
(2004) 02 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 2074 of 1991

Balaji Yarawar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2(16)

Citation : (2004) 3 ALLMR 132 : (2004) 3 MhLj 968

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : R.D. Bhuibhar, for the Appellant; S.Y. Deopujari, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—By invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, this writ petition is directed against the order dated 25-6-1991 passed by the Additional Commissioner, Amravati exercising suo motu revisional jurisdiction u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, the Ceiling Act), by which he held that 7.20 acres of land from survey No. 106 and 10.00 acres of land from survey No. 64 is uncultivable.

Relevant facts are as under:

2. The petitioner is owner of the land and he had filed return as is required u/s 12 of the Ceiling Act. The Surplus Land Determination Tribunal (SLDT) had examined the return and declared surplus land by the order dated 29-11-1985. By that order the land admeasuring 7.20 acres out of survey No. 106 and the land admeasuring 10.00 acres out of survey No. 64 was declared as uncultivable land. Being aggrieved by the order passed by the SLDT, the petitioner had filed appeal before the Maharashtra Revenue Tribunal (MRT) and ultimately the MRT by order dated 24-6-1986 allowed the cross objection filed by the State and

declared that the land admeasuring 7.20 acres out of survey No. 106 and land admeasuring 10.00 acres out of survey No. 64 was uncultivable land.

3. The petitioner being aggrieved by the said order filed writ petition in this Court being Writ Petition No. 1864/1986 which was allowed by this Court on 19-2-1988 and the order passed by the MRT was set aside and the matter was remanded back to the SLDT for deciding the question afresh and to calculate the total holdings of the family unit of the petitioner after rendering a finding upon the question regarding Potkharab land out of field survey No. 106. Thereafter the SLDT held the enquiry, visited the spot and passed the order on 3-9-1988 and declared that the land admeasuring 7.20 acres out of survey No. 106 is Potkharab land and as such, it is liable to be excluded while computing the area of ceiling. Thereafter the Additional Commissioner by exercising suo motu revisional powers u/s 45(2) of the Ceiling Act had rendered the judgment dated 29-6-1991 and set aside the order passed by the SLDT and declared that the land admeasuring 7.20 acres out of survey No. 106 and the land admeasuring 10.00 acres out of survey No. 64 is cultivable land and liable to be taken into account while computing the ceiling area. It is this order which is under challenge in this writ petition.

4. Mr. Bhuibhar, the learned counsel for the petitioner contended that the order passed in revisional jurisdiction by the Commissioner is without jurisdiction. It was specifically pointed out to the Additional Commissioner that in view of the decision of this Court in *Shaliabi v. The State of Maharashtra* 1986 M.L.J. 725, this Court held that in case of surplus landholders, possession of the surplus land have been taken by the respondent State, and therefore, the Additional Commissioner had no revisional jurisdiction u/s 45(2) of the Ceiling Act. He further contended that the revision ought to have been dismissed in view of the fact that the surplus lands have been distributed on 28-10-1988 and immediately thereafter the possession of surplus land have been taken by the respondent-State. Apart from this, on the merits, the revision was not maintainable for the simple reason that so far as fields survey No. 64 is concerned, 10.00 acres of land have been excluded as Potkharab land as per the findings given by the learned MRT vide order dated 24-6-1991. He further contended that this finding of the MRT has attained finality as the State did not challenge the said finding before any forum.

5. The next submission of the learned counsel for the petitioner is that the Additional Commissioner cannot sit over the judgment of the MRT and in support of these submissions, he relied on the decision of this Court in the case of *Bovabhai Budha Girase v. Jirya Dajya Bhil* 1987 M.L.J. 892. He further contended that the impugned order passed by the Additional Commissioner cannot be sustained in law and deserves to be set aside.

6. The learned A.G.P. for the respondents-State contended that though this Court has declared the Amendment Act No. 26 of 1976 void for want of assent of the President of India under Article 31 of the Constitution, by the judgment in *L.P.A.*

No. 438/1984, Shaliabi wd/o Asfak Qureshi v. State of Maharashtra, 1986 M.L.J. 725, on the ground that the possession of the surplus land have been taken by the State. Section 45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 has been amended and the assent of the President was received on 16-3-1990 which was published in the Maharashtra Government Gazette on 31-5-1990. He further contended that though the surplus land was taken into possession and also distributed by the State, the Additional Commissioner had jurisdiction to exercise suo motu revisional powers u/s 45(2) of the Ceiling Act.

7. The learned A.G.P. further submitted that so far as the land admeasuring 10.00 acres out of survey No. 64 is concerned, this land is used or capable of being used for the purpose of agriculture including trees standing on this land. Similar position of the land from survey No. 106 admeasuring 7.20 acres is also found on which teak trees have found to be grown, as per the findings recorded by the SLDT, and therefore, the said land would be covered by the definition of the "Land" as defined under clause (c) of Sub-Section (16) of Section 2 of the Ceiling Act. He contended that in such circumstances, the impugned order passed by the Additional Commissioner is perfectly legal and valid and no interference into the same by this Court is warranted.

8. I have carefully considered the contentions canvassed by the learned counsel for the parties. It is not in dispute that Sub-section (2) of Section 45 of the Ceiling Act was brought on statute book by Maharashtra Act No. 32 of 1965. The said Sub-section (2) reads as under :

The State Government may, suo motu or on an application made to it by the aggrieved persons, at any time, call for the record of any inquiry or proceedings under Sections 17 to 21 (both inclusive) for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under those sections and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard :

Provided that, nothing in this sub-section shall entitle the State Government to call for the record of any inquiry or proceedings of a declaration or part thereof u/s 21 in relation to any land, unless an appeal against any such declaration or part thereof has not been filed within the period provided for it and a period of three years from the date of such declaration or part thereof has not elapsed.

Provided further that, no order shall be passed under this Section so as to affect any land which is already declared surplus and distributed according to the provisions of this Act;

Provided also that the revisional jurisdiction under this Section shall be exercised only where it is alleged that the land declared surplus is less than the actual land which could be declared surplus.

The last two provisos were added by Maharashtra Act No. 17 of 1990.

9. The Division Bench of this Court in Shaliabi v. State of Maharashtra 1986

M.L.J.725 held that; Section 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 prior to its amendment by Maharashtra Act No. 26 of 1976 provided that the State Government shall not be entitled to call for the record of any enquiry in its revisional jurisdiction where possession of the land has been taken under Sub-section (4) of Section 21. The said provisions was amended by the Maharashtra Act No. 26 of 1976 by which the words, "the possession of such land has not been taken under Sub-section (4) of Section 21" in Section 45 (2) have been deleted. However, the Amendment Act did not have the assent of the President. It was contended that the condition which came to be deleted was an inextricable part of the process of acquisition and consequently it could not be deleted without the assent of the President and consequently the amendment was liable to be declared ultra vires and inoperative. It was held that; it is clear from Section 21(3) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act that the declaration made u/s 21(1) is specifically made final and conclusive subject only to the decision of (a) the Maharashtra Revenue Tribunal in appeal u/s 33 or (b) the State Government or its delegate in revision u/s 45(2). The appeal or the revisional power as such is an inextricable part of the process of acquisition. Maharashtra Act No. 26 of 1976 by which the said words were deleted cannot be said to be not a law relating to acquisition as contemplated under Article 31. There was legislative wisdom in having that condition which had received President's assent and the said condition could not have been removed legally without the said assent. Consequently Act No. 26 of 1976 deleting the words "the possession which has not been taken under Sub-section (4) of Section 21" as they existed in Section 45(2) of the Act is void for want of President's assent under Article 31 and consequently the same was liable to be struck down.

10. On the basis of the aforesaid observations of this Court, the learned counsel for the petitioner contended that initiation of the revisional proceeding suo motu by the Additional Commissioner was without jurisdiction. On close scrutiny, I am unable to subscribe to this contention because the Additional Commissioner had delivered the judgment in the revisional proceedings on 29-6-1991 on which date he had perfectly jurisdiction to examine the matter in revision. Therefore, it cannot be said that the order passed by the Additional Commissioner is without jurisdiction and void ab-initio.

11. The next contention of the learned counsel for the petitioner is that the order passed by the MRT on 24-6-1986 has attained finality, and therefore, it was not open for the Additional Commissioner to examine the question again in his revisional jurisdiction also is devoid of any merits. It is admitted position that the petitioner had filed the writ petition which was numbered as Writ Petition No. 1864/1986 which came to be decided on 19-2-1988 wherein the observations in para 5 are as under :

"In the result, the instant writ petition is allowed. The impugned order of the learned S.L.D.T. and of the M.R.T. on the question of Pot kharab land in field

Survey No. 106 of the village Jawala are set aside and the proceedings are remanded to the learned S.L.D.T. to decide the said question afresh after allowing the parties to lead any additional evidence upon the said question if they choose so to do. The learned S.L.D.T. is directed to calculate the total holdings of the family unit of the petitioner after rendering a finding upon the above question and then determine the surplus land belonging to it. The petitioner should be given a fresh choice of retention in regard to the surplus land determined by the learned S.L.D.T. Rule made absolute in the above terms. No order as to cost."

12. Careful reading of the aforesaid directions of this Court, it would reveal that the SLDT was directed to calculate the total holdings of the family unit of the petitioner after rendering a finding upon the above question and then to determine the surplus land belonging to the petitioner and the petitioner was also given a fresh choice of retention in regard to the surplus land determined by the SLDT. In that view of the matter, it cannot be said that the Additional Commissioner sat upon the order dated 24-6-1986 passed by the MRT. The Additional Commissioner was perfectly justified in exercising his revisional jurisdiction and to examine the judgment delivered by the SLDT, after remand on 30-9-1988.

13. The learned Additional Government Pleader was right in his submission that the Amendment Act 26 of 1976 though was declared void by this Court, it had received assent of the President on 16-3-1990 and was brought on the statute book. He is right in his submission that the Additional Commissioner has jurisdiction to invoke his revisional powers and to examine the judgment and proceedings which concluded before the SLDT, after remand and that so far as the land admeasuring 10.00 acres out of survey No. 64 is concerned, this land is used and was capable of being used for the purpose of agriculture including trees standing on this land and similar was the position of the land survey No. 106 admeasuring 7.20 acres which was also under cultivation of teak trees and was held to be the land within the definition of "land" as per clause (c) Sub-section (16) of Section 2.

14. The next contention of the learned counsel for the petitioner that the MRT had declared the land admeasuring 10.00 acres out of survey No. 64 as uncultivable, and therefore, should have been excluded while computing the ceiling area is also not acceptable. The MRT observed in para 14 as under:

"The area not fit for agriculture is to be determined with reference to the commencement date and during 74-75 the area of 10 acres 29 gunthas is shown as fallow in the crop statement. There is thus no objection to treat 10 acres as no land out of land survey No. 64."

15. It is apparent on the face of the judgment of the MRT that the aforesaid finding is nothing but perverse finding. Simply because the land is shown as fallow in the crop statement, it did not follow that the land is uncultivable. Hence,

in these circumstances there is no reason for this Court to interfere into the findings recorded by the Additional Commissioner in his order dated 29-6-1991 in his revisional powers exercised u/s 45(2) of the Ceiling Act. There is no error or illegality in the order passed by the Additional Commissioner and the impugned order deserves to be confirmed. Thus, in the result the writ petition is dismissed with no order as to cost. Rule discharged.

16. However, at this stage the learned counsel for the petitioner makes a request that the parties be directed to maintain status quo as on today, for the period of six weeks. His request is accepted.