

Sheik Madar Vs. Bhagwan

Sheik Madar Vs. Bhagwan

SooperKanoon Citation : sooperkanoon.com/339912

Court : Mumbai

Decided On : Jan-31-1973

Reported in : AIR1973Bom333; 1973MhLJ606

Judge : Padhye, J.

Acts : Maharashtra Revenue Tribunal Regulations, 1958 - Regulation 35; Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959 - Rule 54-B; [Maharashtra Land Revenue Code, 1966](#) - Sections 243; Bombay Mamlatdars' Courts Act, 1906 - Sections 19(4)

Appeal No. : Special Civil Appln. No. 1111 of 1972

Appellant : Sheik Madar

Respondent : Bhagwan

Advocate for Def. : M.S. Deshpande, Adv.

Advocate for Pet/Ap. : R.N. Deshpande, Adv.

Judgement :

ORDER

1. At the time of admission of this special civil application, rule was limited only to the question regarding the power of the Tribunal to award costs of the revision and further to award the costs of the lower Courts also. The petition, therefore, is heard

only to this limited point. The other questions being questions of fact and already been concluded by the decision of the Tribunal, no interference was thought necessary at the stage of admission. That question on merits, therefore, is not gone into and so far as the merits of the case are concerned, this special civil application must be taken to have been dismissed.

2. The proceedings before the Revenue Courts arose on a reference made by the Civil Judge under Section 125 of the Bombay Tenancy and Agricultural Lands Act, 1958 (hereinafter called for brevity. 'The Tenancy Act'). The Tenancy Naib Tahsildar to whom the issue was referred by the Civil Court for determination, gave a finding that the defendant was a partner in cultivation and not a tenant and that the defendant failed to prove that he was tenant of the suit land. The defendant was Sheik Madar, the present petitioner. The Tenancy Naib-Tahsildar did not give any direction as regards the costs to be borne by the party concerned. This order of the Tenancy Naib Tahsildar was challenged in appeal before the Special Deputy Collector, who by his order dated 24-8-1970 maintained the order of the Tenancy Naib Tahsildar and dismissed the appeal. He also did not give any direction as regards the costs to be paid by one party to the other. The contending tenant Sk. Madar then filed a revision application before the Maharashtra Revenue Tribunal and this revision application was held to be barred by time by the Maharashtra Revenue Tribunal. On that ground itself, the revision application was liable to be dismissed and was dismissed. The Revenue Tribunal, however, still went in the merits of the case, perhaps in order to complete the judgment and not to leave any scope for remand, if any, and also held on the merits of the case that the petitioner Sk. Madar failed to prove that he was a tenant of the field. Accordingly, the Revenue Tribunal confirmed the decisions of the Tenancy Naib Tahsildar and the Special Deputy Collector. While reaching this finding the Revenue Tribunal also was of the view that the plea taken by the petitioner Sk. Madar was a false one and he had tried to support the false pleas by production of perjured testimony of himself and his witnesses. The Tribunal further observed that Sk. Madar had misused legal forum and, therefore, he was directed to pay costs of respondent in all the three Courts. The Revenue Tribunal assessed the costs in the first Court at Rs. 150/-, those in the appellate Court at Rs. 50/- and those before it at Rupees 100/-, totalling to Rs. 300/-. It further gave a direction

that these costs be deposited for payment to the respondent in the first Court on or before 3-9-1972 and if the costs are not so deposited, the amounts are liable to be recovered from Sk. Madar as arrears of land revenue under Section 106 and further gave a direction that he will not be granted time to make the payment for any reason. The rule was limited to these directions regarding the costs.

3. At the hearing, Mr. R. N. Deshpande for the petitioner has raised much wider questions but it is not necessary to go in those wider questions in this petition and I will confine myself only to the limited question that arises for the purpose of deciding the question canvassed.

4. Mr. R. N. Deshpande, accepts the position that in all enquiries and proceedings commenced on the presentation of the application under Section 101 of the Tenancy Act, the Tahsildar or the Tribunal is to exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906, and shall, save as provided in Section 36, follow the provisions of the said Act, as if the Tahsildar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented under Section 7 of the said Act. Section 19 (4) of the Mamlatdars' Courts Act, 1906, provides that where the Mamlatdar's finding upon the issues in the favour of the plaintiff, he shall make such order, not being in excess of the powers vested in him by Section 5, as the circumstances of the case appear to him to require; and where his finding is in favour of the defendant, he shall dismiss the suit. It further provides that in either case the costs of the suit, including the costs of execution, shall follow the decision. Section 101 of the Tenancy Act requires that save as expressly provided by or under this Act, all inquiries and other proceedings before the Tahsildar or Tribunal shall be commenced by an application which shall contain the necessary particulars. Then the particulars have been given under Section 101 of the Tenancy Act which are required to be stated in the application. It is the contention of MR. R. N. Deshpande that the proceedings in the instant case which came to the Tahsildar for the determination of an issue referred to him by the Civil Court was not an enquiry or proceeding commenced on the presentation of application under Section 101 of the Tenancy Act and, therefore, in deciding the proceedings on a reference under Section 125 of the Tenancy Act, the Tahsildar has no powers as

the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906, and therefore the powers of the Mamlatdar to award costs as contemplated by Section 19 (4) of the Mamlatdars' Courts Act 1906, are not conferred on the Tahsildar who acts on the reference being made to him under Section 125 of the Tenancy Act. Mr. R. N. Deshpande's contention seems to have much substance in view of the provisions of Section 102 of the Tenancy Act that the proceedings on a reference under Section 125 of the Tenancy Act could not fall under Section 101. To such a proceeding the procedure provided in Section 102 of the Tenancy Act will not therefore be applicable. We are, therefore, to go to the Rules framed under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959. Rule 54-B of these Rules provides that in all enquiries and proceedings to which the provisions of Section 102 do not apply the procedure to be followed, in matters not provided for by or under the Act, shall be that prescribed for Revenue Officers and Revenue Courts under Chapter IV of the Madhya Pradesh Land Revenue Code, 1966, corresponds to Chapter IV of the M. P. Land Revenue Code, 1954, and the provisions in these two Chapters are, more or less, similar. Chapter XII of the Maharashtra Land Revenue Code or Chapter IV of the M. P. Land Revenue Code lays down a detailed and complete procedure as to who the Revenue Officer has to proceed in an enquiry before him and Section 243 of the Maharashtra Land Revenue Code which corresponds with Section 34 of the M. P. Land Revenue Code empowers the Revenue Officer to give and apportion costs incurred in any case or proceeding arising under this Code, that is the Land Revenue Code, or any other law for the time being in force in such manner and to such extent as he thinks fit. There is a proviso to these sections which states that ordinarily the fees of the legal practitioner shall not be allowed as costs in any such case or proceedings, unless such officer considers otherwise for which reasons are to be recorded by him in writing. Thus, the awarding of the fees of a legal practitioner is by way of a special case or by way of an exception to the general rule.

5. Now, in the instant case, since the procedure that has to be followed is under Chapter IV of the Madhya Pradesh Land Revenue Code or Chapter XII of the Maharashtra Land Revenue Code, the Tahsildar though he may not have the powers, as those of a Mamlatdar as contemplated by Section 102 of the Tenancy Act, would still have the powers of a Revenue Officer under Chapter XII of the

Maharashtra Land Revenue Code and in a proceeding before him though it comes on a reference he would be entitled to award costs to the successful party. So far, however, as fees of the legal practitioner are concerned, he would have the power to award them only for special reasons. It is not, therefore, correct to say that the Tenancy Naib-Tahsildar, who enquires into a proceeding on a reference under Section 125 of the Tenancy Act, is powerless to award costs to the successful party.

6. It is not known whether the Tenancy Naib-Tahsildar was aware of his powers to award costs to the successful party but as a fact no costs have been awarded to the successful party while passing his orders. In fact, there is no reference to the question regarding the granting of costs to either party. It has to be presumed that the Tahsildar was aware of his powers to award the costs and while not making a mention about the payment of costs by a party to the other, he must be taken to have exercised his powers in not granting any costs, to the successful party. Section 243 of the Maharashtra Land Revenue Code only gives the power to a Revenue Officer to award costs but leaves it to his discretion to grant the costs or not and if so to what extent. The provisions of Section 243 of the Maharashtra Land Revenue Code are in contrast to the provisions of Section 19 (4) of the Mamlatdars' Courts Act, 1906. They are clearly discretionary and do not require the Revenue Officer to give any reasons to refuse costs to a successful party. Section 19 (4) of the Mamlatdars' Courts Act provides that the costs of the suit shall follow the decision. It leaves no discretion to the Mamlatdar to refuse the costs. If for any reason, the Mamlatdar declines to award costs to a successful party, then it would be necessary for him to give sound reasons as to why he deprives the successful party of his costs. That does not appear to be the case with Section 243 of the Maharashtra Land Revenue Code. So far as the fees of the legal practitioner are concerned, they are not ordinarily allowed but awarded only as a special case. However, in the fitness of things, the order ought to show why the ordinary costs of the proceedings are not awarded to the successful party so as to avoid the criticism of acting arbitrarily in refusing the costs. In appeal also, the learned Special Deputy Collector did not make any order as to costs while dismissing the appeal. So far as the costs in the appeal are concerned as well as before the Revenue Tribunal it would not make any difference whether the

proceedings before the Tahsildar started on the presentation of an application under Section 101 of the Tenancy Act or are initiated on a reference made by the Civil Court to him under Section 125 of the Tenancy Act. The provisions of appeal and revision are independent of the nature of the initiation of the proceedings. Section 107 of the Tenancy Act provides for appeals against orders made under several provisions of the Tenancy Act, which includes an order under Section 125 also, as it does against, an order under Section 36 and many other section (5) of Section 107 of the Tenancy Act empowers the Collector to award costs. It speaks of the power of the Court to award the costs but does not lay down any obligation on the Collector as is done in Section 19 (4) of the Mamlatdars' Courts Act, 1906, or Section 35 of the Code of Civil Procedure to award costs to a successful party. It is wholly in the discretion of the Court but the discretion ought not to be used arbitrarily and some indication should be given as to why the costs are not awarded to a successful party. So far as the Revenue Tribunal is concerned, the powers to award costs are to be found in the Revenue Tribunal Rules framed in exercise of powers conferred by Section 325 of the Maharashtra Land Revenue Code. These are the Maharashtra Land Revenue (Revenue Tribunal) Rules, 1967. Regulation 35 of the Bombay Revenue Tribunal Regulations, 1958 also provides that the Tribunal shall state at the end of its decision whether the appeal or application is dismissed or allowed wholly or in part and mention the relief, if any, granted to the applicant or appellant and also award the costs if any. The Revenue Tribunal, therefore, has got power under this regulation as well as the rules to award costs of the appeal or application revision before it. This regulation or rule does not empower the Revenue Tribunal also to award the costs of the lower Courts which the lower Courts have not awarded, particularly when the question about costs was not agitated by the party aggrieved by way of revision.

7. No regulation or rule empowers the Revenue Tribunal or any of the Revenue Officers to award any sum as compensatory costs, as is provided in Section 35-A of the Code of the Civil Procedure. The power of the Revenue Officers is limited to the granting of the costs incurred in the proceeding itself and does not extend to the granting of any compensatory costs. The costs in the proceedings would, therefore, be actual costs incurred by a party which is capable of being computed and is not a matter of any guess.

8. The position, therefore, that emerges is that even in a proceeding before the Tahsildar arising out of a reference under Section 125 of the Tenancy Act, all the Revenue Officers right from Tahsildar to the Revenue Tribunal, have got the power to award costs of the proceeding before them and it is wholly in the discretion of that authority either to grant or to refuse costs to a party even though successful. In the instant case, neither the Tahsildar nor the Special Deputy Collector has found the case of the petitioner to be a false one. A particular stand was taken by the plaintiff and a different stand was taken by the defendant and on the rival contentions of the parties, the Tahsildar determined as to whether the petitioner was a tenant or not. On the appreciation of the evidence and the construction of the document the Tahsildar took a particular view and held that the petitioner was not a tenant. That view was confirmed by the Special Deputy Collector and later by the Revenue Tribunal. Having found against the petitioner, the Tahsildar or the Special Deputy Collector did not think it fit to award any costs to the respondent though the respondent had succeeded in those proceedings before those Courts. The Revenue Tribunal therefore had no power to grant the costs to the respondent, of the two lower Courts also, as no provision in the Act or the Rules gives him any such power to award those costs, more so when the order, not proving for costs was not challenged by the aggrieved party. So far as the costs before the Revenue Tribunal are concerned, it is undoubtedly within the power of the Revenue Tribunal to award the costs in the proceedings before it to a successful party. The revision application before the Maharashtra Revenue Tribunal was dismissed by it, upholding the findings of the two Courts and it was within the powers of the Revenue Tribunal to award the costs of the revision to the present respondent who had succeeded before it and against the petitioner whose revision application was dismissed. It cannot therefore, be said that the Revenue Tribunal was not authorised to award any costs. However, the Revenue Tribunal could not have awarded the costs which as a matter of fact, have not been incurred by the successful party to whom the costs are awarded. The costs to be awarded could in no case exceed the costs incurred by a party, which would include the fees of the counsel and the costs had to be quantified and awarded to a party. In this case, the Revenue Tribunal has awarded a lump sum amount of Rs. 100/- without any break up. The order even does not say that the amount of

Rs. 100/- awarded by it is inclusive of the fees of the legal practitioner. So far as the first two Courts are concerned, the fees of the legal practitioner could be awarded only for special reasons, but there does not appear to be any limitation so far as the Maharashtra Revenue Tribunal is concerned and it appears to me that the Revenue Tribunal could award the costs which would represent the costs actually incurred by the party in conducting that proceeding including the fees of the legal practitioner which could be fixed at a reasonable amount. The expenses would be the expenses which have been incurred on account of court-fees, on the Appeal or Revision, on wakalatnama, process fees, application and such other items. The Revenue Tribunal, therefore, while awarding the costs to the successful party ought to have made a direction for the payment of the costs incurred by the successful party and also ought to have quantified a sum to be paid by the unsuccessful party on account of the fees of the legal practitioner which however, should be a reasonable amount commensurate with the dispute in the case. here in the instant case, the Revenue Tribunal has granted an amount of Rs. 100/- as costs of the proceedings before it which could be taken to include the counsel's fees. Though this direction regarding costs is not strictly in order, I would not like to interfere with this direction because the amount of Rs. 100/- which would include all the costs in the revision application including counsel's fees, could not be said to be excessive or unreasonable. To that extent, I maintain the order of the Revenue Tribunal regarding the payment of costs before the Tahsildar and Deputy Collector are concerned. I am of the view that the Revenue Tribunal has no powers to grant costs of the proceedings before those Courts as that was a matter within the jurisdiction of the Tahsildar and the Deputy Collector and those orders were not challenged. To what extent the order of the Maharashtra Revenue Tribunal is set aside. The revision application partly succeeds and is allowed to the extent indicated. Since this revision application involved only a question of law to be decided and the rule was limited only to that question I direct that there will be no order as to costs of this petition.

9. Revision partly allowed.