

(2011) 03 BOM CK 0106

In the Bombay High Court

Case No : Writ Petition No. 4007 of 1993

Dasrao Deshpande through his L.Rs. namely Shri Deepak
Ratnglikar

APPELLANT

Vs

The State of Maharashtra, Addl. Divisional Commissioner,
Aurangabad Division and The Chairman, Surplus Land
Determination Tribunal

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

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

Citation : (2011) 5 ALLMR 128

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

Bench : Single Bench

Advocate : S.V. Mundhe, for the Appellant; K.B. Choudhary, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—The Writ Petition is filed challenging the judgment and order dated 30091993 passed by Respondent No. 2 Additional Divisional Commissioner, Aurangabad Division, Aurangabad, which is at Exhibit-D of the petition.

2. The Petitioner herein is resident of Parbhani. It is the case of the Petitioner that, his grant father namely Dasrao s/o Laxmanrao Deshpande has given land to the Petitioner and his sister by way of will 11061970. Said Dasrao Deshpande died on 25101975. After the death of grandfather, on 15111975 the mutation entry has been taken by Revenue Authority to that effect. The Petitioner further submits that, in the month of December 1975 he came to know that inquiry under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (For short,"Said Act") has been initiated against his grandfather but because of his death the Petitioner appeared before Respondent No. 3 Surplus Land Determination Tribunal, Gangakhed, District Parbhani (For short,"S.L.D.T.") and submitted his detail reply to Respondent No. 3.

It is the case of the Petitioner that Respondent No. 3 S.L.D.T. Gangakhed declared the Petitioner as non surplus holder. It is the case of the Petitioner that from the date of judgment and order of the S.L.D.T. Gangakhed, no any proceedings were initiated. However, on 27041993 notice was sent to the Petitioner by the Additional Commissioner for suo moto inquiry. The Petitioner replied the said notice and contended that since the said notice is issued beyond the period of three years and therefore, the Commissioner has no jurisdiction to reopen the inquiry. It is the case of the Petitioner that inspite of specific objection of the Petitioner for suo moto inquiry, the Additional Commissioner by its judgment and order dated 30091993 set aside the order of the S.L.D.T. and remanded the matter back to S.L.D.T. for making denovo inquiry and passing order afresh. Therefore, according to Counsel for the Petitioner, such inquiry is not permissible after lapse of three years since no record and proceedings were called by the Additional Commissioner within three years from order dated 26021976 passed by S.L.D.T. Therefore, Counsel for the Petitioner would submit that the petition may be allowed.

3. On the other hand, learned A.G.P. submitted that the Additional Divisional Commissioner, Aurangabad Division, Aurangabad within its power, initiated proceedings and therefore, this Court may not interfere in the impugned judgment and order passed by the Additional Commissioner.

4. I have given due consideration to the rival submissions of learned Counsel for the parties.

5. Upon perusal of the pleadings in the writ petition, annexures thereto and documents placed on record and after hearing learned A.G.P., I am of the opinion that order impugned in this petition cannot be sustained. Notice issued by the Additional Divisional Commissioner is after lapse of 14 years from the date of passing of the order by the S.L.D.T. Said notice is beyond statutory jurisdiction. From the perusal of the record, it does not appear that the record was called by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad within three years from the date of judgment and order of the S.L.D.T. in the year 1976. First time in the year 1992 notice is issued to the Petitioner and order is also passed in the same year, thereby remanding matter to the S.L.D.T. Since notice issued by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad and also order passed by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad, is beyond statutory period and therefore, Additional Divisional Commissioner, Aurangabad Division, Aurangabad has no jurisdiction to conduct suo moto inquiry after lapse of 14 years. As a result, the impugned order deserves to be quashed and set aside.

6. This Court had occasion to interpret provisions of Section 45(2) of the said Act, in the 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 Sub-section (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 abinitio 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 suomotu revision was issued on 25.03.1982 and not within the period of three years from the date of order of the 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 Sub-section (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.J. 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. Therefore, in the light of discussion hereinabove and in the light of authoritative pronouncement of this Court cited supra, impugned order cannot be sustained, and same is quashed and set aside.

8. Writ Petition is allowed and disposed of.

9. Rule made absolute on the above terms.