
(2000) 06 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2632 of 1987

Bansilal Ramgopal Bhattad

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 17(1), 41, 45(2)

Citation : (2000) 06 BOM CK 0014

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Tanaji E. Mane, for the Appellant;

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition under Articles 226 and 227 of Constitution of India takes exception to the order passed by the Additional Commissioner, Konkan Division, Bombay dated 27th February 1987 as well as the order passed by Surplus Land Determination Tribunal dated 21st February 1976.

2. Briefly stated the facts leading to the present petition are that the petitioner was a member of the joint family which was assessed as HUF by the Income Tax Authority. The Assessment Orders passed by the Income Tax Authority for the year 1941-42 and 1943-44 clearly establish this position. The property in question situated at village Newale, Taluka Palghar, district Thane was acquired by the petitioner from the income of the joint family. The mutation entry with regard to the suit land purchased by the petitioner is registered in the village record being mutation entry No. 114. The mutation entry was certified on 9-10-1953, which records that the property has been purchased in the name of the petitioner vide sale deed dated 7-7-1944. After coming into force of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the petitioner submitted returns in which he took the stand that the said property was owned

by HUF. After examining the said return, by order dated 30-1-1965, the competent authority declared that land admeasuring 23 Acres and 11 gunthas as surplus land held by the petitioner. It is stated that sometime in the year 1965 the properties belonging to HUF were partitioned by a partition deed, though not registered. However, partition deed came to be registered on 30-12-1970. The Act of 1957 was amended by amending Act of 1972 which came into force from 4-5-1972. After the said amendment, the petitioner filed fresh returns before the competent authority, which were duly processed by the Surplus Land Determination Tribunal, Palghar, constituted under the said Act. The Tribunal, vide its order dated 21st February 1976, concluded that no surplus land was held by the petitioner. It is relevant to point out that the said decision of the Tribunal remained unchallenged and has attained finality. At this stage it is necessary to point out that the said decision of the Tribunal dated 21st February 1976 was duly signed by all the Members of the Tribunal including the Chairman. This position is established from the certified copy of the order passed by the Tribunal. It is contended by the petitioner that in any case an order which is not signed by all the members and Chairman of the Tribunal does not automatically become invalid on such technical ground, particularly when the said order has been acted upon by the parties, inasmuch as the members of HUF, after partition, have started separately cultivating their respective holding. The petitioner, however, received a show cause notice sometime in the month of December 1985 purported to be issued u/s 17(1) of the Act dated 19-12-1985. Interestingly, the said notice does not indicate any reason as to why the proceedings were sought to be reopened. On receipt of the said notice the petitioner submitted his reply before the Surplus land Determination Tribunal, Palghar. The Tribunal by its order dated 3-2-1986 decided the matter against the petitioner though it had no jurisdiction to do so. The Tribunal declared that the petitioner was holding 13 Acres 6 gunthas of land as surplus land. It is stated that though the said order shows that it was dated 3-2-1986, the same was not implemented till November 1986 and the petitioner was unable to challenge the same. Later on, the petitioner received notice from the office of the Additional Commissioner, Konkan Division dated 18-11-1986 that suo motu revision is initiated by the commissioner u/s 45(2) of the Act. By the said notice the petitioner was called upon to show cause as to why the order dated 3-2-1986 should not be revised on the basis of mutation entry No. 114. In other words, the Mutation Entry was the only ground indicated in the said show cause notice. The petitioner appeared and filed detailed reply before the Additional Commissioner and supported his stand on the basis of oral argument. The Additional Commissioner, however was pleased to hold that the holding of the petitioner was surplus to the extent of 113 Acres and 36 gunthas and thus ordered taking possession of the Surplus Lands.

3. The aforesaid order passed by the Additional Commissioner, Konkan Division and the order passed by the Surplus Land Determination Tribunal dated 3-2-1986 are subject matter of this writ petition.

4. Be that as it may, the Learned Counsel for the petitioner contends that the basis on which the authorities invoked suo motu action was totally on a non existent ground. According to him the ground that the order passed by the Surplus Land Determination Tribunal on 21-2-1976 was not signed by other members was totally contrary to the record. In support of this contention he has relied upon the certified copy of the said order issued by the Surplus Land Determination Tribunal which clearly indicates that the said order has been signed not only by the Chairman but also by the other two members of the Tribunal. In my view the premise on which the proceedings were started, was, therefore, on a non existing ground. Naturally the decision reached in such proceedings cannot be allowed to stand in law. Moreover, it is seen from the record that the first order passed by the Surplus Land Determination Tribunal on 21-2-1976 was allowed to become final and was not challenged. In the circumstances it was not open for the Tribunal to over turn the said decision dated 21-2-1976 in this manner.

5. It is next contended by the Learned Counsel for the petitioner that even assuming that it was competent to invoke suo motu action of revision on any permissible ground, even then the said action ought to have been taken in a reasonable time. It is contended that the first order passed by the Surplus Land Determination Tribunal was on 21-2-1976, however, the impugned suo motu action was commenced almost after a lapse of about 9 years therefrom, which cannot be considered as a reasonable period at all. In support of this submission, reliance has been placed on the judgment of the Apex Court reported in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, which has taken the view that even if authority is vested with the power to take an action, without providing for any limitation, even in such a case it is the duty of the authority to take an action within a reasonable time. It is held that if the action is taken after unreasonable time or belatedly, the same is vitiated in law. Accordingly, I find force in the said submission advanced on behalf of the petitioners. In the present case the first order was passed by the Surplus Land Determination Tribunal on 21-2-1976, which is the subject matter of the suo motu proceedings which have been initiated almost after 9 years therefrom, this cannot be permitted in law. In my view the suo motu proceedings in question having been initiated after unreasonable period were without authority of law and void ab initio, in view of the above referred decision of the Apex Court.

6. It is next contended on behalf of the petitioners that the order passed by the Surplus Land Determination Tribunal on 21-2-1976 could not have been varied or changed by the subsequent order of the same Surplus Land Determination dated 3-2-1986. This submission is based on the premise that the Surplus Land Determination Tribunal having held that the petitioner did not possess any surplus land, it was not open to the Surplus Land Determination Tribunal to declare by subsequent order that the petitioner held surplus land to the extent of 13 Acres 6 gunthas. I have already held that Surplus Land Determination had invoked its power on the erroneous basis that the previous order was not signed

by all the members of the Tribunal. The premise on which second enquiry was initiated was totally on a non existing ground. Since the said ground cannot be pressed into service, the final action which is based on such ground would also fall to the ground for being vitiated and void ab initio. In the circumstances, I am inclined to hold that in the facts of the present case the Surplus Land Determination Tribunal acted without jurisdiction in reversing the earlier order passed on 21-2-1976, particularly when even the show cause notice did not indicate any reason as to why reconsideration of earlier decision was required.

7. It is next contended that once it is held that the order passed by the Surplus Land Determination Tribunal is without jurisdiction then as a necessary corollary it will have to be held that the Additional Commissioner had no jurisdiction to invoke suo motu action in exercise of section 41 of the said Act for the simple reason that the said action was to be exercised within the period provided for in the said section. It is contended that if the Surplus Land Determination's order dated 3-2-1986 is held to be without jurisdiction in that event the Additional Commissioner had no cause for taking suo motu action on the basis of the said order, albeit within limitation provide u/s 41 of the said Act. Taking into consideration all the aforementioned points, and held that neither the order passed by the Additional Commissioner nor the order of the Surplus Land Determination Tribunal dated 3-2-1986 can be sustained on facts or in law.

In the circumstances, I am inclined to allow this writ petition by setting aside the orders passed by the Surplus Land Determination Tribunal dated 3-2-1986 as well as the order passed by the Additional Commissioner, Konkan Division dated 27-2-1987 respectively.

Writ petition is allowed in the above terms with costs.

Rule is made absolute.

Certified copy expedited.

Parties to act on the copy of this order duly authenticated by Sheristedar of this Court.