
(2003) 08 BOM CK 0097

In the Bombay High Court

Case No : Writ Petition No"s. 56, 176, 639, 732, 885 and 1698 of 1988

Champabai Patwari and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 14, 21, 45(2)

Citation : (2004) 1 ALLMR 874 : (2004) 2 BomCR 749 : (2004) 1 MhLj 148

Hon'ble Judges : A.P. Deshpande, J

Bench : Single Bench

Advocate : B.N. Patil, A.H. Kapadiya, V.G. Sakolkar, S.G. Rudrawar, V.D. Gunale, Saurabh Sadawarte, holding for S.C. Bora and B.N. Patil, holding for V.B. Ghatge, for the Appellant; S.V. Chillarge, A.D. Rakh, J.P. Akolkar, V.K. Jaju, D.V. Tele and S.K. Kadam, Assistant Government Pleaders, for the Respondent

Final Decision : Allowed

Judgement

A.P. Deshpande, J.—A common question of fact and law emerges in all these petitions and, as such, the same are being disposed of by this common judgment.

2. All the petitioners and/or their predecessor in title had filed returns u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (For short, hereinafter referred to as "the Ceiling Act") and thereafter an enquiry was held u/s 14 read with Section 21 of the Ceiling Act by the Surplus Land Determination Tribunal. The S.L.D.T. by its orders passed in all the petitions, held that the petitioners do not hold land in excess of the ceiling limit.

3. u/s 45(2) of the Ceiling Act, State Government is empowered to call for the record of any enquiry or proceedings u/s 17 to 21 (both inclusive) for the purpose of satisfying itself as to the legality or propriety of any enquiry or proceedings and may pass such orders thereon as it thinks fit. The said power of the State Government "to call for the record" under Sub-section (2) of Section 45 has been delegated to the Additional Commissioner, is an admitted position. In exercise of powers u/s 45(2) of the Ceiling Act, notices came to be issued to the

petitioners after lapse of a period of about 8 to 10 years, after the passing of orders by S.L.D.T., by the Additional Commissioner and thereafter enquiry was made and impugned orders are passed, holding that the petitioner's land holding is in excess of the ceiling limit. The orders passed by the Additional Commissioner in exercise of powers u/s 45(2) of the Ceiling Act are challenged in these petitions. Section 45 of the Ceiling Act reads thus:

"(1) In all matters connected with this Act, the State Government shall have the same authority and control over the officers authorised u/s 27, the Collectors and the Commissioners acting under this Act, as they do in the general and revenue administration.

(2) The State Government may, suo motu or on an application made to it by the aggrieved person, 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 the 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.

(3) The State Government may, subject to such restrictions and conditions as it may impose by notification in Official Gazette, delegate to the Commissioner the power conferred on it by Sub-section (2) of this section or under any other provisions of this Act except the power to make rules u/s 46 or to make an order u/s 49."

It is to be noted that the first proviso to Sub-section (2) of Section 45 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.

Sub-section (2) of the Section 45, so also, the first proviso fell for consideration before a Full Bench of this Court and the same has been interpreted by the Full Bench, in the judgment reported in 1989 M.L.J. 1011, in the case of Manohar

Ramchandra Manapure and Ors. v. State of Maharashtra and Anr. The Full Bench in para 6 of the said judgment has observed thus:

"The meaning assigned to the word "call" in Oxford English Dictionary, Vol. 2 and Chambers Twentieth Century Dictionary is "to summon". If this is the meaning of the word "call", then it contemplates some action or application of mind on the part of the State Government or its delegate before calling for the record. It cannot be equated with a mechanical, clerical or ministerial act of calling for the records of all the proceedings irrespective of the fact whether they are required or not for the purpose specified in the section."

The Fully Bench further proceeded to observe thus:

"It requires a conscious application of mind on the part of the competent authority qua particular proceedings. The word "any" as used in Sub-section (2) of Section 45 is indicative of this intention. Section 45(2) contemplates different stages, namely, calling for the records, giving opportunity of being heard to the parties concerned and ultimate decision. However, record is not to be called for merely satisfying the curiosity or for storing. It has a purpose behind it. The State Government is not appointed as roving Commission; but is expected to exercise judicial or quasi-judicial powers. The object behind prescribing the limitation for calling for the record is not to upset settled position at very late stage. The proviso to Section 45(2) will have to be construed in this background."

Thereafter, in para 7 of the said judgment, the Apex Court has drawn the conclusions which read thus:

"This clearly indicates that the Legislature has not treated calling of a record as a ministerial act, but a conscious act on the part of the revisional authority after due application of mind. As already observed, the record is to be called for a specific purpose namely, for satisfying as to the legality or propriety of the enquiry or proceedings of the declaration or part thereof. Therefore, it is quite obvious to us that after applying his mind, 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."

Placing reliance on the language used in the first proviso, and the observations of the Full Bench interpreting the same, the following two submissions are made by the learned Advocates appearing for the petitioners :

(i) that, though State Government or Additional Commissioner is empowered "to call for the record", the decision to initiate the enquiry must be a conscious act, after due application of mind to the facts and circumstances of each case. The act of "calling for the record" must indicate prima facie application of mind to the facts and circumstances of each case and then consciously reaching a decision to initiate the proceedings. It is submitted that in the present case, there has been no application of mind at all by the revisional authority viz. Additional Commissioner and order "to call for the record" was passed mechanically as if it

is a ministerial act. In the submission of the petitioners, if this be the case, then the act of "calling for the record" could not be said to have been taken within a period of 3 years, which is the limitation prescribed in the first proviso; and

(ii) that, assuming for the sake of argument, that the decision to initiate the proceedings viz. "to call for the record", was taken within the period of 3 years, as prescribed, still the initiation of the proceedings, by issuing notices to the petitioners has taken place after a lapse of about 8 to 10 years and, as such, being beyond a reasonable period, has to be termed as illegal. The learned Advocates appearing for the petitioners have contended that there are three stages in which exercise of power contained in Sub-section (2) can be split up. Firstly, "to call for the record" which is to be equated with a decision to initiate the proceedings, for which limitation prescribed is 3 years. The second stage is to initiate the proceedings by issuing notices to the concerned party. In regard to the second stage, there is no limitation prescribed and, as such, it is urged that though no limitation is prescribed in regard to the second stage viz. initiation of proceedings, the authority is expected to take steps within reasonable time, so that, the concerned party does not deal with the suit property, in any manner, so as to create third party interest therein. So far as the third stage is concerned, i.e. when the parties appear after service of notice and participate in the proceedings till the termination thereof, neither limitation would apply nor would the doctrine of reasonable period would apply, for the obvious reason, that for reasons beyond the control of either the authority or the party concerned, the proceedings could be delayed.

4. Having regard to the facts of the present petitions, I proceed to deal with the first submission, that the Additional Commissioner "called for the record" without conscious application of mind to the facts of each case. It has been brought to my notice from the original record, that the Additional Commissioner who acted as a delegate of the State Government, had prepared a cyclostyled/printed format of the order under which the record of the cases were called. In the printed format of the order, two blank spaces were left to be filled in i.e. the name of the person (party in whose case the S.L.D.T. had passed order) and the next, the date of decision rendered by S.L.D.T. Barring the two blank spaces wherein the name of the party and the date of order of S.L.D.T. were to be filled in, the rest of the order is identical in each and every case and it has to be so for the reason that the order is in a printed form. For the sake of proper appreciation of the manner in which the Additional Commissioner has exercised the jurisdiction, it would be appropriate to reproduce the printed form of the order and it reads thus:

Before Shri S. D. Mhaske, I.A.S., Additional Commissioner, Aurangabad Division, Aurangabad.

Case No. Dated : Sub :-- Revision u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, in respect of the inquiry and proceedings u/s 17 to 21 in case No. The State of

Maharashtra v. R/o. Decided by Surplus Land Determination Tribunal..... Whereas it appears from the preliminary data collected for this purpose, that the inquiry u/s 17 to 21 of the aforesaid Act has not been properly conducted and there exists a prima facie need to satisfy myself as to the legality and propriety of the order passed on in the above case.

And whereas:

a. An appeal against the declaration u/s 21 has not been filed within the period provided therefor.

b. that a period of three years from the date of the aforesaid order has not elapsed.

Now, therefore, I, S. D. Mhaske, I.A.S., Additional Commissioner, Aurangabad Division, Aurangabad, in exercise of the powers vested in me u/s 45(2) proviso read with Government Notification Revenue and Forest Department No. ICH-1065/49791-M(Spl) dated 3rd June 1965, hereby order to call for the record and proceedings of the above case.

(S. D. Mhaske) Additional Commissioner, Aurangabad.

Copy forwarded with compliments to the Additional Tahsildar for information.

The original record reveals that the two blank spaces were initially filled in by writing of pencil and thereafter, the blank spaces are filled in by pen, unmindful of even rubbing of the pencil writing.

Barring Writ No. 56 of 1988, no order passed by the Additional Commissioner bears his signature. The order that is available in other writ petitions is without the signature of the Additional Commissioner but it appears that someone has put in the initials of the then Additional Commissioner at the place where the Additional Commissioner was expected to sign.

5. Having regard to the facts referred to hereinabove, in regard to the printed order, the learned Advocates appearing for the petitioners contended that the decision to initiate the proceedings viz. the order to "call for the record", reveals total non-application of mind and on this count, the initiation of proceedings, so also, the impugned order falls to the ground. True, it is that if the State Government or its delegate chooses to have an order readily available in a printed form, it is impossible to infer application of mind to the facts of each case, which according to the Full Bench, is a must. I have no doubt, that the order to call for record or the decision to initiate the proceedings was arrived at in a mechanical fashion, as if it is a ministerial act.

6. In this regard, the learned Counsel for the petitioners have placed reliance on a judgment of the Apex Court reported in Jai Singh and Others Vs. State of Jammu and Kashmir, . In the said case, the short question that was involved was as to whether the detaining authority had applied his mind while issuing the

detention order. The Apex Court on examination of the record, found that the grounds of detention were verbatim reproduction of the dossier submitted by the Senior Superintendent of Police, Udhampur to the District Magistrate requesting that a detention order may kindly be issued. The following facts were noticed by the Apex Court:

"At the top of the dossier, the name is mentioned as Sardar Jai Singh, father's name is mentioned as Sardar Ram Singh and the address is given as village Bharakh, Tehsil Reasi. Thereafter it is recited "The subject is an important member of" Thereafter follow various allegations against Jai Singh, paragraph by paragraph. In the grounds of detention, all that the District Magistrate has done is to change the first three words "the subject is" into "you Jai Singh, s/o Ram Singh, resident of village Bharakh, Tehsil Reasi". Thereafter word for word the police dossier is repeated and the word "he" wherever it occurs referring to Jai Singh in the dossier is changed into "you" in the grounds of detention. We are afraid it is difficult to find greater proof of non-application of mind."

The observations of the Apex Court apply with full force to the facts of the present case.

The next judgment on which reliance is placed is by a learned Single Judge of this Court (Coram : J. G. Chitre, J.) reported in 2003 (4) M.L.J. 825 = 2003 A M. R. (Cri.) 1463, in the case of Mohammed Sadiq Abdul Khalil Patel and Ors. v. V.Y. Choughule, P.S.I. and Ors.. In the said case, the Executive Magistrate made use of cyclostyled orders without even scoring of the redundant lines. The learned Judge observed that every order has to be consistent with provisions of law and has to show application of judicial mind. It is further observed thus:

"He is not supposed to go by following mechanical process of passing already typed order, in which multiple lines are printed for the purpose of meeting the demand of situation. It by itself shows non-application of mind, while passing the order though, the learned Magistrate has printed some words to show that he has used his judicial discretion and has applied judicial mind."

Similar is the view taken in another judgment of Division Bench of this Court, relied upon by the learned Counsel for the petitioners, which is reported in Vidyaprasarak Samaj and Another Vs. State of Goa and Others,

7. The learned Advocates appearing for the petitioners have also placed reliance on a reference judgment delivered by a Division Bench of this Court (Coram : B.H. Marlapalle and V.G. Munshi, JJ.) in Writ Petition No. 639 of 1988. A learned Single Judge of this Court (Coram : A.B. Naik, J.) disagreeing with the view taken by another learned Single Judge of this Court (Coram : R.M.S. Khandeparkar, J.) had made the reference. The said reference was answered by the Division Bench by restating the ratio laid down by the Full Bench and observed thus in para 9 of the judgment:

"The Full Bench of this Court in the case of Manohar (supra) by confirming the earlier view taken in Kisan's case (supra) has clearly stated that an order by the Commissioner for calling for record is a legal necessity even though such a record may be available in the Divisional Commissioner's office, either for storing or at the instance of the Collector or Tahsildar, who passed the initial order. Passing of an order for calling for record and proceedings is a must and such an order must also indicate application of mind by the Divisional Commissioner. Scrutiny of record and passing of order to call for record and proceedings passed by the Commissioner, indicating application of mind, is the stage, which ought to be completed within a period of three years and the limitation of three years is not applicable for the remaining two stages."

The learned Advocates appearing for the petitioners have also relied upon the judgment of this Court reported in 2002(1) M.L.J. 255, in the case of Lotan Fakira Patil v. State of Maharashtra and Ors., wherein the learned Single Judge following the Full Bench decision, has emphasized the need for application of mind while passing the order calling for the record.

8. Having regard to the factual and legal position discussed hereinabove, I am of the clear view that the orders passed by the Additional Commissioner, though passed within the period of 3 years, the same was without application of mind and reveals a mechanical approach, as if the act performed was a ministerial act. There is no conscious application of mind to the facts of each case. The use of a readymade printed form of the order, identical in all cases, is indicative of non-application of mind and reveals mechanical approach and, as such, the impugned orders calling for the record has to be held to be illegal and bad in law. In the result, I answer the first issue in favour of the petitioners.

9. Assuming for the sake of argument, that the orders calling for the record are good in law, then the second question falls for consideration viz. as to whether non-issue of notices to the concerned parties for a period of about 8 to 10 years after the passing of the order by S.L.D.T. would by itself vitiate the initiation of proceedings and the impugned orders. The very purpose of insertion of period of limitation in the first proviso to Section 45 is to crystallize the rights of the parties in regard to the immovable property, so also, to acquire stability, repose and quiet. By introducing limitation, uncertainty, suspense and turmoil, in regard to the rights of the parties, is put to an end. What is to be seen is that though the Additional Commissioner took a decision to initiate proceedings, by passing the order calling for the record, the authority did not take any step whatsoever for a period of about 8 to 10 years and for the first time, the parties came to be noticed about the said decision to initiate the proceedings, after about 8 to 10 years. In the intervening period, some of the petitioners have sold their properties and some of them have created an encumbrance or charge over the same. It is the submission made on behalf of the petitioners, that this belated issuance of notices viz. the initiation of proceedings would be bad in law as the same was not taken within the reasonable period. A distinction that is required to

be borne in mind is in regard to the decision to initiate proceedings and actual initiation of proceedings. A decision to initiate proceedings has been taken by the Additional Commissioner by passing an order "calling for the record" whereas the proceedings are initiated by issuing notices to the parties after a period of 8 to 10 years. In the facts and circumstance of the present case, it is contended that as the proceedings are not initiated within a reasonable time, the initiation of proceedings so also the ultimate decision stands vitiated. Reliance is placed on various judgments of the Apex Court including the judgments reported in *The State of Gujarat Vs. Patil Raghav Natha and Others*, , and *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, . In the first case, the Supreme Court has held that where no time limit is prescribed for exercise of power under a statute, it does not mean that it could be exercised at any time, such power has to be exercised within a reasonable time. In case of *Mohamad Kavi* (supra), the Apex Court was dealing with a suo motu enquiry u/s 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976. The enquiry was initiated by the Mamlatdar after a period of about one year. In the said case, the Apex Court held that initiating suo motu proceedings after about a year by the Mamlatdar was not within the reasonable period and by placing reliance on the decision in the case reported in *The State of Gujarat Vs. Patil Raghav Natha and Others*, quashed the order. Relying on some of the judgments of the Apex Court, a learned Single Judge of this Court, in an unreported judgment, in Writ Petition No. 3476 of 1989 has taken a view, that belated initiation of the proceedings and delayed decision in the matter covered by Section 45(2) of the Ceiling Act, would stand vitiated having regard to the facts and circumstances of a case, as the revisional authority is expected to initiate proceedings within a reasonable time. In the said case, belated issuance of notices, which culminated in passing of the order u/s 45(2) came to be set aside, as the notices were issued after a period of about 8 years. The legal position is settled, that when suo motu powers are vested in an authority, the same need to be exercised within a reasonable time.

10. As discussed above, though in the present case, the decision to initiate the proceedings was taken within 3 years time, the same was without application of mind and hence bad in law. The actual initiation of proceedings is after a lapse of about 8 to 10 years from the date of decision to initiate the proceedings. This delay is totally unexplained. No purpose is served whatsoever, by only taking a decision to initiate the proceedings if the proceedings are not initiated within a reasonable time. In the absence of any justification for the delay, much less satisfactory, I am constrained to hold that the proceedings were not initiated by the Additional Commissioner within a reasonable time. Even on the second submission, the petitioners succeed.

11. Having regard to the above facts and circumstances, I have no hesitation in concluding that the impugned orders passed by the Additional Commissioner are illegal, unfair and unjust, requiring it to be quashed and set aside.

12. In the result, the writ petitions are allowed and the impugned orders are

quashed and set aside.

13. Rule is made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.