

(1967) 12 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No. 1117 of 1966

Aminuddin Sheikh Hafizuddin

APPELLANT

Vs

Bhaoji Hiramansa

RESPONDENT

Date of Decision : 21-12-1967

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1968) 70 BOMLR 421 : (1968) MhLj 452

Hon'ble Judges : Chandurkar, J; Abhyankar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhyankar, J.—This petition under Article 227 of the Constitution challenges an order of the Sub-Divisional Officer, Akot, dismissing a revision application filed by the petitioner before that officer against an order of allotment of land in favour of respondent No. 1 by the Naib Tahsildar, on July 12, 1966.

2. The petitioner claims to be a landless person. 3 acres and 17 gunthas of land out of field survey number 94 with a total area of 17 acres and 26 gunthas at village Talegaon Bk., in Akot Taluq of Akola district, were declared surplus and vesting in the State. After possession was taken under a Panchanama, proceedings were initiated before respondent No. 2, that is, the Naib Tahsildar, Akot, for grant of that land to persons eligible u/s 27 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The original records of the proceedings before the Naib Tahsildar as well as the Sub-Divisional Officer have been made available at the hearing. Even though information given in the petition and the documents filed by the petitioner is insufficient to gather all the necessary facts, we have had the benefit of the records of the revenue proceedings before us and they are referred to in this order.

3. After the intimation of possession having been taken was received, the Naib Tahsildar ordered a notice in form X of the Rules, called the Maharashtra

Agricultural Lands (Ceiling on Holdings) Rules, 1962, to be issued calling , claims of persons who are entitled to grant of land under the Ceiling Act. That notice is to be found at page 15 of the Naib Tahsildar's record. By this notice applications were invited in form No. XI claiming grant of land from persons having various degrees of priority, as provided in Section 27 of the Ceiling Act. This notice was apparently issued on May 17, 1966, and though the notice states that applications for grant of land may be made within a month of the publication of this notice, respondent No. 2 fixed the case for May 25, 1966. By that date applications from several persons appeared to have been received and they are to be found at pages 30 to 108 of the Naib Tahsildar's record. On the next date fixed, that is, June 21, 1966, a provisional statement of claims in Form No. XII was prepared and was sent for publication as required by Rule 10(3). Along with this, a notice in Form No. XIII calling upon persons concerned to submit objections in relation to any matter provided in the provisional statement, and also inviting applications in Form XI for grant of surplus land in respect of which there are no applicants, seems to have been issued. This notice in Form XIII is at page 19 of the Naib Tahsildar's record and the provisional statements in Form XII are at pages 19 to 29 of the record. Thereafter, on receipt of publication report, respondent No. 2 fixed the case for receipt of objections on the provisional statements till June 21, 1966. On that date, the order-sheet shows, that no claims or objections having been received, order for preparing final statement was issued, and final statement in Form No. XII was ordered to be published on June 24, 1966 with a notice in Form No. XIV. The next date was July 12, 1966 when the following order seems to have been noted:

All the applicants in the final statement belong to one and the same category. Hence as prescribed in rules the lots are drawn and the name of Bhauji Hiranman of Talegaon Kd. on the slip picked up. Hence the land is granted to him. He is prepared to pay the occupancy price thereof. Almost all applicants are present.

It is against this order that the petitioner preferred a revision application before the Sub-Divisional Officer on August 17, 1966. The revision application seems to have been presented through a counsel. It appears that before the revision application was filed on August 17, 1966, the petitioner had filed an application before the Sub-Divisional Officer on July 18, 1966, styled as an application for allotment of land. In this application, a complaint is made about the allotment of land to respondent No. 1 Bhauji on the ground that he already cultivated about 28 acres of land, and therefore, was not entitled to get it. It is stated that Bhauji forms a joint Hindu family with his father and brothers and is joint owner of this land. On receipt of this application, the Sub-Divisional Officer forwarded it to Shri Alshi, that is, the Naib Tahsildar, who had passed the order of allotment with the following endorsement:

Forwarded to Shri Alshi. He will hear the parties and pass suitable orders.

This application contains a further endorsement under the signature of the Naib Tahsildar to the following effect:

The applicant is heard. He simply says that non-applicant possesses half share in the property owned by his father and brothers. The non-applicant has made an affidavit to the effect that he is separate from his father and brothers and he has no interest in the property owned by his father or brothers. The application is filed and the affidavit is accepted as true.

It is not clear how such an interim application came to be filed before the Sub-Divisional Officer and disposed of in the manner stated above.

4. To resume the progress of the revision application before the Sub-Divisional Officer, it is to be noted that the Sub-Divisional Officer dismissed the revision application without notice to the opposite side on August 26, 1966, observing:

There is no provision of appeal or revision u/s 33(1) of the Ceiling Act in respect of distribution of surplus land u/s 27 (1) of the Ceiling Act. The application, therefore, cannot be entertained. Inform the applicants accordingly and file.

It is this order of the Sub-Divisional Officer which is challenged before us by the petitioner. There is no doubt that the order of the Sub-Divisional Officer cannot be attacked successfully on the ground either of want of jurisdiction or* any error of exercise of jurisdiction. No such application for revision could lie before the Sub-Divisional Officer against the order of the authorised person granting land under the Ceiling Act. But we have heard the petitioner at length and we have come to the conclusion that even though the remedy pursued by the petitioner was not available to him, the proper order that should have been passed by the Sub-Divisional Officer, having reference to the provisions of the Act, was to direct presentation of the revision application to the proper authority.

5. u/s 45(2) of the Ceiling Act, an express provision is made empowering the State Government suo motu or on an application made to it by the aggrieved person to revise the order passed u/s 27 of the Ceiling Act, and this power of the State Government can be delegated to the Commissioner under Sub-section (3) of Section 45. We are informed that the Divisional Commissioner has, in fact, been delegated with these powers. We are inclined to take a lenient view of the step taken by the petitioner in approaching a wrong forum seeking redressal of his grievance because of the fact that a public duty is required to be performed by the Collector, or a person authorised by him, in distribution of surplus land that comes to vest in the State. The Legislature has taken pains to indicate the order of priority in which such surplus land should be granted in Section 27. It is, therefore, manifest that the grant of land is not by way of patronage, but by recognition of legal rights of a person entitled to such land in order of preference indicated in the statute. In order to determine the proper person so entitled elaborate provision is made in the Rules of giving public notice at several stages of the proceeding in connection with allotment and when it is found that some of these provisions have been lost sight of in the instant case, we consider that the matter should be relegated to the authority which has power to revise these orders. The various steps taken in this case in the Court of the Naib Tahsildar

indicate that enough attention was not paid not only to the observance of the requirements but also the purpose of the rules. Sufficient notice must be given and wide publicity ensured to make as many people know as possible, not only in the village in which the land is situate, but in villages within a radius of 5 miles, about allotment of land. It may be that the rule requiring publication of first notice in all villages within a radius of 5 miles perhaps results in undue burden on the machinery in the Tahsil Office and the rule making authority may like to revise this provision. But so long as the provision stands that provision has to be complied with. What is more important is that sufficient time must be given after a person comes to know that certain land is available for allotment and further procedure cannot be hastened through. In particular, attention must be drawn to the provision of sub-rule (3) of rule 10 which enjoins on the authorised person to prepare provisional statement in Form XII and in preparing such provisional statement the names of applicants have to be arranged according to the order of priority provided by Section 27. If this rule is to be satisfied, it is evident that at that stage some inquiry is contemplated regarding claims of various persons who belong to particular category to determine the order of priorities. Preparation of the provisional statement thus is not a mechanical process and is not a mere compilation. A further opportunity is given by the rules to make objections in writing. If these objections are made, or capable of being made, further date is necessary to be fixed to hear these objections. At this stage, even if no objections in writing have been made, objections could be taken orally if a date is fixed for hearing objections. This also does not appear to have been done in the instant case. It is only after a fair opportunity is given to all the claimants and to all objectors that a final decision as to the choice of person entitled to the grant of land can be made. It is obvious to us that this entails an elaborate inquiry and time necessarily prescribed for various steps has a purpose and that purpose will be defeated if the procedure is unduly shortened.

6. In the instant case it is the contention of the petitioner that respondent No. 1 is not a landless person. Whether there is any merit in this contention will be a matter to be decided by an appropriate authority after inquiry. But what we find is that a proper opportunity to raise such contention does not seem to be available in the manner in which the proceedings have been continued and have been disposed of by respondent No. 2.

7. We also feel that the purpose of the Ceiling Act being to achieve socio-economic goal of providing land to needy persons in certain order of priorities, the authorities concerned are required to follow scrupulously and deliberately every rule and every step prescribed so as to ensure fulfilment of the object of the legislation, That object will be defeated if the procedure for grant of lands is unduly hampered or hustled through.

8. In view of the nature of the legislation and the difficulty of the claimants in knowing of the provisions of the law, the Sub-Divisional Officer would have been well advised to point out that a revision application is provided for before the

State Government or the Commissioner as a delegate and not before the Sub-Divisional Officer and the application for revision should have been allowed to be presented to the proper Court.

9. We, therefore, set aside the order of the Sub-Divisional Officer rejecting the revision application and direct that the application may be returned to the petitioner for presentation to the proper authority, namely, the Commissioner.

10. The petition thus succeeds. But in the circumstance there will be no order as to costs.