IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-115-2020

M/s Suvarn Rajaram Bandekar ... Petitioner

Versus

State of Goa through
Chief Secretary & Ors. ... Respondents

Shri Shailesh Henriques, Advocate for the Petitioner.
Shri B. Sardessai, Advocate for the Respondent No.4(g).
Ms. M. Correia, Additional Government Advocate for the Respondents No.1 to 3.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 14th AUGUST 2020

ORAL ORDER:

Introduction:

The litigation began in 1992. Then, it was about agricultural land. I doubt whether that property remains so even now. In the first round, the matter went to up to the Supreme Court and came back to the Mamlatdar. It was with a direction: The proceedings must conclude in one year. Though the deadline is to end soon, the petitioners are still struggling to serve notice on a few respondents. They allege the respondents are avoiding notice. And to have the proceedings expedited, they have come to this Court.

2. Does this Court have a role to play at this stage?

Facts:

3. The petitioner initially filed two suits—Special Civil suit Nos.64/1992 and 153/1992—against the same set of defendants. In both the suits, the defendant raised a plea of mundkarship. So the Civil Court referred the issue in both these suits to the Mamlatdar.

4. As the parties are the same and as the issue is identical, the Mamlatdar, it seems, took up the objection as raised in one suit. It was in

2012. When the matter was pending before the Mamlatdar, the sole defendant died. Though his legal representatives were brought on record, they were not put on notice.

5. Then two of the six legal heirs went in appeal before the Deputy Collector. Through an order in November 2014, the appellate authority allowed the appeal and remanded the matter to the Mamlatdar. The remand was with a direction that the legal heirs of the deceased defendant should be put on notice and matter heard on the merits.

6. But the petitioners, aggrieved, took the matter in revision before the Administrative Tribunal, which upheld the appellate order through its judgment in December 2015. Still unrelenting, the petitioner filed a Writ Petition, which this Court dismissed in May 2018. Eventually, the petitioner filed an SLP. Through an order dated 10.12.2019, the Supreme Court, too, has not interfered. While affirming the order of remand, the Apex Court has fixed a time frame: the matter to be disposed of in one year, that is by December 2020.

7. After remand, the Mamlatdar had the matter listed for the first time on 23.01.2020 and ordered notice. Two respondents received notice. But the other respondents were said to be not residing in that address. So the notices were returned unserved. By next adjournment, one of those respondents that have been served has informed the Mamlatdar that he published notice as a matter of substituted service. He has also claimed that he has communicated to the unserved respondents through email, WhatsApp, and SMS. This respondent who gratuitously took upon himself the task of serving notice is the deceased defendant's son-in-law. He too, along with his wife, wants the matter expedited.

8. In the light of these developments, the petitioner has applied to the Mamlatdar for a declaration that there is a proper service of notice on the remaining four respondents, too. On that application, the Mamlatdar is yet to pass orders. Aggrieved with, as the petitioners' counsel puts it,

the Mamlatdar's frequent adjournments even on the issue of notice serving, the petitioners have filed this Writ Petition.

Submissions:

Petitioners:

9. Shri Shailesh Henriques, the learned counsel for the petitioners, has drawn my attention to the affidavit one of the unserved respondents —that is, Sunifer Cardozo (an advocate)—filed before the Supreme Court. It was in a Miscellaneous Application after the SLP was disposed of. In that affidavit, she has shown the same address as shown in the notices issued to them after the remand.

10. In this context, Shri Henriques contends that Sunifer Cardozo filed the affidavit before the Supreme Court on 31.01.2020, and the petitioners sent the notice on 23.01.2020. Both are contemporaneous and contained the same address. Yet the endorsement reveals that the unserved respondents—including Sunifer Cardozo—have not been residing at the address the parties themselves have shown.

11. According to the petitioners' counsel, the respondents have been trying to evade the notice. They intend to drag the proceedings, *ad nauseam*. So he wants this Court to direct the Mamlatdar to rule on the application the petitioners have filed for a declaration that the service has been effected on the respondents.

Respondent No.4(g):

12. Shri B. Sardesai, the learned counsel for the respondent no.4(g), who is the son-in-law and legal heir, has supported the pleas the petitioner's counsel has advanced. According to him, the siblings have been trying to drag the proceedings without any justification.

Respondent Nos.1 to 3:

13. Ms. M. Correia, the learned Additional Government Advocate for the respondents no.1 to 3, has submitted that the petitioners have not applied for a declaration of service. Instead, they have applied for substituted service. That apart, she has raised a technical objection.

According to her, in terms of the Bombay High Court Appellate Side Rules 1960, a Single Judge has no jurisdiction to decide this Writ Petition. It must have been placed, she insists, before a Division Bench. To support her contentions, she has drawn my attention to Chapter 17, Rule 18 as well as Chapter 1, Rules 1 & 2 of the Bombay High Court Appellate Side Rules.

Reply:

14. In reply, the petitioner's counsel has submitted that on the earlier two occasions, that is in 2011 and in 2014, a learned Single Judge ruled on the disputes arising from some interlocutory applications. Therefore, the respondents no.1 to 3, who were parties then too, cannot turn around and take a different stand. They are thus stopped.

15. Heard Shri Shailesh Henriques, the learned counsel for the petitioners; Shri B. Sardesai, the learned counsel for the respondent no.4(g); and Ms. M. Correia, the learned Additional Government Advocate for respondent nos.1 to 3.

Discussion:

16. First I will rule on the objection raised by the respondents no.1 to 3. The petitioners' grievance is quotidian, and the issue they raised innocuous: an early disposal of an application. They are warm-up applications in a litigious tussle. But the learned counsel for the respondents 1 to 3, who are the state authorities, has tenaciously persisted with her plea. And in that tenacity, she has displayed industry rather than obstinacy. She has brought to my notice the relevant provisions and done her best to articulate on them. Her industry needs to be rewarded—even if it is in the negative.

17. True, on two earlier occasions, certain collateral issues reached this Court from the same proceedings. Then, the respective Single Judges adjudicated the issues. Admittedly, the respondents 1 to 3 did not object. That said, are they estopped now? They are not. When it is a question of *quorum non judicie*, the common law concept of estopple finds no place.

18. The Codes of Procedure usually deal with the courts presided over by a designated judge—for example, Junior Civil Judge, Senior Civil Judge, District Judge. Section 15 of Civil Procedure Code ("the Code") requires a suitor to institute a suite "in the Court of the lowest grade competent to try it". But this principle works in the descending order. That is, a matter to be decided by a District Court cannot be decided by a Senior Civil Judge's Court. So is the hierarchical adjudication between the Senior Civil Judge's Court and the Junior Civil Judge's Court. On the converse, however, this principal will not apply.

19. A District Court can decide the matter over which both the Junior and Civil Judges have jurisdiction. And a Senior Civil Judge can decide the matter over which the Junior Civil Judge has jurisdiction. As to the subject-matter or inherent jurisdiction, the assumption of adjudicatory powers in the descending order renders the decision susceptible to jurisdictional challenge; on the ascending order, it does not.

20. This Court in *Comunidade of Ponchovadi v. Silvia Ribeiro e Miranda*[1] has held that Section 15 CPC merely lays down a rule of procedure. It has nothing to do with a court's jurisdiction. A court of higher grade may return a suit triable by a court of lower grade for presentation to the proper Court if it thinks fit. Yet that court of higher grade has always jurisdiction to try the cases triable by the court of lower grade unless specially prohibited by law. All is said and done, Section 15 CPC deals with pecuniary jurisdiction, and the objection must have been taken at the earliest stage.

21. But the limitations on account of inherent or subject-matter jurisdiction are insurmountable. The High Court of Kerala in *Kanakku Karthiayani Pillai Narayani Pillai v. Neelacanta Pillai Raman Pillai*[2] has well nuanced the distinction between the inherent and non-inherent jurisdictions. According to it, the expression 'jurisdiction' is used in

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1AIR1971Goa, Daman and Diu36 (rendered by The Goa, Daman and Diu Judicial Commissioner's Court)
2AIR 1969 Ker 280

different senses. In the sense of inherent jurisdiction, it is a virtue of the Court and is not dependent on the consent or dissent of parties. And if the court lacks the jurisdiction, its orders and decisions remain *ultra vires* or void. So they are challengeable even in collateral proceedings. On the other hand, in the sense of pecuniary or territorial jurisdiction, the statutory limitation is waivable by the parties—such waiver will be presumed conclusively under Section 21 of the CPC and Section 11 of the Suits Valuation Act if objection is not taken before settlement of issues for trial.

22. Granted the jurisdictional limitations under CPC do not apply to constitutional adjudication, we must examine the position in the light of the Rules the High Court has framed under Article 225 of the Constitution. Besides, the jurisdictional issues in a High Court with Benches of varied compositions is dicey. Neither the principal of judicial hierarchy nor the administrative tag of subordination applies, in the strict sense, to the Benches of High Court. A Single Bench is not subordinate to a Division Bench and so on. But precedentially, the distinction carries weight. That said, this precedential constraint applies to even co-ordinate Benches.

23. It needs no reiteration that the Hon'ble the Chief Justice of a High Court is the Master of the Roaster, that the allocation of work to individual judges is the Chief Justice's sole prerogative, and that a judicial determination without roster allotment is a nullity. If we keep aside the Chief Justice's discretionary element from our consideration, the allocation of the matters among the Benches of fixed strength—say, Single Bench and Division Bench—depends on the High Court Rules.

24. Here, we need to consider the Bombay High Court Appellate Side Rules 1960. Rule 2 of Chapter I enumerates the matters a Single Judge can dispose of in an appeal. Those matters include appeals "(v) from orders under local or special Acts not having the force of a decree" and from "(e) all other applications incidental to or interlocutory or

arising out of or relating to the appeals or civil revisional applications pending or proposed to be Filed in the High Court".

25. For us relevant are the Rules 17 and 18 of Chapter XVII. This Chapter deals with petitions under Articles 226 and 227, and applications under Article 228 of the Constitution. In fact, Rule 17 requires a Division Bench, to be appointed by the Chief Justice, to dispose of all applications under Articles 227 and 228, on the appellate side. Rule 18 exempts certain matters from the purview of the Division Bench. It begins with a non-obstante clause and enumerates the matters a Single Judge can dispose of under Article 226 or 227. There are 46 items or applications listed under the Rule 18. All those applications a Single Judge can consider must be against "an order" or "a decree".

26. So Ms. Correia contends that in this writ petition there is no order. Once enumerated items do not include the petitioner's application; he must, then, approach the Division Bench, which holds the residuary adjudicatory powers. That is, all those matters that have not been listed under Rule 18 must be taken as included under Rule 17. Is it so?

27. If we accept Ms. Correia's arguments, what obtains is this: if an order is passed, a Single Judge gets jurisdiction, say, under Article 227 over that order. If no order is passed, it must be the Division Bench that gets the jurisdiction. And this jurisdiction is not to adjudicate but to direct the court or tribunal to act—to pass an order. In other words, under the Bombay High Court Appellate Side Rules, a Single Judge stands denuded of any supervisory jurisdiction over a matter unless it is found enumerated. I wonder such a drastic constitutional constriction should be read into the Rules—a piece of subordinate legislation pitted against the Constitutional mandate.

28. Besides, an order refused to be passed is an order passed, for the very refusal is an order. And an order not yet passed is an order refused to be passed by the time the inaction is questioned. Thus, an appellate or revisional power to correct an order comprehends within itself the power

to require the court or tribunal to pass an order in a timeframe. The supervisory course-correction includes the process—what leads to an order—as well as the product—the very order.

29. So I hold that the objection the respondents 1 to 3 have raised cannot sustain itself. It has failed.

Back to Brass-tacks:

30. Now, I move on to the issue the petitioners have raised. The dispute began in 1992. Under Agricultural Tenancy Act in Goa, the procedure is protracted. The landowner may approach the Civil Court for a declaration, for recovery of possession, or both. More often than not, the tenant raises mundkarial right. That question raised, the forum of adjudication changes; the matter goes to the Mamlatdar—a quasi-judicial authority. He should, first, rule on the mundkarial rights. That ruling, then, will run its entire course through the adjudicatory avenues. First, appeal before the Deputy Collector, later a revision before the Administrative Tribunal, thereafter a writ petition before this Court, and finally an SLP before the Supreme Court. It is almost always the norm; a shorter course of litigation is an exception, though. In fact, this case has already run its gamut but still remains with the Mamlatdar.

31. Once the mundkarial issue becomes final, the matter comes back to the civil court, where the original civil suit must have been, by then, hibernating for, at least, a decade or two. Risen from that slumber, the suit resumes its journey. It continues up and down all the adjudicatory avenues, once again. I wish the length of litigation in these matters were a little shorter, lest it should amount to a war of nerves and attrition.

32. In this matter, the sole objector died, his legal representatives were brought on record. But they remained unserved. The appellate forum rightly remanded the matter. The petitioners carried the matter all the way up to the Apex Court. If anyone were to take the blame for the delay, it would be the petitioners themselves.

33. That said, even the unserved respondents do not seem to be *bona fide* in their approach—at least, going by the record. In a Misc. Application before the Supreme Court, they showed one address. To the same address the petitioners sent a notice just a fortnight earlier. The notice was returned unserved. On the one hand, these unserved respondents swear before the Supreme Court that they have been living at a particular address; on the other hand, they ensure the notice remains unserved. The report says they live elsewhere. That 'elsewhere' no one knows—not even the family's son-in-law, the respondent No.4 (g), who on his own published a notice, emailed it, besides sending information through SMS and WhatsApp. Even his wife, the other respondent and sister to those unserved respondents, does not know where they live!

34. The ways of litigation are strange; its means are mysterious. And nothing is unfair in the litigious war, it seems.

35. When I queried with the learned Counsel for the respondent no.4(g), the son-in-law, he avers that the unreserved respondents are not residing at the address shown in the notice and in the affidavit. Yet he insists that they have been aware of the proceedings but are keeping away only to drag them.

36. The fact remains that the Apex Court has given a time frame and deadline for the Mamlatdar to dispose of the proceedings. For the proceedings began in 1992. Of some relevance is the fact that this matter has already been transferred from the Joint Mamlatdar III to Mamlatdar I. It was on the allegation of bias. The time Apex Court fixed for the Mamlatdar to dispose of the proceedings will end by December 2020. At this stage, this Court does not intend to issue any directions affecting the quasi-judicial authority's discretion in proceeding with the matter.

37. This Court, indeed, is disinclined to supervise how and when the Mamlatdar should consider each application before the timeframe ends. I leave it to the Mamlatdar's discretion. Even on the application the

petitioners filed about the service of notice on the remaining respondents, I trust the learned the Mamlatdar will act with dispatch.

38. I need not reiterate the importance of all judicial forums in the country complying with the Apex Court's directions—including the adherence to the timeframe it fixes.

With these observations I dispose of the writ Petition.

DAMA SESHADRI NAIDU, J.

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NITI K HALDANKAR

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