

(2010) 03 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 1170 of 1991

Hari Ghodke

APPELLANT

Vs

The Maharashtra Revenue Tribunal, Bench Aurangabad,
Additional Commissioner, The Collector and Vasantrao

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 17, 18, 19, 2
Maharashtra Land Revenue (Restrictions on the Use of Land) Rules, 1968 — Rule 2
Maharashtra Land Revenue Code, 1966 — Section 67

Citation : (2010) 3 BomCR 50

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : P.G. Godhamgaonkar, for the Appellant; N.H. Borade, AGP and V.G. Sakolkar, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—The petitioner is Ex-serviceman. He was allotted three (3) acres land out of land Gut No. 19A, situated at village Sangvi (Karadkhed) under Degloor Tahsil in the year 1982. The land was delineated from the land of respondent No. 4 Vasantrao since he was found to be surplus land holder. There is no dispute about the fact that the petitioner was in actual possession of the land allotted to him during course of distribution of the surplus land since 1982.

2. The land holder i.e. respondent No. 4 Vasantrao had filed Return u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, "the Ceiling on Holdings Act"). He held six (6) parcels of land situated in two villages, including land Gut No. 19A. His total holding was found to be 73 acres and 5 parcels of such lands were irrigated one. The Surplus Land Determination Tribunal (for short, "S.L.D.T.") held on 19th March, 1976 that respondent No. 4 Vasantrao was holder of surplus land to the extent of 5 acres 24 gunthas. The decision of the S.L.D.T. was challenged by respondent No. 4 Vasantrao by filing

appeal u/s 21 of the Ceiling of Holdings Act. His appeal bearing case No. 1120/A/76/NANDED was decided by the Maharashtra Revenue Tribunal (M.R.T.), Aurangabad on 17th June, 1976. The M.R.T. held that the S.L.D.T. shall determine the area of pot-kharab land for the purpose of exclusion from the holding of respondent No. 4 Vasantrao. dissatisfied with such direction to hold enquiry, the respondent No. 4 - Vasantrao filed Special Civil Application No. 3597/1976 in this Court. This Court came to the conclusion that respondent No. 4 Vasantrao was entitled to seek exclusion of 7 acres 15 gunthas land from the holdings because that was legally sold on 30th October, 1972. This Court held that the area of 11 acres 17 gunthas was claimed to have been part of un-used (pot-kharab) land out of the holding and determination of such area could be effected after due enquiry by the S.L.D.T. This Court directed that while determining the holding and the surplus, if necessary, the S.L.D.T. would take into consideration the transfer of 7 acres 15 gunthas, which was found to be valid one. The S.L.D.T. thereafter inquired into the matter, effected the necessary deduction of the alienated 7 acres 15 gunthas land from the holdings of respondent No. 4 Vasantrao and ultimately, came to the conclusion that he was holder of surplus land to the extent of 4 acres 19 gunthas as contemplated u/s 21 of the Ceiling on Holdings Act. The S.L.D.T. came to the conclusion that there was only 13 acres 17 gunthas land which could be excluded as pot-kharab and considering the entire holding of respondent No. 4 Vasantrao, instead of earlier finding that he was surplus land holder to the extent of 5 acres and 24 gunthas, he was held to be holder of surplus land to the extent of 4 acres 19 gunthas. This finding was rendered vide order dated 19th May, 1982 by the learned Additional Tahsildar of the S.L.D.T. Though respondent No. 4 Vasantrao did not challenge the said findings of the S.L.D.T. and maintained silence as regards such surplus land determined, yet, the learned Additional Commissioner, Aurangabad Division, suo motu commenced revision proceedings u/s 45(2) of the Ceiling on Holdings Act. The learned Additional Commissioner came to the conclusion that the pot-kharab land was not properly identified and measured by the District Inspector of Land Records (DILR). The learned Additional Commissioner held that the pot-kharab land was required to be measured after carrying of survey and thereafter afresh finding to be given by the S.L.D.T. In pursuance to the said directions, the learned Assistant Collector conducted the enquiry and held that respondent No. 4 Vasantrao was not the surplus land holder. This was done behind back of the petitioner. He was likely to be affected due to such findings in as much as the land allotted to him could have been withdrawn as a sequel to such orders. He, therefore, preferred an appeal u/s 33(2) of the Ceiling on Holdings Act. His appeal bearing case No. 178/A/90-N was entertained by the M.R.T. The M.R.T. held that the findings of the learned Assistant Collector were legal and proper. Consequently, the appeal was dismissed vide the impugned judgement. Hence, the petition.

3. Heard learned Counsel for the parties and learned A.G.P.

4. Questions involved in this petition are:

(i) Whether the findings regarding determination of surplus land holding rendered by the S.L.D.T. on 19th May, 1982 could be set aside by the learned Additional Commissioner in the exercise of powers of suo motu revision u/s 45(2) of the Ceiling on Holdings Act after delay of approximately seven (7) years?

(ii) Whether the proceedings of suo motu revision could be entertained without giving any opportunity of hearing to the petitioner, in whose favour the part of surplus land was already allotted while making distribution of the excessive land available for such purpose, and was it proper to hold that respondent No. 4 Vasantrao was eligible to get exemption of more land than which was claimed by him as pot-kharab land while filing of the Returns and, therefore, afresh enquiry could be ordered?

(iii) Whether the S.L.D.T. committed patent error while reaching conclusion that the respondent No. 4 - Vasantrao held 20 acres 29 Ares (gunthas) pot-kharab land only on basis of so called certificate issued by the DILR, Nanded, without considering the long-standing revenue assessment entries?

5. There cannot be duality of opinion that the holding of land could be determined on basis of information furnished by the land holder while filing the Returns. The Returns are required to be filed u/s 12 of the Ceiling on Holdings Act. It is pertinent to note that respondent No. 4 Vasantrao had filed such Return. He had not shown any particular area of pot-kharab land as such. The exemption sought by him was in respect of land which was acquired for Degloor-Udgir road out of Survey No. 19, to the extent of 1 acre 20 gunthas, land which was sold prior to 26-09-1970 to the extent of 1 acre, land which was acquired out of Survey No. 23/B to the extent of 0 Hectare 17 Ares, lands sold for repayment of the cooperative loans to the extent of 6 acres 10 Ares and the land which was covered under river and nala passing through lands Survey Nos. 20/1, 20/2, 19 and 23/B, admeasuring 13 Acres 17 gunthas. Thus, he had sought exclusion of 22 acres 24 gunthas land from the entire holding of land which was in his possession. The S.L.D.T. had determined that cultivable area in his possession comprised of 70 acres and 16 gunthas. The family unit was entitled to hold 64 acres 32 gunthas area and, therefore, 5 acres 24 gunthas land was found as surplus land with him.

6. The question is whether the learned Assistant Collector, Degloor, after the direction of the Additional Commissioner, Aurangabad, could have determined the area of pot-kharab land as 20 acres 29 gunthas even though the case of respondent No. 4 Vasantrao was never that he held such pot-kharab land. The details of pot-kharab as given in the Return submitted by the respondent No. 4 Vasantrao would show that all along, he had maintained the stand that 13 acres 17 gunthas land had been occupied by river and nala and that was the only pot-kharab land i.e. un-cultivable land. Excluding the land acquired for Degloor-Udgir road and a small fragment of land acquired out of Survey No. 23/B, how come this excessive pot-kharab land was held to be the holding of respondent No. 4 Vasantrao? What transpires from the record is that there was no proper enquiry

in this context. The learned Assistant Collector simply treated the certificate of DILR as a gospel truth in this behalf. The M.R.T. failed to examine this issue in proper perspective. As a matter of fact, in the earlier round of litigation, this Court while deciding the Special Civil Application No. 3597/1976 had noticed that the pot-kharab land was to the extent of 11 acres 17 gunthas and was sought to be excluded from the holdings of respondent No. 4 Vasantrao. In fact, respondent No. 4 Vasantrao had never approached the learned Additional Commissioner, Aurangabad against finding that he was surplus land holder to the extent of 4 acres 19 gunthas as held by the S.L.D.T. on 19th May, 1982. It is difficult to comprehend as to why the learned Additional Commissioner took it unto himself to entertain suo motu revision, though there was no prima facie material to infer that the land holder had suppressed some material facts in order to cause illegal exclusion of some land from the clutches of the Ceiling on Holdings Act. The purport of suo motu revision is to facilitate the competent authority to detect any fraud, unravel mala fide suppression of material facts by the landholder or to rectify any patent illegality committed by the S.L.D.T. in determination of the surplus land. The exercise of such suo motu power is not intended to give land to the land holder who had never challenged the adverse order and then to declare that he is not surplus land holder on the basis of newly prepared material.

7. The matter does not stop here. Neither the learned Additional Commissioner nor the learned Assistant Collector, Degloor, gave any opportunity of hearing to the petitioner. It was explicit from the record that the petitioner was likely to be affected by the proceedings which were suo motu initiated. The relevant orders were passed in his absence. Obviously, it will have to be said that principles of natural justice were not followed by the learned Additional Commissioner and learned Assistant Collector. The M.R.T. appears to have missed this important flaw in the relevant orders which were challenged by the petitioner by way of appeal.

8. What is the meaning of expression "pot-kharab land" is also not properly appreciated by the S.L.D.T. and the other authorities including the M.R.T. Mr. Sakolkar invited my attention to definition of word "land" as used in Section 2(16) of the Ceiling on Holdings Act. The definition of word "land" implies only the land which is used or capable of being used for the purpose of agriculture. It also contains inclusive definition in respect of certain categories. There is no specific definition u/s 2 of the said Act in respect of expression "pot-kharab land". It goes without saying that the general definition under the Maharashtra Land Revenue Code and the Rules framed thereunder will have to be considered. The categories of pot-kharab land are enumerated in village Form-I provided under the Maharashtra Land Revenue Record of Rights and Registers Rules, 1971. The manner of assessment and alteration of assessment of land revenue is envisaged in Section 67 of the Maharashtra Land Revenue Code. The expression "pot-kharab land" means barren or un-cultivable land included in the assessment, survey number and includes any land comprised in a survey number which for

any reason is held to be likely to be brought under cultivation. In other words, the pot-kharab land means the land which is included in the assessment of land revenue, but cannot be used for the purpose of cultivation due to the natural reasons like, it being barren due to improper soil structure, stony surface, etc. However, its defects can be surmounted by appropriate methodology and, therefore, the pot-kharab land is regarded as one which is temporarily un-used though assessed for the purpose of land revenue. Rule 2 of the Maharashtra Land Revenue (Restrictions on the Use of Land) Rules, 1968 would show that the land included as pot-kharab in a survey number for the purpose of agriculture could be only of two kinds. The pot-kharab land does not include alluvial land. The determination of the pot-kharab land by the learned Assistant Collector, Degloor is not founded on any tangible evidence except a certificate which seems to have been issued by the DILR. It was expected that the learned Member of the M.R.T. would consider the previous stand taken by the land holder i.e. respondent No. 4 Vasantrao as regards the area shown to be pot-kharab land in the Return filed by him. That was not done by the learned Member of the M.R.T. The entire approach of the learned Member of the M.R.T. is improper and incorrect.

9. It need not be reiterated that after about seven (7) years? period unless there was some special reason to infer that land holder had committed fraud or had suppressed material information while filing the Return, the suo motu exercise of powers u/s 45(2) of the Ceiling on Holdings Act was uncalled for. The delay caused in the exercise of such suo motu powers is not explained by the learned Additional Commissioner. Section 45A(1) of the Ceiling on Holdings Act empowers the Commissioner to suo motu call for the record of any enquiry or proceedings for the purpose of satisfying himself as to the legality or propriety of the enquiry or proceedings. Section 45(2) and the provisos appended thereto read as follows:

(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 - 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.

The legal impact of the afore-stated three (3) provisos appended to Sub-section (2) of Section 45 is overlooked by the M.R.T. Not only that, the suo motu revisional jurisdiction could not have been invoked after period of three (3) years from the date of the declaration made by the S.L.D.T., but no such order could have been passed in respect of the land which was already declared surplus and had been distributed according to the provisions of the said Act. The second proviso intends to protect the beneficiaries who are already inducted in possession of the allotted land. The further embargo is placed on the exercise of suo motu revisional jurisdiction by the competent authority in respect of the land declared as surplus. The third proviso would make it amply clear that the suo motu revisional jurisdiction shall be exercised only where it is alleged that the land declared as surplus is less than the actual land which could have been declared surplus. It goes without saying that such exercise of suo motu revisional jurisdiction cannot be undertaken when there is no allegation that the land declared as surplus is actually less than what could have been declared. It is necessary for the competent authority to prima facie give finding that actually more land should have been declared as surplus but the S.L.D.T. had committed mistake or that the land holder had suppressed material information so as to get escape from the provisions of the Ceiling on Holdings Act. In the present case, diagonally opposite process is undertaken by the learned Additional Commissioner and it was furthered by the S.L.D.T. as well as the M.R.T. This is nothing but abuse of revisional powers and that too with lopsided intention to unnecessarily turn the earlier findings topsy-turvy. Considering these aspects, I have no hesitation in holding that the impugned judgements are perverse and rendered in total ignorance of the legal import of the provisos appended to Section 45(2) of the Ceiling on Holdings Act.

10. In *Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr.* 1989 Mh.L.J. 1011 (Full Bench), this Court held that the proviso to Section 45(2) of the 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 three (3) years from the date of declaration u/s 21. The fact situation of the present case is covered by the above referred authority. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , the Apex Court held that even though no period of limitation is prescribed for exercise of revisional jurisdiction by the State Government, suo motu, such power must be exercised within a reasonable time. It is more so when there is no tangible material to infer any fraud committed by the land holder and that he had accepted the finding of the S.L.D.T. regarding his being surplus land holder.

11. Taking stock of the foregoing discussion, it will have to be said that the very commencement of the suo motu revisional proceedings was barred by limitation, was in total disregard to the provisos appended to Section 45(2) and the result emanating therefrom cannot withstand the legal parameters. Needless to say,

the impugned judgements will have to be set aside by allowing the petition.

12. In the result, the petition is allowed. The impugned judgements, rendered by the learned Assistant Collector and the Maharashtra Revenue Tribunal, are set aside. Rule made absolute accordingly. No costs.