
(2000) 07 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 5398 of 1987

Behram Sheriar Irani

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Constitution of India, 1950 — Article 227

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

Citation : (2001) 1 BomCR 473 : (2001) 1 BOMLR 31

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

Bench : Single Bench

Advocate : Shri C.G. Parulekar, for the Appellant; Shri D.L. Patil, A.G.P., for the Respondent

Judgement

A. M. Khanwilkar, J.—This writ petition, under Article 227 of the Constitution of India, is directed against the order passed by the Additional Commissioner, dated 27.2.1987 in Appeal Desai C.L.N. 2007/86.

2. Briefly stated, after the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 came into force, the Petitioner, filed his return. The Surplus Land Determination Tribunal, Palghar by his order dated 15.3.1976 was pleased to drop the said proceeding having held that the holding of the Petitioner was less than the Ceiling Limit.

3. After a lapse of about 10 years the Tahasildar and Chairman. Surplus Land Determination, Palghar initiated suo motu proceedings for an enquiry to determine the ceiling limit of the Petitioner. By order dated 23.2.1986, the Tahasildar and Chairman, Surplus Land Determination, after examining the records held that the holding of the Petitioner was less than the ceiling limit and accordingly dropped the proceedings.

4. What is relevant to point out is that, the basis of the above said suo motu action was on the ground that the previous decision rendered by the Tribunal on

15.3.1976 was nullity as it was signed only by the Chairman and not by the Member of the Tribunal.

5. In spite of the suo motu proceedings having been dropped on merits, the Additional Commissioner. Konkan Division, Bombay, initiated suo motu revision action u/s 45(2) of the Act. In this suo motu revision the Additional Commissioner held that Petitioner held excess land to" the extent of 14 acres and 6 gunthas and accordingly directed the Tahasildar and Chairman, Surplus Land Determination Tribunal, Palghar to obtain the choice of the Petitioner and take the possession of the surplus land from him.

6. The present petition takes exception to the aforesaid order passed by the Additional Commissioner. Konkan Division, Bombay. The learned Counsel for the Petitioner contends that the suo motu enquiry by the Tahasildar in the year 1986 was only a ruse to enable the Additional Commissioner to invoke powers u/s 45(2) of the Act. It is further contended that in any case the Tribunal having held that the holding of the Petitioner did not exceed the ceiling limit, it was inappropriate for the Additional Commissioner to proceed against the Petitioner. The learned Counsel relied on the decision of this Court in Laxminarayan Maniklal Pathak and Anr. v. State of Maharashtra, to contend that the decision signed by the Chairman alone is also a valid decision and not a nullity. It is further submitted that the Additional Commissioner had no authority to make suo motu enquiry that too after lapse of about 10 years from the order passed by the Tribunal dated 15.3.1976 in dropping the proceedings. The learned Counsel also argued that since the action of the Tribunal initiating suo motu proceedings in the year 1986 suffered from laches and being contrary to the above view expressed by this Court, the suo motu proceedings initiated in the year 1986 were without authority of law and should be held to be non est in the eyes of law. As a necessary corollary it is argued that, if it is held that the Tribunal had no authority to invoke suo motu action after lapse of 10 years; and that too on a non existing ground, then it will have to be held that the revisional powers invoked by the Additional Commissioner u/s 45(2) are beyond limitation. Besides this it is contended that even if there is a power, the same has to be exercised in a reasonable time. Reliance has been placed on the decision of the Apex Court in Ram Chand and others v. Union of India and others, and Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim, in support of the said proposition.

7. I am inclined to accept the argument advanced on behalf of the Petitioner that the Tribunal had no jurisdiction to invoke suo motu power in the year 1986 after lapse of about 10 years from the date of the order of the Tribunal dated 15.3.1976 that too on a non-existing ground. The ground posed by the Tribunal was non-existing because this Court in Laxminarayan Maniklal Pathak and Anr. v. State of Maharashtra, had pronounced that a decision signed by the Chairman alone was a valid decision and not nullity. In my view, the exercise of suo motu power by the Tribunal after passage of 10 years cannot be permitted in law, as has been held by the Apex Court in the decisions referred to above. Accordingly,

the action of the Tribunal in initiating suo motu proceedings being void, ab initio was non est in the eyes of law. As aforesaid, the basis on which the Tribunal exercised the suo motu action was totally unavailable for the simple reason that this Court in the decision in Laxminarayan Maniklal Pathak and Anr. v. State of Maharashtra, had observed that if the decision is signed by the Chairman alone that would not render the decision invalid ipso facto. Naturally, therefore, suo motu action initiated on such ground was totally without authority of law and by necessary implication non est in the eyes of law, in which case there was no cause of action to initiate revisional powers by the Additional Commissioner for being beyond limitation. Moreover, the Tribunal having concluded in favour of the Petitioner - that the holding of the Petitioner was less than the Ceiling Limit, the Petitioner is justified in contending that the suo motu proceedings were only a ruse to give handle for initiating suo motu revisional Jurisdiction u/s 45(2) of the Act. The authorities below having resorted to suo motu power, which proceedings, if ignored and discarded for the aforesaid reason, in that case it will have to be assumed that there was no authority for the Additional Commissioner to invoke powers u/s 45(2) of the Act. In the circumstances the decision of the Additional Commissioner should also be set aside on this count alone.

8. As regards the merits of the case, since the Tribunal had already taken the view that holding of the Petitioner was less than the ceiling limit and the said decision remained in operation for over 10 years, even assuming that Additional Commissioner had suo motu revisional jurisdiction the same being exercised after lapse of over 10 years was totally unreasonable and impermissible in law. Accordingly, taking any view of the matter the order passed by the Additional Commissioner dated 27.2.1987 cannot be sustained in law, being without jurisdiction.

9. For the aforesaid reasons, writ petition is allowed with no order as to costs. Rule made absolute. Order passed by the Additional Commissioner, Konkan Division, Bombay dated 27.2.1987 in Appeal No. 2007 of 1986 is quashed and set aside.

10. Certified copy expedited.

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