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**(2011) 03 BOM CK 0209**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 2373 of 1992**

Dyanoba Shendge

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 07-03-2011

**Acts Referred:**

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

**Citation :** (2011) 4 ALLMR 627

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

**Bench :** Single Bench

**Advocate :** E.P. Sawant and K.M. Babhulgaonmer, for the Appellant; P.P. More, A.G.P. for State, for the Respondent

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## Judgement

S.S. Shinde, J.—This petition takes exception to the judgment and order dated 20th April, 1992 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Case No. 1978/ICH/R/2766.

2. It is the case of the Petitioner that, the Petitioner is resident of village Shelapuri, Tq. Majalgaon. It is the contention of the Petitioner that, one Rambhau Nana Ghyatidak was the owner of Survey No. 35/AA admeasuring 9A 14G assess at Rs. 15.54 paise situated at village Umbari (Bk), Tq. Majalgaon to the extent of 1/2 share and also Sy. No. 36 Adm. 9A 39G assess at Rs. 13.94 paissa in which the said Rambhau had also 1/2 share. The proceeding under the ceiling Act had been initiated against the said Rambhau by the Tahsildar Majalgaon vide file No. 77 ICH402. Said Rambhau in response to the notice appeared before the S. L. D. T., Majalgaon and filed his return as required by law. The S. L. D. T. ,Majalgaon after considering the evidence on record came to the conclusion that said Rambhau S/o Nana Ghaytidak was not the surplus land holder by its judgment and order dated 09th May, 1977.

3. It is further case of the Petitioner that, said Rambhau Nana Ghaytidak had contracted to sale land Sy. No. 35/AA to the extent of 1/2 share having share in the well and pond and Sy. No. 36 to the extent of 1/2 share to the Petitioner for

the consideration of Rs. 32,500/ on 21st February 1978 and executed an agreement of sale which is registered in favour of the Petitioner and put the Petitioner in possession, as the Petitioner was cultivating the said land on batai basis. The said agreement of sale came to be registered after the decision of S. L. D. T., Majalgaon.

4. It is further case of the Petitioner that, after 15 years from the date of order of the S. L. D. T. the Additional Commissioner by exercising powers u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holding) Act 1961 reopened the enquiry i. e. initiated a suo moto proceeding in the matter and reopened the proceedings. The Respondent No. 2 accordingly issued the notice to the said Rambhau Nana Ghaytidak on 04th April, 1991 directing him to remain present at Beed Camp. The Petitioner submitted that, the notice does not disclose as to when the revision was opened. During the pendency of said notice the said Rambhau Nana Ghaytidak expired and as such, his son Shahaji S/o Rambhau was brought on record as his legal representative. Said Shahaji S/o Rambhau is also expired.

The Petitioner submitted that, the Respondent No. 2 has no jurisdiction or power to start or reopen the suo moto enquiry u/s 45(2) of the Ceiling Act after the period of 3 years from the date of judgment and order passed by the S. L. D. T. The Additional Commissioner must apply his mind within a period of 3 years by summoning the land holder and to start the enquiry. The commissioner must complete the enquiry within a period of 3 years from the date of the order passed by the S. L. D. T. It is further submitted that, in the present case, the Additional Commissioner has not called the record of the S. L. D. T. within a period of 3 years.

It is further case of the Petitioner that, the deceased original vendor Rambhau nor his son Shahaji who is also deceased could remain present before the Respondent No. 2 because of their demise. The Respondent No. 2 therefore decided the case mentioning therein that the deceased Shahaji was not present. Therefore, the Respondent No. 2 decided the case stating therein that the judgment and order dated 09th May, 1977 passed by the S. L. D. T. in case No. 77/ICH40 is not proper, hence the Respondent No. 2 set aside the judgment and order dated 09.05.1977 passed by the S. L. D. T., Majalgaon and remanded the case for denovo enquiry to the S. L. D. T. Majalgaon vide his judgment and order dated 20th April, 1992.

The learned Counsel for the Petitioner submitted that, the judgment and order passed by the Respondent No. 2 is against the principles of natural justice and merits of the case. The Respondent No. 2 did not consider the documentary evidence properly and arrived at a wrong conclusion. The Respondent No. 2 ignored the provisions of Section 45(2) of the Ceiling Act. Therefore, the counsel for the Petitioner submitted that, this writ petition may be allowed and judgment and order dated 20th April, 1992 passed by the Respondent No. 2 may be quashed and set aside.

5. On the other hand the learned Additional Government Pleader vehemently opposed the petition and submitted that, the judgment and order passed by the Respondent No. 2 is correct and after going through the record in proper perspective. The learned A.G.P. also submitted that, the Additional Commissioner, Aurangabad has also taken into consideration the provisions of the Section 45(2) of the said Act. Therefore, the learned A.G.P. would submit that, this writ petition is devoid of any merits and same may be dismissed.

6. I have given due consideration to the rival submissions of the learned Counsel for the parties. It is admitted position that, in response to the notice issued by the S. L. D. T. deceased Rambhau appeared before the S. L. D. T. Majalgaon. Said Rambhau was declared as non surplus land holder. The present Petitioner is purchaser of the land for valuable consideration. The present Petitioner is in possession and cultivation of the land in question. It is also admitted position that the notice for suo moto enquiry was issued by the Additional Commissioner after 15 years from the date of judgment and order dated 09.05.1977 passed by the S. L. D. T. Therefore, said notice for suo moto enquiry was after the period of about 15 years from the date of order passed by the S. L. D. T. It further appears that, the judgment and order passed by the Respondent No. 2 on 20th April, 1992 is exparte. Because no one was present at the time of hearing. Both deceased Rambhau and his son Shahaji are expired. Therefore it appears that the order passed by the Respondent is without hearing the Petitioner or his vendor. The notice issued by the Respondent was also not within the prescribed period of limitation. Therefore, in my opinion, since the notice issued by the Additional Commissioner was beyond the statutory period prescribed u/s 45(2) of the Ceiling Act, and the judgment and order is passed without hearing the Petitioner, the said judgment and order deserves to be quashed and set aside.

7. This Court had occasion to interpreter provisions of Section 45(2) of the Said Act in 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 subsection (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 provisional 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 provisional jurisdiction.

Yet in another decision in the case of Bansilal Ramgopal Bhattad v. State of Maharashtra and Other 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 ab initio 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 Others 2002 (2) Mh.L.J.255 this Court in the facts of the case held, notice u/s 45(2) of the Act for suo moto revision was issued on 25.03.1982 and not within the period of three years from the date of order of 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 subsection (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 Another 2004 (1) Mah.L.R. 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.

8. Therefore, in the light of aforesaid discussion the judgment and order dated 20th April, 1992 in Case No. 1978/ICH/R/2766 passed by the Additional Commissioner, Aurangabad Division, Aurangabad is quashed and set aside. The petition is allowed in terms of prayer clause "D". Rule is made absolute in above terms. The writ petition stands disposed of.