

(2008) 06 BOM CK 0068
In the Bombay High Court
Case No : Petition No. 565 of 1996

Gowardhandas deceased through his L.R. Vijaykumar	APPELLANT
Vs	
The State of Maharashtra and The Additional Divisional Commissioner	RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1976 — Section 84C
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 17, 18, 19, 20

Citation : (2008) 5 ALLMR 95 : (2008) 5 BomCR 78 : (2008) 110 BOMLR 2241 : (2008) 6 MhLj 571

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

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; S.S. Autade, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

P.R. Borkar, J.—This writ petition is directed against the order passed by the Additional Divisional Commissioner, Aurangabad in Case No. 1978/ICH/R-2483, dated 30.3.1993, whereby the Additional Commissioner exercised powers u/s 43 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 of suo motu revision and set aside the order of the Surplus Land Determination Tribunal, Gangapur passed in Ceiling Case No. 75/CLNG/23 and remitted the case back for declaration that the holder was surplus for an area of 32 acres 14 gunthas instead of 27 acres 2 gunthas. Further direction was given to the Tribunal to de-limit additional area of 5 acres 12 gunthas for distribution after hearing the holder.

2. Facts giving rise to this case may briefly be stated as below.

Gowardhandas Laxmandas and Vishakhabai Gowardhandas were husband and wife. They filed 2 separate returns u/s 12 of the Maharashtra Agricultural Lands

(Ceiling on Holdings) Act, 1961 (hereinafter referred to as, "the Ceiling Act"). After deduction the holding of land as per notices issued under Sections 17 (1) and 17(2) of the Ceiling Act was found to be 166 acres 14 gunthas. Ultimately it was found that the total holding was 145 acres 17 gunthas. The land holder had one major son besides his wife and thus family consisted of 3 persons. In the circumstances, considering the Potkharab land ultimately it is held that 27 acres 2 gunthas land was surplus. The land holder gave the numbers of land which could be declared as surplus. Accordingly his choice was accepted and order was passed stating that 27 acres 2 gunthas as mentioned in the last part of the order was free from all encumbrances and those lands were declared as surplus. The order was declared on 8.11.1976. The said order is produced at Exh. "A" with the petition.

3. At Exh. "B" there is order passed by the Additional Divisional Commissioner, Aurangabad. He stated that on preliminary scrutiny of the case record, it revealed that the Tribunal committed error and so suo motu revision u/s 42(2) of the Ceiling Act is taken up. The memorandum to that effect was issued on 30.11.1978. The holder was served with notices and the grounds of Revision were communicated to him. As per the petitioner, the said notice was issued to him in the year 1992 after lapse of 16 years after decision of the Surplus Land Determination Tribunal, Gangapur (hereinafter referred to as, "the S.L.D.T").

4. Learned advocate Shri V.D.Salunke drew my attention to Section 45(2) of the Ceiling Act. Section 45(2) reads as follows :

45. Control.

(1) ...

(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 this 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 first proviso to Sub-section (2) of Section 45 of the Ceiling Act has been interpreted in several cases.

5. Learned advocate also argued that in this case the order was passed by the S.L.D.T., Gangapur on 8.11.1976 regarding de-limitation was not challenged in appeal either by the State Government or by the present petitioner or Gowardhandas the original land holder. He also argued that surplus land of 27 acres 2 gunthas was actually taken into possession and was distributed by the Government to the landless persons. In view of interpretation of law made in the case of Shalikram Dagduba Solunke v. State of Maharashtra 2004 (1) Mah.L.R. 310 the revision petition could not have been entertained. In para 9, the earlier judgment of this Court in Writ Petition No. 24 of 1986 decided on 13.2.1991 (Coram : N.P.Chapalgaonker, J.) was referred and following portion is quoted with approval.

Shri A.B.Naik, learned Counsel appearing on behalf of the petitioner, submitted only one point for my consideration. It is his submission that, since possession of the declared area under the order of the S.L.D.T. Hadgaon, was already taken on 16th April, 1976 and since the land was distributed at the very time, Additional Commissioner, Aurangabad had no jurisdiction to exercise his powers u/s 45(2) of the Ceiling Act of 1961, in view of the fact that, the possession of the land was already taken. Two conditions under the first proviso to Sub-Section (2) of Section 45, are required to be fulfilled before the State Government can call for the record and enquire into the proceedings. The first is that an appeal should not have been filed within the period provided for and possession of the land declared should not have been taken the words "the possession of such land has not been taken under Sub-section (2) of Section 21" were deleted by the Maharashtra Act No. 26 of 1976 read with Section 2. The provisions of this Act No. 26 of 1976 were held to be ultra-virus since the assent of the President was not received for the said Act. Shri Naik further placed reliance on a Division Bench judgment of this Honourable Court in the case of Shalinibai Astak Qureshi v. State of Maharashtra (supra). The Division Bench held that, the deletion of the above referred words by Maharashtra Act No. 26 of 1976, cannot become operative since the Act deleting these words was not a law relating to acquisition as contemplated under Article 31 in view of the fact that, the President's assent was not there. Mrs. A.S.Rasal, learned Assistant Government Pleader appearing for respondents, was fair enough to admit that, in view of the record submitted by the petitioner in this Court, the possession of the declared portion was taken in the year 1976 and one Jungloo s/o Sambha, resident of Talni was put in possession of this land in the year 1976 and the Commissioner has exercised his powers to call for the record thereafter. " So far as this point is concerned there is no necessary pleading or averments in the writ petition and, therefore, I cannot consider the same.

6. The learned advocate for the petitioner also relied upon the Full Bench case of Manohar Ramchandra Manapure v. State of Maharashtra 1989 Mh.L.J. 1011. In

that case Section 45 (2) proviso was considered and it is observed that the Ceiling Act restricts the exercise of jurisdiction u/s 45(2) to those cases where record is called for within the period of 3 years from the date of declaration u/s 21. It is further observed that meaning assigned to word "call" as per Dictionaries is "to summon". It is further observed that 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 the 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. In the case before Their Lordships it is held that the necessary application of mind on the part of the Commissioner was much beyond the period of 3 years of the order impugned, and therefore, it was held that the records were not called within a period of 3 years and in such cases the Commissioner will have no power to exercise the revisional jurisdiction.

7. The same view as abovesaid is followed in (1) *Lotan Fakira Patil v. State of Maharashtra* 2002 MCR 311; (2) *Laxminarayan Jaju Vs. State of Maharashtra*, ; (3) *Shalikram Dagduba Solunke v. State of Maharashtra* 2004 (1) Mah.L.R. 310 and (4) *Bansilal Ramgopal Bhattad v. State of Maharashtra* 2001 (1) Mh.L.J. 68.

8. The entire law was reviewed by this Court (Coram : A.P.Deshpande, J.) in the case of *Champabai w/o Shankarrao Patwari v. The State of Maharashtra* 2004 MCR 480. In that case after referring to various authorities the ultimate conclusion drawn in para 8 was that having regard to the factual and legal position discussed the Court was of the opinion that the orders of calling record passed by the Additional Commissioner though passed within a 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. The facts of that case revealed that there was use of a ready made printed form of the order was identical in all cases which was indicative of non-application of mind and revealed mechanical approach. In para 9, the Court has laid down law as follows:

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 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 circumstances 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 *Mahamad 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.

9. In this case, Mrs. Autade, A.G.P. has drawn my attention to para 2-A of the order of the Additional Commissioner and stated that in the case before this Court memorandum regarding entertaining suo motu revision u/s 45(2) of the Ceiling Act was issued on 30.11.1978 and, therefore, the decision to entertain revision was taken within 3 years from 8.11.1976 and, therefore, the revision

was rightly entertained. However, there is no denial that after having issued memorandum on 30.11.1978 which was nothing but internal office action, no notice was issued to the petitioner till 1992. I fully agree with the observations made in the case of Champabai Patwari (supra). The 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. In this view of the matter, in my opinion, the order passed by the Additional Commissioner, Aurangabad is clearly beyond limitation laid down u/s 45(2) of the Ceiling Act and, therefore, it needs to be quashed and set aside.

10. In the result, the petition is allowed. The order passed by the Additional Commissioner, Aurangabad in Case No. 1978/ICH/R-2483 dated 30.3.1993 is hereby quashed and set aside. Rule is made absolute. However, the parties are directed to bear their own costs.