

Supreme Court of India

Vajesingh Salambhai Naik & Ors vs State Of Gujarat & Anr on 1 April, 1966

Equivalent citations: 1967 AIR 148, 1966 SCR 139

Author: V Ramaswami

Bench: Ramaswami, V.

PETITIONER:

VAJESINGH SALAMBHAI NAIK & ORS.

Vs.

RESPONDENT:

STATE OF GUJARAT & ANR.

DATE OF JUDGMENT:

01/04/1966

BENCH:

RAMASWAMI, V.

BENCH:

RAMASWAMI, V.

SUBBARAO, K.

CITATION:

1967 AIR 148                      1966 SCR 139

CITATOR INFO :

D                      1977 SC 22 (5)

ACT:

Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, ss. 13, 17(1), 20--Decision of appeals under the Act by Tribunal Whether must be on merits in every case-Regulation 21 made under the Bombay Revenue Tribunal Act, 1958--Limitation for application for restoration of appeals dismissed for non-prosecution.

HEADNOTE:

The appellants had applied for compensation to the Jagir Abolition Officer under s. 13 of the Bombay Merged Territories and Areas (Jagir Abolition) Act, 1953 in respect of their proprietary jagirs. Against the orders of the said officer they preferred appeals to the Revenue Tribunal which were dismissed for non-prosecution. The appellants thereupon filed applications for restoration of the appeals within 30 days of the receipt of the orders of dismissal of the appeals. These applications were dismissed as time-barred, the Tribunal taking the view that time was to be calculated from the date of the order. The appellants' applications under Art. 227 of the Constitution to the High Court failed and they came by way of special leave, to this

Court. It was contended on behalf of the appellant that (i) the Tribunal even while deciding ex-parte had to decide on merits and that (ii) the applications for restoration were filed within the time prescribed in Regulation 21 made under the Bombay Revenue Tribunal Act, 1958 which applied to the case.

HELD: (i) In the context of s. 20 and ;in view of the express language of s. 17(1) of the Jagirs Abolition Act the Tribunal had no power to dismiss the appeals in question for non-prosecution, but it was obligatory on its part to decide the appeals on merits and to record its decision even though there was default on the part of the appellant to appear in the appeal. [142 E-F]

(ii) The Tribunal also committed an error of law in dismissing as time-barred the applications for restoration of the appeals made by the appellants. In Regulation 21 made under Bombay Revenue Tribunal Act, 1958 the time prescribed for such applications is thirty days from the date of receipt of the Tribunal's order dismissing the appeal, and the appellants had filed their applications within the said period. [145 A, B]

Regulation 21 lays down the procedure for dealing with applications for restoration made under Regulation 20 and the latter Regulation includes within its scope all appeals 'decided ex-parte' whether on merits or otherwise. It could not therefore be said that Regulation 21 did not apply to the case. [144 H]

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Appeals by special leave from the judgments and orders dated November 27, 1961 of the Gujarat High Court in Special Civil Applications Nos. 704 and 707 of 1961.

Arun Naginlal Surti, B. Datta and J. B. Dadachanji, for the appellants.

A. K. Sen, M. S. K. Sastri and B. R. G. K. Achar, for the respondents.

The Judgment of the Court was delivered by Ramaswami, J. These four consolidated appeals are brought, by special leave, against the order of the High Court of Gujarat dated November 27, 1961 summarily dismissing four Special Civil Applications Nos. 704 to 707 of 1961 which had been filed by the appellants under Art. 227 of the Constitution of India for quashing the order of the Gujarat Revenue Tribunal dated July 18, 1961.

The appellants had applied for compensation to the Jagir Abolition Officer, Baroda under s. 13 of the Bombay Merged Territories & Areas (Jagirs Abolition) Act, 1953, hereinafter referred to as the 'Jagirs Abolition Act', in respect of their proprietary jagirs. Against the award of compensation made by the Jagir Abolition Officer the appellants preferred appeals under s. 16 of the Jagirs Abolition

Act. Although these appeals were filed before the Revenue, Tribunal at Bombay, the appeals were transferred, on the bifurcation of Bombay State, to the Gujarat Revenue Tribunal at Ahmedabad, hereinafter called the 'Tribunal'. All these appeals were ultimately dismissed by the Tribunal for non-prosecution on account of non-appearance of the advocate of the appellants. Against the dismissal of the appeals for non-prosecution the appellants filed applications for restoration before the Tribunal on May 6, 1961. The appellants contended that since the orders passed dismissing the appeals were received by them on April 9 and April 20, 1961, the restitution applications filed on May 6, 1961 were within 30 days of the receipt of the order of dismissal and hence the applications for restoration were made in time under Regulation 21 of the Bombay Revenue Tribunal Regulations. The appellants also prayed that the applications for restoration should be allowed as they were prevented for sufficient cause from appearing at the hearing of the appeals. The Tribunal rejected the applications holding that they were barred under Art. 168 of the Limitation Act read with Regulation 55 and O.41, rr. 17 and 19 of the Civil Procedure Code. The view taken by the Tribunal was that the applications for restoration should have been made within 30 days from the date of the order of dismissal. As the orders of dismissal was made on February 1, 2 and 3, 1961 and the applications for restoration were made only on May 6, 1961, the Tribunal held that they were time-barred. Aggrieved by the order of dismissal of the restoration applications the appellants moved the High Court of Gujarat under Art. 227 of the Constitution of India but their applications were dismissed in limine. The first question for consideration is whether the orders of the Tribunal dated February 1, 2 and 3, 1961 are illegal and ultra vires because the Tribunal dismissed the appeals for non-prosecution and there was no decision of the appeals on merits. It was contended that it was obligatory on the part of the Tribunal to decide the appeals on merits and record its decision in view of s. 17 of the Jagirs Abolition Act which states as follows:

"17. (1) The Bombay Revenue Tribunal shall, after giving notice to the appellant and the State Government, decide the appeal and record its decision.

(2) In deciding an appeal under this Act the Bombay Revenue Tribunal shall exercise all the powers which a court has and shall follow the same procedure which a Court follows in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908."

in our opinion, the contention put forward by the appellants is well-founded and must be accepted as correct. Section 13 of the Jagirs Abolition Act provides that any jagirdar entitled to compensation under section 11 or 12 shall, on or before the 31st day of July 1958 apply in writing to the Collector for determining the amount of compensation payable to him under the said section. Section 13(2) states that on receipt of an application under sub-s. (1), the Collector shall, after making formal enquiry in the manner provided by the Code, make an award determining the amount of compensation. Section 14 of the Jagirs Abolition Act states as follows:

"14. (1) If any person other than a jagirdar is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to, or interest in property and if compensation for such abolition, extinguishment or modification has not been provided for in the provisions of this Act, such person may apply to the Collector for

compensation.

(2) The application under sub-section (1) shall be made to the Collector in the prescribed form on or before the 31st day of July 1958. The Collector shall, after holding a formal inquiry in the manner provided by the Code, make an award determining the compensation in the manner and according to the method provided for in sub-section (1) of section 23 and section 24 of the Land Acquisition Act, 1894."

Section 15 states that "every award made under section 13 or 14 shall be in the form prescribed in section 26 of the Land Acquisition Act, 1894 and the provisions of the said Act shall, so far as may be, apply to the making of such award". Section 16 provides for an appeal against the Collector's award and is to the following effect:

"16. An appeal shall lie against an award of the Collector to the Bombay Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957 notwithstanding anything contained in the said Act."

Section 20 provides for the finality of the award and of the decision of the Revenue Tribunal and reads as follows:

"20. The award made by the Collector subject to an appeal to the Bombay Revenue Tribunal and the decision of the Bombay Revenue Tribunal on the appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court."

On a consideration of the language of s. 17(1) of the Jagirs Abolition Act and in the context of s. 20 of the Jagirs Abolition Act we are of the opinion that it is obligatory on the part of the Tribunal to decide an appeal on merits even though there is default in the appearance of the appellants and to record its decision regarding the merits of the appeal. If an appeal is dismissed for want of prosecution it cannot be said that the Tribunal has 'decided the appeal' and 'recorded its decision' within the meaning of s. 17 of the Jagirs Abolition Act. It cannot be supposed that the legislature intended by the word 'decide' in s. 17(1) to mean 'dispose of the appeal or to put an end to the appeal'. It is important to notice that s. 20 of the Jagirs Abolition Act makes a decision of the Tribunal in appeal as final and conclusive and not to be questioned in any suit or proceeding in any Court. In the context of s. 20 and in view of the express language of s. 17(1) of the Jagirs Abolition Act we are of opinion that the Tribunal has no power to dismiss an appeal for non-prosecution but it is obligatory on its part to decide the appeal on merits and to record its decision even though there is default on the part of the appellant to appear in the appeal.

The second question of law for consideration in this case is whether, on a proper construction of Regulations 19, 20 and 21 of the Bombay Revenue Tribunal Regulations, 1958, the Tribunal was right in taking the view that the applications for restoration made by the appellants were barred by limitation.

Section 14 of the Bombay Revenue Tribunal Act (Bombay Act No. XXXI of 1958) deals with the practice and procedure to be followed by the Gujarat Revenue Tribunal. Section 14 states:

"14. (1) Subject to the provisions of this Act and to the previous approval of the State Government, the President may make regulations for regulating the practice and procedure of the tribunal, including the award of costs by the Tribunal, the levy of any process fee, the right of audience before the Tribunal, the sittings of the members either singly, or in benches constituted by the President or such member as is authorised by him from amongst the members of the Tribunal, the disposal by the Tribunal, or a bench thereof, of any proceedings before it notwithstanding that in the course thereof there has been a change in the persons sitting as members of the Tribunal or bench; and generally for the effective exercise of its powers and discharge of its functions under this Act. Where any members sit singly or where any benches are constituted, such member or bench shall exercise and discharge all the powers and functions of the Tribunal.

(2) The regulations made under this section shall be published in the Official Gazette."

Regulation 19 deals with procedure to be followed by the Tribunal in case of non-appearance of parties. Regulation 19 is to the following effect:

"19. (1) If on the date fixed for hearing or any other subsequent day to which the hearing may be adjourned, the appellant or applicant does not appear either in person or through his agent or lawyer when the appeal or application is called for hearing, the Tribunal may dismiss the appeal or application or may decide it on merits, after hearing the respondent or his agent or lawyer, if present. (2) If on the date fixed for hearing or on any other subsequent day to which the hearing may be adjourned, the respondent or opponent, as the case may be, does not appear in person or through his agent or lawyer when the appeal or application is called for hearing the Tribunal may decide the same on merits, after hearing the appellant or applicant or his agent or lawyer....."

Regulation 20 provides for restoration of an appeal or application and reads as follows:

"20. If any of the parties was absent on the date of the hearing, either preliminary or final, and the appeal or application was heard and declared ex-parte, the party concerned may apply for restoration of the appeal or application, as the case may be, and if the party satisfies the Tribunal that he had no notice of the date of the hearing or that he was prevented by sufficient cause from appearing when the appeal or application was called for hearing, the Tribunal may restore the appeal or application to its file, provided that where the other party had appeared in the appeal or application such party shall be given notice and an opportunity of being heard before the order for restoration of the appeal or application is made."

Regulation 21 is to the following effect: (1) An application for restoration of an appeal or application made under regulation 20 shall be filed within thirty days from the date of the receipt of the order or dismissal of the appeal or application and shall be accompanied by-

(a) a certified copy of the Tribunal's order;

(b) the decision or order (either in original or a certified copy thereof) in respect of which appeal or application sought to be restored is made;

(c) if the decision or order referred to in clause (b) is itself made in appeal against any decision or order, then also such latter decision or order either in original or a certified copy thereof; and

(d) as many copies of the restoration application as there are respondents or opponents.

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.....".

Regulation 55 states that in any matter not provided for in the Regulations the Tribunal shall follow the procedure, as far as it is applicable, laid down in the Code of Civil Procedure, 1908.

From the scheme of the Regulations it is apparent that under Regulation 19(1) it is open to the Tribunal to dismiss an appeal for non-prosecution in a case where the appellant does not appear either in person or through his agent or lawyer. It is also open to the Tribunal in such a case to hear the respondent to the appeal and decide it on merits. Regulation 19(2) contemplates a case where the respondent fails to appear and even so it is open to the Tribunal to hear the appellant and then decide the case on merits. Regulation 20 which provides for restoration of the appeal is a, consequential regulation to Regulation 19. One of the conditions for invoking the provisions of restoration under Regulation 20 is that "the appeal 'or application was heard and decided ex-parte". On behalf of the respondent it is contended by Mr. Asoke Sen that Regulation 20 only applies to cases contemplated by the latter part of Regulation 19(1) and 19(2) and not to cases of dismissal for want of prosecution under the first part of Regulation 19(1). We are unable to accept this submission as correct. In our opinion, the language of Regulation 20, on its true interpretation, applies not only to a case where the appeal has been decided on merits but also to a case where the appeal has been dismissed for want of prosecution under Regulation 19(1). The reason is that in Regulation 19(1) and 19(2) the legislative authority uses the words "decide it on merits" but in Regulation 20 the expression used is "decided ex-parte" and we see no reason, either in the language or context of Regulation 20, why it should not include in its scope and ambit an application for restoration of an appeal dismissed for non-prosecution as also an application for restoration of appeal decided on merits under Regulation 19(1). If the view that we have taken as to the interpretation of Regulation 20 is correct, it follows that Regulation 21 applies to the present case and the period of limitation

prescribed by that Regulation being 30 days from the date of receipt of the order of dismissal of the appeal, the applications of restoration made by the appellants in all the four cases were well within the period of limitation prescribed by Regulation 21. It follows, therefore, that the Tribunal committed an error of law in dismissing the applications of restoration made by the appellants in all the four appeals.

For these reasons we allow these appeals, set aside the order of the Gujarat High Court dismissing Special Civil Applications 704 to 707 of 1961 and hold that the order of the Gujarat Revenue Tribunal dismissing the restoration applications Nos. GRT.D. 10 to 13 of 1961 dated July 18, 1961 is defective in law and must be set aside. We also hold that the orders of the Gujarat Revenue Tribunal dismissing Appeals Nos. REV.A. 27, 28, 29 and 30 of 1960 are ultra vires and illegal and must be set aside and order that these four appeals should go back to the Gujarat Revenue Tribunal for being reheard and dealt with in accordance with law. The parties will bear their own costs up to this stage.

Appeals allowed.