

Kalidas Vs. Wamanrao

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Court : Mumbai

Decided On : Aug-24-1979

Reported in : AIR1981Bom28

Judge : Joshi, J.

Acts : Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 - Sections 21 and 120; [Code of Civil Procedure \(CPC\), 1908](#); [Limitation Act, 1963](#) - Sections 4 and 5 - Schedule - Article 137; Limitation Act, 1908 - Schedule - Article 181; [Constitution of India](#) - Article 227; Contempt of Courts Act, 1952 - Sections 3(1); Evidence Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 193, 219 and 228; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476; Employees' State Insurance Act - Sections 78; Tenancy Act - Sections 36(3-A), 102, 106-A and 115; Uttar Pradesh Land Revenue Act, 1901 - Sections 4(8) and 5; [Mamlatdars' Courts Act, 1906](#) - Sections 36

Appeal No. : Special Civil Appln. No. 1661 of 1973

Appellant : Kalidas

Respondent : Wamanrao

Advocate for Def. : N.S. Munshi, Adv.

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

Judgement :

ORDER

1. The petitioner is the landholder owning field Survey No. 56/2, area 5 acres 24 gunthas, in village Taroda in Pusad Tahsil of Yeotmal District. The respondent was originally a tenant cultivating this land. The respondent surrendered his tenancy right on 30-9-1961 by a surrender deed executed in favour of the petitioner. The surrender was verified by the Naib Tahsildar, Pusad on 11-10-1961. By his order the Naib Tahsildar, Pusad, after having recorded the statement of the Respondent in the absence of the landlord found that the respondent had executed the surrender deed willingly and voluntarily. The Naib Tahsildar, Pusad, also came to the conclusion that the total acreage of land including the surrendered land with the petitioner was less than three family holdings and, therefore, he was entitled to resume the land in question under Section 21 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act). The Naib Tahsildar, therefore, endorsed in his order:

'The instrument of surrender dated 30-9-1961 is endorsed. Accordingly, the lessee has already left possession.'

Thereafter it seems at some date during the year 1963-64 it was contended that the respondent had forcibly taken possession of the land, and therefore on 21-4-1971 the petitioner filed an application under Section 120 (c) of the Tenancy Act before the Sub-Divisional Officer, Pusad, for summary eviction of the respondent. This proceeding was contested by the respondent. The respondent contended that he had not given possession of the land to the petitioner. The petitioner had not taken possession through the Court. The surrender deed was a nominal and sham document, not intended to be acted upon. The respondent was all along in continuous possession of the suit land and he denied that he had taken forcible possession of the land in the year 1963-64. The respondent also contended that in October, 1963 the petitioner had agreed to sell this field to the respondent for Rs. 1500/- and the sale deed was to be executed in the month of the following year. After recording evidence, the Sub Divisional Officer, Pusad by his order D/- 14-1-72 negatived the contentions of the respondent and came to the conclusion that

the possession of the respondent over the suit land was unauthorised and wrongful, within the meaning of Section 120 (c) of the Tenancy Act. The Sub Divisional Officer, Pusad, therefore, allowed the application of the petitioner, and, ordered summary eviction of the respondent from the suit land. Aggrieved by this decision of the Sub Divisional Officer, Pusad, the respondent preferred a revision application to the Maharashtra Revenue Tribunal, which by its order dated 1-2-1973 allowed the revision application, set aside the order of the Sub Divisional Officer, Pusad, and dismissed the application of the petitioner under Section 120 (c) of the Tenancy Act. By this writ petition under Article 227 of the Constitution, the petitioner has challenged this order of the Revenue Tribunal.

2. The Revenue Tribunal concurred with the finding of the Sub Divisional Officer on the point of validity of the surrender and also observed:

'The verification order was passed on 11-10-61. The order sheet of that date unmistakably indicates that the surrender was accepted as valid and voluntary and as to possession it was said that as it was already delivered it should be retained by the landlord..... ..

The tenancy was therefore terminated.' However the Revenue Tribunal observed:

'Waman re-entered in possession in 1963 not as a tenant, but on the basis of an agreement of sale. It was, therefore, the case of a tenureholder in possession who was ousted by a stranger under a contract of sale. There was no question of tenancy after 11-10-61 or in 1963-64.

To such a case 120 (c) will not apply. The applicant should have something to do with the tenancy Act. In the instant case, according to Kalidas, Waman was rank trespasser and, therefore, Kalidas could not utilise the summary remedy under Section 120 of the new Tenancy Act.'

This was one of the grounds which led the Revenue Tribunal to allow the Revision Application and to dismiss the application of the petitioner under Section 120 (c) of the Tenancy Act. The second ground on which the Revenue Tribunal dismissed the application of the petitioner under Section 120 (c) of the Tenancy Act was the

ground of limitation. The Revenue Tribunal held that the Tenancy Act did not specify any period of limitation for an application under Section 120 (c) of the Tenancy Act and therefore by reason of Section 29 of the [Limitation Act, 1963](#) the application under Section 120 (c) of the Tenancy Act would be governed by the provisions of the residuary Article 137 of the said Limitation Act prescribing a period of three years for making application, time starting to run from the date when the right to apply accrued to the petitioner. On the petitioners own allegation, the respondent had entered into unauthorised possession of the suit land some time in the year 1963-64; whereas the application under Section 120 (c) of the Tenancy Act was filed on 21-4-1971, that is, admittedly beyond three years from 1963-64. Therefore, the Revenue Tribunal held that the application of the petitioner under Section 120 (c) of the Tenancy Act was barred by limitation.

3. On the first point, it is clearly conceded by both the sides before me that the finding of the Revenue Tribunal is not correct. A plain reading of the provisions of Section 120 (c) of the Tenancy Act shows that an application for summary eviction of the person in possession of any particular land could be filed under that provision if it were shown that the person in possession was (1) un-authorised occupying or wrongfully in possession of the said land, (2) to the use and occupation of which he is not entitled under the said provisions of the Tenancy Act and (3) the provisions of the Tenancy Act do not provide for the eviction of such person. All these conditions were satisfied in this case. It was not further necessary, as wrongly observed by the Revenue Tribunal, that tike taking of possession by the unauthorised person should have something to do with the tenancy rights over the land. Therefore, it is clear, this is a proper case in which the petitioner could have applied for eviction of the respondent under Section 120 (c) of the Tenancy Act

4. That leaves for my consideration the only other ground which led the Revenue Tribunal to dismiss the application of the petitioner under Section 120 (c) of the Tenancy Act, that is the ground of limitation under Article 137 of the Limitation Act. The question is whether the provisions of Article 187 of the Limitation Act would govern an application filed under Section 120 (c) of the Tenancy Act

5. In Kerala State Electricity Board v. T.P. Kunhaliumma : [1977]1SCR996 , the Supreme Court has observed in para 18 of the reported judgment:

'The alteration of the division as well as the change in the collocation of words in Article 137 of the [Limitation Act, 1963](#) compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In 1908 Limitation Act, there was no division between applications in specified cases and other application as in the 1963 Limitation Act. The words 'any other application' under Art 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant, satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.'

It may be observed that the Tenancy Act does not provide for any specific period of limitation for an application under Section 120 (c) of the Tenancy Act There are even no words anywhere in the Tenancy Act expressly excluding the operation of any of the provisions of Sections 4 to 24 of the [Limitation Act, 1963](#) in respect of an application under Section 120 (c) of the Tenancy Act Therefore, as observed by the Supreme Court in Kerala State Electricity Board case cited above, the provisions of Article 137 would be applicable to an application for summary eviction under Section 120 (c) of the Tenancy Act, provided it could be said to be an application to a 'Court'. That calls for determination of the question whether the Collector acting under the provisions of Section 120 of the Tenancy Act could be said to be a 'Court'.

6. A similar question came up for determination before the Supreme Court in Brajnandan Sinha v. Jyoti Narain : 1956 CriLJ156 . The question that arose for determination in that case was whether a Commissioner appointed under the provisions of the Public Servants (Inquiries) Act, 1850 for making an inquiry under

that Act was a 'Court' within the meaning of Section 3 of the Contempt of Courts Act, 1952. In that case the Supreme Court observed that the word 'Court' was not defined in the Contempt of Courts Act and the expression 'Courts subordinate to the High Court' in Section 3 (1) of the Contempt of Courts Act 1952 would prima facie mean the Courts of law subordinate to the High Court in the hierarchy of Courts established for the purpose of administration of justice throughout the Union. The Supreme Court also observed that the definition of 'Court' in Section 3 of the Evidence Act is not exhaustive but was framed only for the purpose of that Act, and is not to be extended where such an extension is not warranted. The Supreme Court also observed that the definitions of the words 'Judge' and 'Court of Justice' in the Penal Code indicate that the pronouncement of a definitive judgment is considered the essential sine qua non of a Court, and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons, it cannot be predicated that he or they constitute a Court. Therefore, in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of judicial tribunal power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

7. In Para 27 of the reported judgment in *Brajnandan v. Jyoti Narain* : 1956 CriLJ156 the Supreme Court observed apart from the above considerations which weighed with the Court in that case:

'We have also the provisions of Section 8 of the Act itself which go to show that the Commissioners are given certain powers of the Civil and Military Courts in regard to punishing contempts and obstruction to their proceedings, summoning of witnesses, compelling the production of documents and for service of their process as also the same protection as Zilla and City Judge.

The very fact that this provision had got to be enacted shows that the position of the Commissioners was not assimilated to that of judges and that they did not constitute Courts of Justice or Courts of law, but were mere fact finding tribunals deriving whatever powers they could exercise under the very terms of the Act which created them. The power of punishing contempts and obstruction to their

proceedings as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898 was also similar in its nature and the very nature and extent of the power indicated that they were not Courts in the ordinary sense of the term.

No such provision would have been necessary to be enacted if in fact they were constituted Courts of Justice or Courts of law and it is no argument to say that these provisions were enacted even though they were not strictly necessary merely for the sake of abundant caution or clarification of the position. We are of the opinion that the Commissioner appointed under the Act, having regard to the circumstances above set out does not constitute a Court within the meaning of the term as used in the Contempt of Courts Act.'

A similar question arose for determination before this Court in *Popular Process Studio v. Employees' State Insurance Corporation* : AIR1970 Bom413 . There the question which arose was whether the Employees' State Insurance Court was a 'Court' i.e. a Court of law for administration of justice. Bal J. deciding that case observed that Section 78 of the Employees' State Insurance Act enacted that the Employees' Insurance Court shall have all the powers of a Civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a Civil Court within the meaning of Section 195 and Chapter XXXV of of the Code of Criminal Procedure, 1898. On the observations of the Supreme Court in *Brajnandan Sinha's* case, it is observed that this deeming provision made it clear that the Employees' Insurance Court was not a 'Court' in the strict sense of the term and, therefore, the provisions of Article 137 of the [Limitation Act, 1963](#) would not govern an application made to that Court.

8. Examining in that light the provisions of the Tenancy Act, it has to be noted first that Section 115 of the Tenancy Act provides that all inquiries and proceedings before the Tahsildar, the Tribunal, the Collector, and the Maharashtra Revenue Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code. Again Section 106-A of the Tenancy Act enacts that for the purposes of an inquiry under Sub-section (3A) of

Section 36 the Collector shall have the same powers as are vested in Courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit, namely: (a) proof of facts by affidavits, (b) summoning and enforcing attendance of any person and examining him on oath, and (c) compelling the production of documents. It would follow as a corollary that a Collector exercising his powers under the Tenancy Act otherwise than under Section 36 (3-A) of the Tenancy Act would not be a 'Court' under the Code of Civil Procedure even by legal fiction. Even when the Collector is exercising the power under Section 36 (3A) of the Tenancy Act, he would not be a Court in the strict sense of the term, except for the limited purposes specified under Section 106A of the Tenancy Act, by reason of the operation of legal fiction enacted under that section. Narrowing down the inquiry to the limited scope of operation of the Collector under Section 120 of the Tenancy Act, it has to be noted that the marginal note to that section shows that it is only a procedure for summary eviction of the unauthorised person on the land. The section itself enacts that any such person may be summarily evicted by the Collector after such inquiry as he deems fit. There is no mandate in the section that the inquiry is to be a judicial inquiry or necessarily an inquiry after hearing both sides and recording of evidence, though perhaps that would be necessary in observance of the principles of natural justice. What is important further is that the Collector may act suo motu even without an application being made to him under Section 120 of the Tenancy Act, and, of course, in those cases no question of application of any period of limitation for such application, under Article 136 of the [Limitation Act, 1963](#) could at all arise. Since it is a summary inquiry, it may not necessarily even be a judicial inquiry. In fact, it has been observed by this Court in the Full Bench decision in *Kashiram v. Maharashtra Revenue Tribunal, Nagpur* : AIR1970 Bom366 of the reported judgment:

'In construing Section 120 it must moreover be remembered that it creates a summary remedy, summary in the sense, that Collector has not to make a judicial inquiry but only 'such inquiry as he deems fit'. This of course does not mean that he need not make any inquiry whatever, but clearly that he must inform himself as best he can from the records available in his department or the material placed before him by the parties. That it is a summary remedy and that the Collector has only to make 'such inquiry as he deems fit' does not however absolve the Collector

from making a proper order giving reasons for his conclusions.'

From what has been discussed above, it is difficult to hold that a Collector acting in a summary inquiry proceeding under Section 120 of the Tenancy Act could be said to be a 'Court' within the strict sense of that term. Mr. Munshi arguing for the respondent has placed reliance on the decision in Harprasad v. Hans Ram AIR 1966 AU 124. It has been held in that case that a Tahsildar dealing with a mutation proceeding is a revenue court i.e. a 'Court' for the purpose of Section 195 (2) read with Section 476 of the Criminal Procedure Code. The decision in that case turned on the provisions of Sections 4(8) and 5 of U. P. Land Revenue Act, 1901 and the notification issued by the State Government defining the mutation proceedings as judicial proceedings and because the Tahsildar dealing with a mutation proceeding decides a lis by a definitive judgment on the basis of evidence recorded in accordance with the Evidence Act, there can be no doubt that he is a link in the hierarchy of revenue courts as envisaged under Section 195. Section 4 (8) of the United Provinces Land Revenue Act, 1901 actually defined 'Revenue Court' as meaning all or any of the following authorities, that is to say, the Board and all members thereof, Commissioner, Additional Commissioners, Collectors, Additional Collectors, Assistant Collectors, Settlement Officer, Assistant Settlement Officers, Record Officer and Assistant Record Officers and Tahsildars. The decision in that case seems to have turned on the definition of the 'Revenue Court' and on the Government notification issued by the State Government defining mutation proceedings as judicial proceedings. The decision in that case would not, therefore, be of any assistance in the present case.

9. It has also to be noted that under Section 102 of the Tenancy Act, the Tahsildar or Agricultural Lands Tribunal making an inquiry on presentation of application under Section 102 of the Tenancy Act has to exercise the same powers as the Mamlatdars' Court under the [Mamlatdars' Courts Act, 1906](#) and save as provided in Section 38 they are to follow the provisions of the Mamlatdars' Courts Act. However, clearly this provision would not be applicable to the Collector because he neither comes under the category of the Tahsildar nor the Agricultural Lands Tribunal. As indicated above, the provisions of Section 106-A of the Tenancy Act make him a Civil Court for certain restricted purposes by operation of a legal fiction

only when he is dealing with an inquiry under Section 36 (3A) of the Tenancy Act. When the Collector is acting under Section 120 of the Tenancy Act, he is not even making a judicial inquiry.

10. In my view the Collector acting under Section 120 of the Tenancy Act is not a 'Court' in the strict sense of that term. In that view the provisions of Article 137 of the [Limitation Act, 1963](#) would not be applicable and an application under Section 120 of the Tenancy Act would not be governed for the purposes of limitation for filing the application, by the provisions of Article 137 of the Limitation Act. No specific period of limitation for making such application is provided under the Tenancy Act. Therefore, it would seem to me that the decision of the Revenue Tribunal dismissing the application of the petitioner under Section 120 (c) of the Tenancy Act as barred by limitation under Article 137 of the Limitation Act was clearly erroneous.

11. In the result, this writ petition is allowed. The order of the Revenue Tribunal dated 1-2-1973 is quashed and the order of the Sub-Divisional Officer. 'Pusad, dated 14-1-1972 shall stand restored. In the circumstances of this case, which turns mainly on the legal interpretation governing the applicability of Article 137 of the [Limitation Act, 1963](#) to the application under Section 120 of the Tenancy Act, there shall be no order as to costs.

12. Petition allowed.