

SUPREME COURT OF INDIA

Damjibhai Bijibhai Vasava

Vs.

Ranchhodbhai Zinabhai

C.A.No.1707 of 1995

(S. Saghir Ahmad and S. N. Phukan, JJ.)

09.02.2000

JUDGEMENT

S. SAGHIR AHMAD, J.:-

1. Suit for partition filed by the respondents in respect of Plot No. 64/1/A and other properties was decreed by the trial Court in 1969 which decree was upheld by the first appellate Court and also by the High Court. Since one of the properties in respect of which partition decree was passed was assessed to land revenue payable to the State Govt., the trial Court referred the matter to the Collector under Section 54 of the Code of Civil Procedure for partition. The Collector partitioned the properties by his order dated 1-6-1976. The order of the Collector was challenged by the Appellant before the Deputy Secretary under Section 211 of the Bombay Land Revenue Code, 1879. This Revision was allowed on 2-7-1977 and the Deputy Secretary remanded the matter to the Collector. The order of the Deputy Secretary was challenged by the Respondents in Regular Civil Suit No. 71 of 1978 on the ground that the Deputy Secretary had no jurisdiction to consider the propriety of the order passed by the Collector under Section 54 of the Code of Civil Procedure. The suit was decreed on 22-12-1981. The appeal preferred by the appellant against this decree was dismissed by the District Judge on 20-8-1983. The second appeal thereafter filed by the appellant was summarily dismissed by the High Court on 17-8-1984 on the ground that the appeal did not

involve any substantial question of law. The matter is now before us.

2. Learned counsel for the appellant contended that the Collector was a Revenue Officer and therefore he was amenable to the jurisdiction of the State Government under the provisions of the Bombay Land Revenue Code, 1879. He placed reliance upon Sections 203 and 211, which are reproduced below:

"203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act or any other law for the time being in force to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

211. The State Government and any revenue officer, not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely * * * a Mamlatdar, a Mahalkari, and Assistant Superintendent of Survey and an Assistant Settlement Officer.

If in any case, it shall appear to the State Government or to such Officer aforesaid that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit.

Provided that an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit."

3. It is contended that since it is specifically provided under Section 203 that any order passed by a Revenue Officer under this Act (or any other law for the time being in force) would be appealable to that officer's immediate superior, the order passed by the Collector could be legally challenged under the Code to the superior officer. Under Section 211 the revisional jurisdiction of the State Government could also be invoked.

4. In order to substantiate his contention, learned counsel placed reliance upon the decision of the Bombay High Court in *Paygonda Survgonda Patil v. Jingonda Surgonda Patil*, AIR 1968 Bombay 198, in which it was inter alia, laid down as under:

(11) We are, however unable to accept the first part of the learned Government pleader's argument, viz, the Collector is not a revenue officer when he is engaged in any official work other than "the business of the land revenue or of the survey assessment accounts or records connected therewith." In our view the word "employed" in the definition of revenue officer in Section 3(1) of the Land Revenue Code has reference to the purpose of employment of the officer concerned or the normal work for which he is employed, and does not refer to the particular work which he may have to do at a particular time in the course of his official duties. It appears to us that this is the natural meaning of the word "employed" in the context in which it occurs. The Collector is a revenue officer, because he is appointed under the provisions of the Bombay Land Revenue Code and because the purpose of his employment and the normal work for which he is employed is to look after the revenue administration of district. Decisions and order passed by him are, therefore, appealable under S. 203 even when they are not passed in the course of revenue administration. There are some cogent reasons for accepting this interpretation of the term "revenue officer" defined in S. 3(1) and occurring in S. 203 of the Bombay Land Revenue Code.

(12) In the first place, it can be shown that in S. 203 itself the legislature has used the term "Revenue Officer" in the sense mentioned above. Several provisions of the Land Revenue Code confer powers and impose duties upon the Collector in the performance of which he is not engaged "in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith." According to the view urged by the learned Government pleader, the Collector is not a revenue officer when he acts under those provisions. Any decision or order made by the Collector under those provisions should, therefore, not be subject to any appeal under S. 203. That is, however, not the case. For instance, sub-section (2) of S. 37 of the Bombay Land Revenue Code says that where any property or any right in or over any property, is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice has been given to pass an order deciding the claim. Now the property involved in the Collector's decision under S. 37(2) need not be a revenue paying land, and even when it is a revenue paying land the inquiry into the claim connected therewith cannot be said to be a business of the land revenue or of the surveys, assessment, accounts or records connected therewith. Yet a decision of the Collector under S. 37(2) is appealable and this is recognized by the Legislature itself."

It was further observed:-

"(13) Secondly, the interpretation which the learned Government pleader seeks to impose on the term 'Revenue Officer in Section 3(1) and Section 203 would render nugatory that part of Section 203 which allows an appeal to be filed from any decision or order of the Collector passed under any

law other than the Bombay Land Revenue Code. The Bombay Land Revenue Code is a complete Code providing for all matters regarding land revenue and work connected therewith. It is not easy to find another, Act which confers on the Collector such powers and imposes upon him such duties as would employ him "in or about the business of the land revenue or of the surveys, assessment, accounts, or records connected therewith." No instance of such an Act was brought to our notice."

It was further held (Paras 15 and 16 of AIR):-

"The fact that the duty to effect a partition of revenue paying lands is cast by Section 54 on the Collector or any gazetted subordinate of the Collector deputed by him does not exclude the right of superior revenue authorities to examine and correct any decision or order of the Collector in the exercise of their appellate and revisional powers. Section 54 contains no provision and certainly no express provision, which runs counter to the appellate powers conferred by Section 203 of the Bombay Land Revenue Code.

We are accordingly of the view that the Commissioner erred in law in holding that he had no jurisdiction to entertain an appeal or a revisional application against any order of a Collector passed in proceedings relating to the execution of a decree for partition of revenue paying lands passed by a Civil Court."

5. The Bombay High Court dissented with the view taken by the Mysore High Court in Ramchandra Shamarao Kulkarni v. Prahlad Krishnaji Kulkarni, AIR 1964 Mysore 31, in which the provisions of Bombay Land Revenue Code were considered. The view expressed by the Bombay High Court is in consonance with the view of the Madras High Court in Venkataraghava Rao v. Venkata Hanumantha Rao, AIR 1945 Madras 336.

6. It is thus apparent that there was an important and substantial question of law, which was involved in this case, which required a decision from the High Court. Since the second appeal filed by the appellant was summarily dismissed on the ground that no substantial question of law was involved, we allow this appeal, set aside the order passed by the Gujarat High Court and remand the case back to the High Court so that the second appeal which shall be treated as "admitted" may be disposed of on merits after notice to the parties. No order as to costs.

Order accordingly.