

Act, far from using any language that would compel us to hold that such a power was contemplated to be given to the Custodian, on the contrary makes it clear that the scope of the Act is only with regard to the securing, administering, preserving and managing the evacuee property, and that no power is conferred upon the Custodian to take possession of the property which does not belong to the evacuee. That was the view taken by the learned Judge in the Court below. In our view that view was correct. The appeal, therefore, fails and is dismissed with costs.

Attorneys for appellant: *Little & Co.*

Attorneys for respondent: *Amarchand & Mangaldas.*

Appeal dismissed.

A. J. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

PHIROZE FRAMROZE TARAPOREWALLA, AND OTHERS, PETITIONERS
v. THE MUNICIPAL CORPORATION OF THE CITY OF POONA, AND
OTHERS, OPPONENTS.*

1951
July 26

The Bombay Municipal Boroughs Act (XVIII of 1925) s. 110—Appeal pending before Magistrate—The Bombay Provincial Municipal Corporations Act (LIX of 1949) s. 406 (1)—Jurisdiction to hear appeals vested in a Judge of the Small Causes Court—Whether pending appeals saved—Bombay General Clauses Act (I of 1904) s. 7—Effect of repeal of the previous Act.

The jurisdiction of the Magistrate before whom an appeal is pending under s. 110 of the Bombay Municipal Boroughs Act, 1925, is not taken away by the repeal of the said Act by the Bombay Provincial Municipal Corporations Act, 1949.

There is nothing in the Bombay Provincial Municipal Corporations Act, 1949 which in any way is contrary to what is provided in the Bombay General Clauses Act, 1904 according to which the effect of a repeal of a statute is that all pending proceedings are saved from the operation of the repealing Act.

Civil Revision Application from the decision of D. G. Ghugale, City Magistrate, F. C., Poona.

* Civil Revisional Application No. 1058 of 1950.

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On January 28, 1950, the Petitioners filed an appeal in the Court of the City Magistrate at Poona under s. 110 of the Bombay Municipal Boroughs Act, 1925 against the annual rental value of certain property fixed by the Assistant Municipal Commissioner, Poona Suburban Municipality. On February 15, 1950 the Bombay Provincial Municipal Corporations Act, 1949 came into force and under s. 406 (1) of this Act appeals against any rateable value or tax fixed or charged under the Act are to be heard and determined by the Judge. "The Judge" is defined, for the purposes of Poona, as the Judge of the Small Causes Court. On June 12, 1950 the petitioners made an application to the Magistrate requesting for transfer of the pending appeal to the Court of the Small Causes at Poona for being heard and determined under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 and contending that the Court of the City Magistrate had no jurisdiction to hear and determine the appeal.

The Magistrate rejected the application of the Petitioners.

The Petitioners applied in Revision to the High Court.

B. G. Thakor, J. R. Vimadalal, and Gagrath & Co. for the Petitioners.

R. N. Bhalerao, for Opponent No. 1.

CHAGLA C. J. This revision application raises a question as to the jurisdiction of the Poona Magistrate to hear an appeal from an order of the Chief Officer, Poona Borough Municipality, with regard to assessment of the property of the petitioners in Poona, after the Bombay Provincial Municipal Corporation Act came into force. The assessment was made by the Chief Officer on December 31, 1949, and the assessee preferred an appeal to the Magistrate on January 28, 1950, and the new Act LIX of 1949 came into force on February 15, 1950. Under s. 406 (1) of the new Act, appeals against any rateable value or tax fixed or charged under the Act shall be heard and determined by the Judge, and "the Judge" is defined, for the purpose of Poona, as the Judge of the Small Causes Court. Therefore, the contention is that although the petitioners had preferred their appeal to the Magistrate under the Municipal Boroughs Act, by reason of the new Act coming into force and by reason of s. 406 the Magistrate ceased to have jurisdiction to hear that appeal and the Small Causes Court Judge became a competent appellate tribunal and he alone could hear that appeal against the order of assessment.

Now, this Act repeals the Municipal Boroughs Act by s. 490, and therefore by virtue of the Bombay General Clauses Act all pending proceedings under the old Act would be saved. When the Municipal Boroughs Act was repealed, the petitioners' appeal was pending before the Magistrate, and under the General Clauses Act that proceeding would not be affected by any provision in the new Act. Mr. Thakore contends that there is a clear intendment in the Act itself which goes to show that the Legislature wanted the pending proceedings to be affected and the Legislature also intended to give a retrospective effect to s. 406 of the Act. My attention is drawn to s. 434 (1) which provides that the Civil Procedure Code shall apply to appeals to the Judge from the orders of the Commissioner, and it is pointed out that under the Act the taxing authority is the Commissioner and not the Chief Officer and appeals from the orders of the Commissioner with regard to assessment are provided, as pointed out, to the Judge, and therefore in those appeals the provisions of the Civil Procedure Code would apply. Under s. 437 the provisions of the Code of Criminal Procedure shall, so far as may be, apply to all inquiries and proceedings under this Act before the Magistrates. Mr. Thakore says that the intention of the Legislature was that appeals should be governed by the Civil Procedure Code, and therefore if this appeal continues before the Magistrate, the provisions of the Criminal Procedure Code would apply which was not the intention of the Legislature. I fail to see how s. 434 and s. 437 in any way help the contention of the petitioners. Both these sections provide for proceedings which arise under the Act. The proceedings I am considering did not arise under the Act but had arisen under the repealed Act and these were pending when the Act was repealed, and I see no difficulty as to the application of the law to these proceedings. I do not see what the Criminal Procedure Code has got to do with assessment and rating, and although the Magistrate is constituted an appellate Court, he deals with rating and assessment as a special authority appointed under the Municipal Boroughs Act.

My attention is then drawn to Appendix IV and cl. 4, sub-cl. (4), of that Appendix, provides:

"All prosecutions instituted by or on behalf of the said municipality or local authority, and all suits and other legal proceedings instituted by or against the said municipality, local authority or any officer of the said municipality or local authority pending on the said date shall be

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continued by or against the Commissioner or the Corporation for the said City, as the case may be, as if the area was constituted to be a City when such prosecution, suit or proceeding was instituted."

On a plain interpretation of this sub-clause, all that it means and all that it conveys is that any pending proceeding which might have been instituted by or against a municipal authority under the Municipal Boroughs Act should be continued by or against the Commissioner. Therefore, the pending appeal of the petitioners, although it was against the Chief Officer, by reason of this provision it shall be continued against the Commissioner. But this sub-clause does not in any way affect pending proceedings nor does it in any way direct a transfer of pending proceedings to the new Courts recognised under the new Act. It is rather significant to contrast this with the language used in sub-cl. (2) of cl. 4 which provides that all proceedings pending before any authority of the municipality or local authority on the day which under the provisions of this Act are required to be instituted before or undertaken by the Commissioner shall be transferred to and continued by him and all other such proceedings shall, so far as may be, be transferred to and continued by such authority before or by whom they have to be instituted or undertaken under the provisions of this Act. Therefore, with regard to the specific authorities mentioned under this sub-clause the Legislature provides for a transfer, but only such transfer is provided with regard to appeals pending before the Magistrate under the repealed Act.

Mr. Thakore then points out that under s. 411 an appeal is provided to the District Court from the decision of the Judge dealing with a question of assessment or rating. Mr. Thakore says that under the old Act there was only a power of revision given to the High Court and Mr. Thakore says that that is a valuable right given to the subject. It is perfectly true that if a right of appeal is given by a statute, that right of appeal cannot be taken away retrospectively unless the Legislature in express terms deprives a person of that right. A right of appeal has been considered as a vested right, but the only vested right that the petitioners had was to appeal to the Magistrate and then go in revision to the High Court. That right has not been in any way affected by the new Act. What Mr. Thakore, however, wants is a new right which he never possessed, viz. the right to appeal to the District Judge. Unless I find from

the language of the Act that such a new right has been conferred upon the petitioners although they did not enjoy it when the new Act was passed, I cannot come to the conclusion that the petitioners have now a right to go to the Small Causes Court Judge and then to appeal from his decision to the District Judge.

In my opinion, there is nothing in the provisions of the Provincial Municipal Corporations Act which in any way is contrary to what is provided in the Bombay General Clauses Act with regard to the effect of a repealed statute and the effect of a repealed statute is that all pending proceedings are saved, and therefore the appeal pending before the learned Magistrate is saved and he has jurisdiction to hear and dispose of that appeal. The result is that the application fails and is dismissed with costs.

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Application dismissed.

K. B. S.

APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Vyās

GOVIND BALKRISHNA PANSARE AND OTHERS (ORIGINAL DEFENDANTS Nos. 3, 6 AND 5), APPELLANTS v. RAMCHANDRA RAJARAM JOSHI AND OTHERS (ORIGINAL PLAINTIFFS NOS. 1 AND 2'S HEIRS),
RESPONDENTS.*

1951
Sept. 4

Hindu law—Female heirs with limited estate—Widow and son's widow successively inheriting property of last full owner—Suit by next reversioner for possession of property on death of latter—Indian Limitation Act (IX of 1908), art. 141—Applicability of article—Adverse possession against female heir—Whether next reversioner is affected.

The Hindu female whose death is referred to in art. 141 of the Indian Limitation Act, 1908, is a Hindu female, be she a widow or a reversionary heir of the last full owner, on whose death the reversion opens and the reversionary heir to the last full owner comes to be determined. She may be the widow of the last full owner or she may be a female heir who succeeds to him either initially, though having a limited estate in what she inherits, or as a reversionary heir on the extinction of a

* Letters Patent Appeal No. 43 of 1950.