

(2011) 03 BOM CK 0167

In the Bombay High Court

Case No : Writ Petition No. 2252 of 1992

Ashok Rangrao Deshmukh

APPELLANT

Vs

The State of Maharashtra and The Additional Commissioner,
Aurangabad Division

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 21, 45(2)

Citation : (2011) 4 ALLMR 325

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : E.P. Sawant, for the Appellant; K.B. Choudhari, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This petition takes exception to the notice issued by the Additional Commissioner, Aurangabad Division, Aurangabad bearing No. 1978/ICHR/331 dated 11th August, 1992.

2. The Petitioner herein is the resident of Parbhani. The Petitioner herein filed returns u/s 12 of the Ceiling Act in the year 1975. The S.L.D.T. Tribunal, Parbhani in its decision dated 31st December, 1975 declared that the Petitioner is surplus holder to the extent of 5 Acres 39 Gunthas. It is the case of the Petitioner that, land which is declared as surplus one to the extent of 5 Acres 39 Gunthas from survey No. 261 of Parbhani is given in possession to whom said has been allotted by the Competent Authority as per the provisions of Law.

It is specific case of the Petitioner that, Additional Commissioner, Aurangabad Division, Aurangabad by exercising the powers u/s 45(2) of the Maharashtra Agricultural Lands Ceiling on Holdings Act 1961 (hereinafter called as "Ceiling Act" for brevity) reopened the enquiry i.e. suo moto enquiry in the year 1990. It is the Petitioner's case that the Respondent No. 2 has no jurisdiction or power to

start or reopen sue moto enquiry u/s 45(2) of the Ceiling Act after the period of three years from the judgment and order passed by the S.L.D.T. Not only this, but the Additional Commissioner must apply his mind within a period of 3 years by summoning the land holder and to start the enquiry. The enquiry must be completed within three years period from the date of order passed by the S.L.D.T. But in the instant case the Additional Commissioner had not called upon the Petitioner within 3 years from the date of order of S.L.D.T. Therefore, the case of the Petitioner is that, no such enquiry can be reopened even by exercising sue moto power by the Additional Commissioner after a period of 17 years from the date of order passed by the S.L.D.T.

3. The counsel for the Petitioner invited my attention to the grounds taken in the petition and also provisions of Sub-Section 2 of Section 45 of the Maharashtra Agricultural Lands Ceiling on Holdings Act 1961 and would submit that it was not permissible for the Additional Commissioner to reopen the sue moto enquiry after laps of 17 years from the date of order passed by the S. L. D. T.

4. On the other hand the learned Additional Government Pleader submitted that, the Additional Commissioner after proper application of mind has issued the notices. Therefore, this Court may not interfere in the writ jurisdiction.

5. I have given due consideration to the rival submissions of record, it is admitted position that the notice issued by the Additional Commissioner for suo moto enquiry under Sub-Section 2 of Section 45 of the Ceiling Act is on 11th August, 1992. It is not in dispute that S.L.D.T. by its order dated 31.12.1975 declared the Petitioner herein as surplus holder to the extent of 5 Acres 39 Gunthas. From the perusal of pleadings in para 4 of the writ petition, it is clear that the said land to the extent of 5 Acres 39 Guntha of which, the possession has been given to the persons to whom said land was allotted by the Government.

6. I find considerable force in the arguments of learned Counsel for the Petitioner. No such suo moto enquiry after 17 years can be reopened. This Court had occasion to interpret provisions of Section 45(2) of the Said Act in following decisions:

In the case of Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr. 1989 Mh.L.J. 1011, the Full Bench of this Court held that the proviso to Section 45(2) of the Maharashtra Agriculture Lands (Ceiling on Holdings) Act, restricts the exercise of jurisdiction u/s 45(2) to those cases where the record is called for within the period of 3 years from the date of declaration u/s 21. The starting point of limitation as prescribed in the proviso to subsection (2) of Section 45 is the declaration or part thereof u/s 21 of the Act. Calling of the record cannot be equated with the mechanical, clerical or ministerial act of calling for the record for all the proceedings irrespective of the fact whether they were required or not for the purpose specified in the section. It is further held that it is after applying his mind that the revisional authority will have to call for

the record of the enquiry or proceedings after conscious application of mind to the facts and circumstances of each case. Where admittedly the necessary application of mind on the part of the Commissioner was much beyond the period of 3 years of the order impugned, it will have to be held that the records were not called within the period of 3 years. In such a case the Commissioner will have no power to exercise the revisional jurisdiction.

Yet in another decision in the case of *Bansilal Ramgopal Bhattad v. State of Maharashtra and Ors.* 2001 (1) Mh.L.J. 68, this Court held that suo motu proceedings for revision having been initiated almost after 9 years from the date of decision of S.L.D.T., could not be permitted in law. Suo motu proceedings in question having been initiated after unreasonable period were without authority of law and void ab initio in view of the decision of the Apex Court in *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, .

Yet in another reported case of *Lotan Fakira Patil v. State of Maharashtra and Ors.* 2002 (2) Mh.L.J. 255, this Court in the facts of the case held, notice u/s 45(2) of the Act for suo moto revision was issued on 25.03.1982 and not within the period of three years from the date of order of S.L.D.T. dated 03.07.1978 and therefore the exercise of powers under the said provisions was beyond the period of limitation and therefore was without jurisdiction.

Yet in another case of *Champabai Patwari and Another Vs. State of Maharashtra and Others*, , this Court held that the first proviso to subsection (2) of Section 45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 lays down two conditions which are required to be satisfied before the State Government or its delegate could invoke the revisional powers. The said two conditions are: (a) that, appeal has not been filed against the order/declaration made by S.L.D.T. within the prescribed period, and (b) that, a period of 3 years has not elapsed from the date of the order or declaration made by S.L.D.T. In the facts of that case the Court held that the decision to initiate the proceedings was taken within three years time. However, same was without application of mind and hence held to be bad in law. It is further held that the actual initiation of proceedings was after a lapse of about 8 to 10 years from the date of decision to initiate the proceedings. This delay was totally unexplained. Therefore, taking overall view of the matter, the Court held that where the notice came to be issued to the Petitioner by the Additional Commissioner, after lapse of period of 8-10 years, after passing orders by S.L.D.T., holding that the Petitioners did not hold land in excess of ceiling limit are bad in law.

Yet in another case of *Shalikram Dagduba Solunke etc. v. State of Maharashtra and Anr.* 2004 (1) Mh.L.R. 310, this Court held that exercise of revisional powers by Additional Commissioner after 10 to 15 years from the date of order of S.L.D.T., is beyond the statutory period and also passed in mechanical manner and same is liable to be set aside.

Yet in another judgment in *Gowardhandas deceased through his L.R. Vijaykumar*

Vs. The State of Maharashtra and The Additional Divisional Commissioner, , this Court held that in suomotu revision by Additional Commissioner, memorandum regarding revision issued on 30.11.1978 after declaration u/s 21 on 08.11.1976 but no notice was issued to the Petitioner till 1992, the order passed by the Additional Commissioner on 30.03.1993 is beyond limitation prescribed u/s 45(2) of the said Act.

7. In the instant case the notice issued by the Additional Commissioner is after 17 years. Not only that upon perusal of notice at Exhibit B it does not appear that, by calling the record and proceedings, the Additional Commissioner has applied his mind and then had taken decision to initiate the suo moto enquiry. Therefore, in my opinion, the writ petition deserves to be allowed. The writ petition is allowed in terms of prayer clause "C". The impugned order dated 11th August, 1992 bearing No. 1978/ICHR/331 stands quashed and set aside. The writ petition stands disposed of. The Rule is made absolute in above terms.