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(2009) 05 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No''s. 760 of 1990 and 175 of 1991

Fatima since deceased (through L.Rs. Abdul Kasam Bagwan and Others) — APPELLANT

Vs

The State of Maharashtra and The Surplus Land Determination Tribunal
 Bhaskar Shinde, Fulchanda Gade and Navnatha Gaikwad Vs The State of Maharashtra and Fatima since deceased (through L.Rs. Abdul Kasam Bagwan and Others) — RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 11A, 21, 45(2)

Citation : (2009) 3 BomCR 532 : (2009) 111 BOMLR 2022 : (2010) 1 MhLj 142

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : S.B. Bhapkar and S.S. Thombare, for the Appellant; D.V. Tele, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Borkar, J.—These two Writ Petitions raise basic question whether Fatima Kasam Bagwan who died pending these petitions and her son Abdul Aziz were holding surplus land within the meaning of provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Both these Writ Petitions can be advantageously disposed of by a common judgment.

2. Kasam Bagwan who was husband of the original petitioner in Writ Petition No. 760 of 1990 was resident of village Massa-Khandeshwari, Taluka Kallam, District Osmanabad. The Surplus Land Determination Tribunal, Kallam (hereinafter referred to as, "the S.L.D.T., Kallam") held inquiry. By decision dated 13.4.1976 the S.L.D.T., Kallam declared that the holding of the petitioner''s husband Kasam as ''non-surplus''. The husband of petitioner Fatima had expired three years before filing Writ Petition No. 760 of 1990. The Additional Commissioner,

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Aurangabad Division, Aurangabad somewhere in the year 1989 initiated proceedings u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as, "the Ceiling Act"). No notice of the proceedings was issued to the petitioner Fatima or her son. By decision dated 30.6.1989 the Additional Commissioner, Aurangabad Division, Aurangabad remanded the matter to the S.L.D.T., Kallam for re-inquiry. No notice was given by respondent No. 2 while deciding the matter afresh. By order dated 25.1.1990 the S.L.D.T., Kallam held that Fatima''s husband Kasam Nabiji Bagwan was holding surplus land to the extent of 16 acres 18 gunthas. It is this order dated 25.1.1990 which came to the notice of petitioner Fatima on receipt of notice dated 18.2.1990 issued by the Circle Inspector of Revenue, Kallam asking the petitioner to remain present on 19.2.1990 to hand over possession of Block Nos. 763 and 803 situated at Massa. It is stated that petitioner Fatima even thereafter continued to be in possession of the property till filing of the petition. With these averments, petitioner Fatima filed Writ Petition No. 760 of 1990 for quashing and setting aside decision dated 30.6.1989 passed by the Additional Commissioner, Aurangabad Division, Aurangabad u/s 45(2) of the Ceiling Act in respect of fresh inquiry and for quashing and setting aside decisions dated 25.1.1990 and 15.2.1990 by the S.L.D.T., Kallam.

3. The order dated 13.4.1976 passed by the S.L.D.T., Kallam is produced at Exh.''C'' in Writ Petition No. 760 of 1990 and said order clearly shows that after inquiry the S.L.D.T., Kallam declared that holding of Kasam Nabiji Bagwan, resident of Massa Khandeshwari was ''non-surplus''. At Exh.''E'' there is order passed by the Additional S.L.D.T., Kallam dated 25.1.1990 and thereby he declared that Kasam Nabiji Bagwan through his son Abdul Kasam Bagwan was holding surplus land to the extent of 16 acres 18 gunthas and direction had been given to issue notice for filing information in Form No. 7. It is stated that Abdul Kasam Bagwan has not filed information in Form No. 7 and, therefore, 10 acres 6 gunthas land out of Survey No. 170 and 6 acres 12 gunthas land out of Survey Nos. 171, 172 and 173 were declared as surplus.

4. The order dated 25.1.1990 passed by the S.L.D.T. declaring the land holder surplus to the extent of 16 acres 18 gunthas was challenged before the Maharashtra Revenue Tribunal, Aurangabad by filing Case No. 51/A/90-O and the Maharashtra Revenue Tribunal by its decision dated 9.8.1990 set aside the order of the S.L.D.T., Kallam and declared that the land holder was not having any surplus land.

5. After declaring land as surplus and after the order dated 15.1.1990 referred to above, the Revenue Authorities decided to allot surplus land to landless persons and accordingly on 28.2.1990 panchanama was drawn allotting the surplus land to three petitioners in Writ Petition No. 175 of 1991 and two more persons. The panchanama to that effect was drawn on 28.2.1990. According to the petitioners in Writ Petition No. 175 of 1991 they were put into actual possession of the property. Mutation No. 644 was sanctioned on 19.3.1990 regarding the allotment

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of lands. By filing Writ Petition No. 175 of 1991 said allottees of land have challenged the decision of the Maharashtra Revenue Tribunal, Aurangabad. According to them, the said decision is wrong and deserves to be quashed and set aside and it is necessary to confirm the orders of the S.L.D.T., Kallam dated 25.1.1990 and 25.2.1990 and also the decision dated 30.6.1989 by the Additional Commissioner, Aurangabad Division, Aurangabad.

6. A copy of decision of the Maharashtra Revenue Tribunal, Auangabad, dated 9.8.1990 is at Exh. ''F'' in Writ Petition No. 175 of 1991. The Tribunal observed that the S.L.D.T., Kallam had assessed the total holding as 70 acres 18 gunthas by observing that the land holder had admitted that the irrigation facility was available to an area of 7 acres. After converting the irrigated area S.L.D.T. had assessed total holding as 70 acres 18 gunthas. However, there is no evidence regarding availability of irrigation facility to an area of 7 acres. The S.L.D.T., Kallam had incorrectly observed that there was admission by the land holder to this effect. The Tribunal observed that there was no evidence at all before it about the availability of irrigation to an area of 7 acres. The learned Member of the Tribunal also stated that he had gone through the deposition of land holder and did not find admission regarding availability of irrigation facility to an area of 7 acres and, therefore, the assessment of the S.L.D.T., Kallam regarding total holding was wrong. The total holding of the land holder was 63 acres 18 gunthas and not 70 acres 18 gunthas. After excluding 9 acres 11 gunthas out of Survey No. 170 which was transferred as per order of the Civil Court in Civil Suit No. 153 of 1968 decided on 31.10.1069, the land holder was not having surplus land. The Tribunal in para 2 of its judgment referred to the decision dated 13.4.1976 by the S.L.D.T., Kallam and stated that S.L.D.T. had assessed total holding of land holder as 63 acres 18 gunthas without excluding area of 9 acres 11 gunthas which was transferred as per the decree of the Civil Court. In the order dated 25.1.1990 the S.L.D.T., Kallam ignored the transfer on ground that actual transfer was after notified date. But as per the Tribunal, the transfer was as per compromise which was made prior to the notified date. So transfer was not to defeat provisions of the Ceiling Act. The area of 9 acres 11 gunthas was liable to be excluded from the holding of the land holder. The Tribunal also noted the delay of 13 years made by the Additional Commissioner in revising the order and remanding the matter.

7. At the time of arguments the learned advocate Shri S.S.Thombare for the petitioner in Writ Petition No. 175 of 1991 referred to the 7/12 extracts of year 1989-90 produced at Exh.''E'' with the petition, which showed that Block No. 803 was seasonally irrigated to the extent of 3 Hectare 4 Are. The original record before the Tribunal is not before us. There is no record to show availability of irrigation facility to 7 acres on the date of commencement. There is no discussion in the light of Section 11A of the Ceiling Act. So it is not possible to consider new point and upset decision of the Maharashtra Revenue Tribunal merely on basis of VII-XII extract of 1989-90. The statement of Abdul Aziz alleged to have been recorded do not appear in the record received by this Court. In my opinion, no

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error can be found with the judgment and reasons given by the Maharashtra Revenue Tribunal, Aurangabad and, therefore, Writ Petition No. 175 of 1991 deserves to be dismissed.

8. So far as Writ Petition No. 760 of 1990 is concerned, the learned advocate Shri S.B.Bhapkar for original petitioner Fatima referred to the Full Bench Ruling of this Court in the case of Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr. 1989 Mh.L.J. 1011. In that case, Their Lordships considered the scope of Section 45(2) of the Ceiling Act. It is observed after referring to proviso to Section 45(2) of the Ceiling Act that said Act restricts the exercise of jurisdiction u/s 45(2) to those cases where record is called for within a period of 3 years from the date of declaration u/s 21. The starting point of limitation as prescribed in the proviso to Section 45(2) is the declaration or part thereof u/s 21 of the Act. The meaning assigned to word "call" in Oxford English Dictionary, Vol.2 and Chambers Twentieth Century Dictionary is "to summon". 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 mechanical, clerical or ministerial act of calling for the records of all the proceedings irrespective of the fact whether they were required or not for the purpose specified in the Section. The State Government is not appointed as roving commission, but is expected to exercise judicial or quasi-judicial powers. The object behind prescribing of limitation for calling for the record is not to upset the settled position at a very late stage. Calling for the record will require some positive act on the part of the authority but it must ultimately depend upon the facts of each case as to when the record was actually called for by the concerned authority. It is further observed that 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. At the end of para 8 it is specifically observed that the State Government or its delegate are expected to exercise said power within a reasonable time depending upon the facts and circumstances of each case.

9. The learned advocate Shri Bhapkar also referred to the decision of this Court in Gowardhandas deceased through his L.R. Vijaykumar Vs. The State of Maharashtra and The Additional Divisional Commissioner, , in which after referring to the law laid down in the case of Champabai W/o Shankarrao Patwari v. The State of Maharashtra 2004 MCR 480 it is observed that law requires not only making up of mind but actual initiating the proceedings and the first step that is expected is of issuance of notice to the affected persons. It is observed in para 9 of Chapabai''s case that when suo motu powers are vested in an authority the same need to be exercised within reasonable time. Supreme Court cases are also referred to in said para 9 for laying down proposition 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

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reasonable time.

10. In this case the order declaring Kasam Nabiji Bagwan as non-surplus was passed on 13.4.1976 and the order of remand for re-enquiry passed by the Additional Commissioner is dated 30.6.1989. In other words, it was passed after 13 years and without any explanation for such a long delay.

11. Here we may refer to earlier orders passed in Writ Petition No. 760 of 1990. In spite of several opportunities, the respondent officers of State were not filing affidavit in reply. Time was granted again and again. Ultimately by order dated 16.9.2008 opportunity was given finally to the respondents/State to file affidavit in reply subject to payment of exemplary costs of Rs. 10,000/-. In spite of this opportunity though reply affidavit is filed, the State Government did not produce original record of proceedings in which the Additional Commissioner passed order dated 30.6.1989. We wonder what prevented the State Government and its authorities from producing the record which is required to show that papers were called within three years from the order dated 13.4.1976.

12. In para 7 of the reply affidavit filed by the State it is stated that from the order dated 30.6.1989 it was clear that on the date of hearing the holder of land had filed his appearance before the respondents and this showed that suo motu revision notices were issued to the holder of the land. It is also stated that the holder of the land had died and his legal heir Abdul Kasam Bagwan was given notices on 28.12.1989 and 11.1.1990 and even after service of notices, Abdul Kasam Bagwan had remained absent before the S.L.D.T., Kallam. In para 13 of the affidavit in reply, it is stated that the matter was reopened by way of suo motu revision on 12.12.1978. The order of the Additional Commissioner, Aurangabad Division, Aurangabad dated 30.6.1989 shows in the opening para that suo motu proceedings were reopened on 12.12.1978 u/s 45(2) of the Ceiling Act, but nothing like memorandum or order dated 12.12.1978 is produced on record. Even the deponent who filed affidavit in reply refers to the order dated 30.6.1989 to say that the proceedings were re-opened on 12.12.1978. It is difficult to know what prevented the authorities from producing the document dated 12.12.1978 which showed that the revisional powers were exercised on that date. There is also complete silence as to what had happened between 12.12.1978 and 30.6.1989 and why no action whatsoever was taken during said period. Thus there is no document to show that the revisional power was exercised within limitation as per proviso to Section 45(2) of the Ceiling Act. In Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , the Supreme Court laid down that where there is no limitation laid down by statute to exercise power, it must be exercised in reasonable period. So action taken after 13 years in 1989 by the Additional Commissioner cannot be upheld.

13. Learned advocate Shri Bhapkar produced a copy of judgment delivered in Writ Petition No. 2399 of 1990 by the Single Judge on 4.6.2008. In that case same view as one taken in the case of Gowardhandas was taken. In that case in para 17 it is observed that the decision rendered in the case of Champabai v.

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State of Maharashtra in Writ Petition No. 56 of 1988 along with other Writ Petitions was challenged by way of SLP and the SLP came to be dismissed on 9th January, 2006 thereby upholding the view taken in Champabai and other cases.

14. The Division Bench of this Court in L.P.A. No. 131 of 2002 decided on 19.3.2009 after referring to various decisions at the end of para 20 has observed that it has now been settled that even in absence of any period of limitation being provided the authorities concerned should dispose of such matters within reasonable period. In para 22 after considering the original record the Division Bench stated that there was proper application of mind by the Additional Commissioner. Ultimately it held that revision was properly entertained in that matter and upheld the judgment of the Single Bench. It was observed in para 28 that the period consumed for final disposal of the matter by the Additional Commissioner in that case was not highly unreasonable. That was observed in the facts of that case.

15. In the present case no document is produced along with affidavit in reply by the State authorities to show that the Additional Commissioner has made necessary application of mind within period of limitation. Mere reference to memorandum dated 12.12.1978 in order dated 30.6.1989 is not enough. It cannot be said that powers u/s 45(2) are used in time in view of the law laid down by Full Bench in case of Manohar and in other cases.

16. In this view of the matter, Writ Petition No. 760 of 1990 is allowed and order dated 30.6.1989 passed by the Additional Commissioner and orders dated 25.1.1990 and 15.2.1990 by the S.L.D.T., Kallam are quashed and set aside and all other actions taken in pursuance thereof such as allotment of lands to landless persons including petitioners in Writ Petition No. 175 of 1991 are also quashed and set aside. Rule made absolute accordingly.

Writ Petition No. 175 of 1991 is dismissed. Rule discharged.

Parties are directed to bear their own costs.

Both Writ Petitions are accordingly disposed of.

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