

BOMBAY HIGH COURT

Rambhau

Vs.

State (Bombay)

Special Civil Appln. No. 143 of 1971

(Kania and Aggarwal, JJ.)

30.06.1975

JUDGEMENT

Kania, J.

1. This is a petition under Article 227 of the Constitution of India and it arises out of certain proceedings taken under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "the said Act".) The petitioner held certain lands at Chanegaon, taluka Jalna, district Aurangabad. The petitioner filed a return under Section 12 of the said Act. Proceedings were then started under Sections 14, 17 and 21 of the said Act before the Special Deputy Collector, Land Ceiling, Aurangabad. In these proceedings the petitioner took up several contentions on the basis of which he contended that he was not the holder of any surplus land. It was held by the Special Deputy Collector that the family of the petitioner consisted of five members and he was entitled to a ceiling area of 108 acres. The Special Deputy Collector determined the holding of the petitioner as comprising of 129 acres 17 gunthas, and hence came to the conclusion that the surplus area held by the petitioner comprised of 21 acres 17 gunthas. The Special Deputy Collector observed that the petitioner had not exercised his option under Section 16 of the said Act regarding the lands to be retained upto the ceiling area and in view of this the Special Deputy Collector selected the particular lands described in his order for the surplus area of 21 acres 17 gunthas. On 16th February, 1967, the petitioner preferred an appeal against this decision to the Maharashtra Revenue Tribunal, Aurangabad. This appeal was dismissed by the said Tribunal on the ground that it was barred by limitation and that there were no good grounds given for condoning the delay. It is common ground that this appeal was dismissed without going into the merits of the case. The petitioner then preferred a Special Civil Application under Article 227 of the Constitution of India to this Court against these orders, but the same was summarily rejected on 12th December 1967. The petitioner then applied to the Commissioner, Aurangabad Division, respondent No. 2 herein, under Section 45 (2) of the said Act for revision of the orders passed by the Special Deputy Collector. There is some dispute as to

the date when this application was made. According to the petitioner, it was filed on 9th July 1969, whereas according to the respondents it was filed on 29th October, 1969. This really makes no difference because the application has been made within three years of the decision given by the Spl. Dy. Collector. The Commissioner, Aurangabad, who is respondent No. 2 before us, held that as the appeal preferred by the petitioner to the Revenue Tribunal has been dismissed on the ground of limitation and as this Court had rejected the aforesaid Special Civil Application on merits and not on the ground of limitation alone the revision application was not maintainable. It is this decision which the petitioner has sought to impugn in the petition before us.

2. As the arguments turn, to a large extent, on the construction of Section 45 (2) of the said Act, it would not be out of place to set out the said sub-section, which run as follows:

"(2) The State Government may, suo motu or on an application made to it by the aggrieved person, at any time, call for the record of any inquiry or proceedings under Sections 17, 21 (both inclusive) or under Section 27 for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under those sections or of any order passed under Section 27, and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard:

Provided that, nothing in this sub-section shall entitle the State Government to call for the record of any inquiry or proceedings of a declaration or part thereof under Section 21 in relation to any land, unless an appeal against any such declaration or part thereof has not been filed within the period provided for it, the possession of such land has not been taken under sub-section (4) of Section 21 and a period of three years from the date of such declaration or part thereof has not elapsed."

3. It is common ground that in the case of an order passed by the Special Deputy Collector, an application under Section 45 (2) of the said Act would lie to the Commissioner by reason of the powers delegated to him by the Government. The submission of Mr. Sali, the learned counsel for the petitioner, is that, in the present case, the declaration or order made by the Special Deputy Collector was on 31st October 1966, the application under Section 45 (2) was made within three years of that time and hence respondent No. 2 was in law bound to entertain this application on merits. It is submitted by him that in dismissing the application on the ground that it was not maintainable, respondent No. 2 has committed a patent error of law which has led to a miscarriage of justice. It does seem to us that there is considerable substance in the submission of Mr. Sali. In our view, as the application had been made in time, it ought to have been considered on merits unless it fell within the scope of the proviso to Section 45 (2) of the said Act.

4. The first submission of Mr. Sabnis, the learned Assistant Government Pleader for the respondents, is that in the present case as an appeal had been filed by the petitioner to the Revenue Tribunal under Section 33 of the said Act, the order passed by the Special Deputy Collector which was appealed against became merged in the order of the said Tribunal and there

could be no revision preferred to the Commissioner against that order which was made in an appeal under Section 33 of the said Act. In this regard, it would be useful to refer to the decision of a Division Bench of this Court in *Mohamed Oomer v. S.M. Noorudin*¹. In that case it has been held that it is only on a judicial determination that the order of the lower Court becomes merged in the decision of the Court of appeal. But no merger takes place when the Court of appeal does not judicially determine the appeal but dismisses it on any preliminary ground like limitation or maintainability. Then, on the

¹(AIR 1952 Bom 165)

dismissal by the appellate Court, the order that still stands is the order of the lower Court and not the order of the Court of appeal. In view of this decision, it appears to us that the aforesaid submission of Mr. Sabnis must be rejected.

5. The next submission of Mr. Sabnis is that as an appeal had been preferred against the order of the Special Deputy Collector the case of the petitioner was covered by the proviso to Section 45 (2) of the said Act, and the application preferred to the Commissioner was not maintainable at all. Mr. Sabnis placed strong reliance on the part of the proviso which lays down that no application under Section 45 (2) can be entertained "unless an appeal against any such declaration or part thereof has not been filed within the period provided for it." It is submitted by him that once it is established that an appeal was filed, whether in time or beyond time as in the present case, the case falls within the terms of the proviso and no application under Section 45 (2) of the said Act could be maintained. In our view, this submission is unsustainable. What Mr. Sabnis is really trying to do is to ignore the words "within the period provided for it," which are used in the said proviso, and there is no warrant at all for doing this. In the present case, an appeal was undoubtedly preferred against the order passed by the Special Deputy Collector, but this appeal which was not filed within the period provided for it was dismissed on the ground of limitation. Admittedly, this appeal was filed beyond the prescribed time, and we fail to see how the application made to the Commissioner could have been rejected by him on the ground that the petitioner had preferred an appeal to the Revenue Tribunal which was beyond time and was dismissed summarily on that ground. The case might have been different had the delay been condoned by the said Tribunal and the appeal before it considered on merits. That is admittedly not the case here. It is not the contention of Mr. Sabnis that the application is covered by the proviso to Section 45 (2) of the said Act for any other reason.

6. The last submission of Mr. Sabnis is that as the petitioner had preferred a Spl. Civil Application against the aforesaid order of the Tribunal in which he had also sought to challenge the order of the Special Deputy Collector, and as that Special Civil Application had been summarily rejected by this Court, the matter was finally concluded between the parties and it was not open to the petitioner to make an application under Section 45 (2) of the said Act as he has sought to do. In our view, this submission of Mr. Sabnis must also be rejected. It is not seriously disputed before us that even an order summarily rejecting a revision application cannot amount to a decision on merits. In the present case, moreover, the application which was summarily

rejected was an application made to this Court under Article 227 of the Constitution of India where the relief claimed is to a large extent discretionary. Further, the main question which must have been directly in issue in that Special Civil Application was whether the Tribunal was right in dismissing the appeal on the ground of limitation. That Special Civil Application was filed sometime in 1967, after 3rd October, 1967, and it is hardly likely that in that Special Civil Application, which was admittedly filed after even the time for appeal against the decision of the Special Deputy Collector had expired, the Court would have considered in any detail the merits of the order of the Special Deputy Collector which was passed on 31st October, 1966. It is true that in his order respondent No. 2 has stated that that Special Civil Application was summarily dismissed on merits. But, we fail to see what is the basis of that observation. Respondent No. 2 has not taken any evidence and he was admittedly not present when that application was disposed of by this Court. His assertion that the said Special Civil Application was summarily rejected on merits is, therefore, based on a pure conjecture and needs no serious consideration. This submission of Mr. Sabnis must also, therefore, fail.

7. In our view, in the facts and circumstances of the present case, it was incumbent on respondent No. 2 to have considered the application made to him under Section 45 (2) of the said Act on merits and to have disposed of the same according to law. The finding of respondent No. 2 to the effect that the application made to him was not maintainable discloses, in our opinion, a patent error of law which has led to a miscarriage of justice, in the sense that the application of the petitioner has not been considered on merits at all.

8. We would, therefore, make the rule absolute and set aside the order passed by respondent No. 2 holding that the application made to him by the petitioner was not maintainable and direct him to consider this application and dispose it of according to law. The respondents to pay to the petitioner the costs of this petition.

Petition allowed.