have been qualified.

17. Here, it is the Rent Controller that ought to exercise the jurisdiction under the Rent Control Act. The question is whether the landlord has been qualified or whether the transaction has all the trappings of being a dispute under the rent control regime. If the Rent Controller ought not to have entertained the eviction proceedings in the absence of a written lease deed; at best, it becomes an error in exercise of his jurisdiction, but not an error of the subject matter.

18. At any rate, it is idle to dwell on this topic. The very question whether the landlord could seek eviction of the tenant based on an oral lease has been the bone of contention between the parties up to the Supreme Court. And that issue has attained finality. The question cannot be reagitated at the execution stage in the garb of a jurisdictional issue, under Article 227 of the Constitution of India. The finding on the issue, in fact, has attained finality.

The Precedents:

19. Shri Salgaonkar has cited a few authorities at the Bar. Let us examine them.

(i) *Dr. H. S. Rikhy*:

20. In *H.S. Rikhy*, one of the questions was whether there existed the relationship of tenant and landlord between the parties. On the facts, we may note that 30 occupants applied under section 8 of the Delhi and Ajmer Rent Control Act, praying for the fixation of standard rent concerning the premises in their respective occupation. The Municipal Committee raised a preliminary objection to the maintainability of the applications. It asserted

that there was no relationship of landlord and tenant between the applicants and the Committee, within the meaning of the Act. The High Court has held that there was no valid lease between them in terms of section 47 of the Punjab Municipal Act.

21. On appeal, the Supreme Court has affirmed the High Court's judgment. It has held that "admittedly ... section 47 [has] not been complied with. Therefore, the Committee is not bound to recognise the transactions in question as creating an interest in immovable property; there being no interest in immovable property in favour of the appellants, they cannot be called 'tenants' within the meaning of the Act, and as only a tenant can invoke the provisions of section 8, the applications must be held to be incompetent."

(ii) *Shiv Kumar Chadha*:

22. If a statute creates or identifies only rights and liabilities but has not provided forums for remedies, any aggrieved person could approach the ordinary civil court on the principle of law that where there is a right there is a remedy—*ubi jus ibi remedium*. If the statute, on the other hand, specifically provides for remedial mechanism—adequate and effective—then the aggrieved person's right to approach the civil court under Section 9 of CPC stands curtailed.

23. To this adjudicatory dichotomy, *Shiv Kumar Chadha*, an admirably articulated judgment, provides a third dimension: that despite the bar placed on the civil court's power, orders passed under the statutes with their

remedial mechanism can be examined on “jurisdictional question”. That is, the civil court can always examine the question whether subject matter of the dispute stands covered by the statute invoked. In the face of jurisdictional bar under a special enactment concerning “public land”, *Shiv Kumar Chadha* has held, “still a suit will be maintainable before a court on a plea that the land in question shall not be deemed to be a public land within the meaning of the definition of ‘public land’ given in the Act in question, and as such provisions thereof shall not be applicable.”

(iii) *Laxmidas Morarji*:

24. In this case, the building is in Greater Bombay. Under Section 28 of the Bombay Rent Act, the Court of Small Causes, Bombay, has jurisdiction. The appellants filed a suit for eviction and that would be maintainable if the landlord accepted that the occupant was a tenant. But there, the appellants did not consider the fifth respondent a tenant. In furtherance of this stand, the appellants went on to adduce evidence to prove that the respondent did not fulfil the conditions to be a tenant under the Bombay Rent Act. That means, according to *Harsha Chiman Lal Modi*, the Small Cause Court at Bombay had no jurisdiction to entertain the suit.

25. By the time the matter reached the Supreme Court, four decades had gone by. So the appellants’ counsel pleaded with the Court that it may invoke Article 142 of the Constitution of India and direct the respondent to quit and deliver vacant possession of the suit building. In that backdrop, *Harsha Chiman Lal Modi* has observed that Article 142 endows the Supreme

Court with residuary power, based on equity principles. So the powers under that article remain undefined. Then, *Harsha Chiman Lal Modi* has clarified that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties.

26. Shri Salgaonkar has, it seems, relied on *Harsha Chiman Lal Modi* to underline that the eviction suit may have been filed decades ago, but when a statutory shortcoming stares at the case, it must wilt, should yield no result.

(iv) *Ferozi Lal Jain*:

27. In *Ferozi Lal Jain* the question before the Supreme Court was whether the decree under execution is nullity. On facts, the appellant wanted the first respondent's eviction on the grounds that he sublet the leased property. The first respondent denied it. During the pendency of the suit, the appellant and the 1st respondent compromised; the first respondent agreed to vacate in four years. The compromise petition did not refer to the alleged sub-lease.

28. Four years later, the first respondent did not vacate. The appellant filed for execution. Again, it has resulted in another compromise. The first respondent was given some more time. That time, too, passed. Still the first

respondent has not vacated. So the appellant sought execution once more. This time, the first appellant took a plea that the decree was passed in contravention of Section 13 of the Rent Control Act. That is to say, the decree is a nullity and inexecutable. This contention was accepted by the execution court, the appellate court, and the High Court. Finally, by the Supreme Court, too.

29. In that backdrop, *Ferozi Lal Jain* has held that under the Rent Control Act, a decree for recovery of possession can be passed by any court only if that court is satisfied that one or more grounds mentioned in Section 13(1) are established. Without such a satisfaction, the court is incompetent to pass a decree for possession. It has also held that at no stage was the court called upon to apply its mind to the question whether the alleged sub-letting is true or not. On the contrary, the court had proceeded solely based on the compromise arrived at between the parties. Thus, the decree under execution was held to be a nullity.

(v) *Harsha Chiman Lal Modi*:

30. First, the High Court of Delhi has reiterated the well-known proposition of law that if a particular court does not have any jurisdiction to deal with the matter and no part of the cause of action has arisen within the jurisdiction of that court, the parties by their consent cannot confer jurisdiction on that court. Therefore, a clause vesting jurisdiction on a court which otherwise does not have it would be void as offending the public

policy. The Supreme Court has approved this proposition in *Harsha Chiman Lal Modi*, as it has done earlier on many an occasion.

(vi) *Sarup Singh*:

31. *Sarup Singh* accepts that the executing court cannot go behind the decree. But it holds that if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is because if a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by that court would be without jurisdiction and it is *non est* and void *ab initio*. *Sarup Singh* reaffirms that the defect of jurisdiction strikes at the very root and authority of the court to pass a decree, and this defect cannot be cured by the parties' consent or waiver.

(vii) *Sarwan Kumar*:

32. In *Sarwan Kumar*, property was let out for commercial purposes in 1969; the owner bequeathed the property a decade later. The transferee issued notice under section 106 of the Transfer of Property Act to the tenant to quit. The person receiving notice took the stand that the tenant was a firm, in which he was a partner. The suit that followed was decreed. After several rounds of litigation and after losing the appeals, the judgment debtor objected under Section 47 CPC to execution. He maintained that commercial tenancy in the State of Delhi was heritable and, therefore, civil court lacked inherent jurisdiction to pass the decree. The executing court overruled the objection; so did the High Court.

33. On further appeal, the Supreme Court has held that under section 14 of the Rent Act, the only authority to pass a decree for ejectment of the tenant is the Rent Controller. For section 50 specifically bars the jurisdiction of civil courts to entertain any suit or proceeding relating to eviction of tenant from the premises covered by the Rent Act. The decree passed by the civil court having no jurisdiction over the subject matter would be a nullity, and the judgment debtor can object to the execution of such decree being a nullity and *non est*.

(viii) *Sri Ramnik Vallabhdas Madhvani*:

34. The disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order on special leave petition is also never *res judicata*.

(ix) *Allahabad Development Authority*:

35. The High Court of Allahabad, on the facts, has held that the acquisition proceedings stood lapsed by operation of Section 11-A, as amended by Act 68 of 1984. It directed the State to deliver possession of the lands to the respondents. In response, the Supreme Court has held that once the lands stood vested in the State free from all encumbrances, there is no question of “divesting the land and re-vesting the land in the erstwhile owners.” The only right the erstwhile owner has is to ask for the compensation in accordance with the provisions of the Act.

36. *Allahabad Development Authority* has held that when the Legislature has directed an authority to act in a particular manner, but the authority has

failed to act so, the question is whether the authority's previous order operates as *res judicata* or estoppel. When the previous decision was found to be erroneous on its face, it does not operate as *res judicata*. The principle of estoppel or *res judicata* does not apply where to give effect to them would be to counter some statutory direction or prohibition. A statutory direction or prohibition cannot be over-ridden or defeated by a previous judgment between the parties.

Summary:

37. In *Dr. H. S. Rikhy, Shiv Kumar Chadha, Laxmidas Morarji, Ferozi Lal Jain, Harsha Chiman Lal Modi, Sarup Singh, and Sarwan Kumar* the precedential theme is common. To adjudicate, the court concerned should have the inherent or the subject-matter jurisdiction. This jurisdiction gets conferred by the statute, not the parties. Once the court lacks the jurisdiction, its judicial directives become nullity. And, in that context, the executing court can go behind the decree and ascertain the validity of the order or decree sought to be enforced.

38. On the other hand, *Ramnik Vallabhdas Madhvani* holds that the Supreme Court's dismissing an SLP summarily at the admission stage does not attract the doctrine of merger. Nor does it amount to the Supreme Court's upholding the correctness of the impugned judgment. Then, *Allahabad Development Authority* reiterates that estoppel does not operate against a statutory mandate.

The Law Applied to the Facts:

39. Here, Shri Salgaonkar has harped unceasingly on the absence of a written lease deed and insisted that the Rent Controller has no jurisdiction to entertain the eviction proceedings. To drive home his point, he has drawn my attention to certain statutory provisions, too.

40. As rightly observed by the Executing Court, the Rent Controller, to begin with, dismissed the eviction proceedings precisely on the same premise: absence of the written lease deed. In the landlord's appeal, the Appellate Board reversed it; it has held that the eviction proceedings are maintainable. Against that decision, the petitioners approached this Court, and this Court dismissed that Writ Petition. I may repeat that the whole dispute centered on the Rent Controller's jurisdiction to entertain the eviction proceedings in the absence of a written lease deed.

41. Let us accept that the summary dismissal of an SLP does not attract the merger principle, nor does it amount to a judicial imprimatur at the highest level about the correctness of a judicial pronouncement. That said, the fact remains that the Supreme Court has refused to interfere. The High Court's findings on the jurisdiction, thus, have become final. The salutary principle of common law, for that matter any law, is the finality of findings. Judicial proceedings cannot be taken out and dragged *ad nauseam*, and the judicial arena is no ground for litigious waging.

42. A question of law, especially affecting the inherent jurisdiction of the court, not raised and decided can always be raised—at any stage and, even, collaterally. An issue raised and decided, erroneous it may have been,

attracts the principle of *res judicata*, even at different stages of the same proceedings. Shri Salgaonkar argues that the Supreme Court has not decided the issue, for it only refused to entertain the petitioners' SLP. So he wants this Court to revisit the whole issue—once again. That said, a Supreme Court's decision vertically binds all other courts and tribunal across the country. And every High Court's decision binds itself horizontally if decided by coequal benches and vertically if decided by benches of larger composition. Here, this Court's earlier decision—that of a coequal Bench in WP No.64/2014—squarely binds me.

Result:

43. Under these circumstances, I refuse to interfere with the impugned order passed by the Executing Court. As a result, the Civil Revision Application stands dismissed.

No order on costs.

DAMA SESHADRI NAIDU, J.

AP/-