
(2004) 11 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No's. 1098, 1099, 1100, 1101, 1249, 1251 of 1992

Haribhau Baliramji Wankhede

APPELLANT

Vs

Additional Commissioner, Amravati Division and Others

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 27, 27(3), 27(4), 27(5), 27(7)

Citation : (2005) 2 BomCR 615 : (2005) 2 MhLj 593

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : S.K. Pardhy, in W.P. No. 1098, 1099, 1100, 1101, 1249 and 1251/1992, for the Appellant; T.R. Kankale, A.G.P. in W.P. No. 1098 and 1099/1992, Deepak Thakare, A.G.P. in W.P. No. 1100/1992 for respondent Nos. 1 to 3 and in W.P. No. 1101/1992 and Neeta Jog, A.G.P. in W.P. No. 1249 and 1251/1992 for respondent Nos. 1 to 3, for the Respondent

Judgement

Dharmadhikari B.P., J.—In all these petitions somewhat identical questions arise and hence, all can be conveniently disposed of together as the facts are also similar. The orders which are challenged are the orders dated 13-1-1989 passed by Sub-Divisional Officer, Daryapur and the order dated 20th March, 1992 passed by the Additional Commissioner, Amravati Division, Amravati. Both these orders are common in all these writ petitions.

2. In all these writ petitions lands were allotted by the State Government to the petitioners either on 16-11-1987 or on 2-5-1988 and thereafter have been withdrawn on 13-1-1989 by the Sub-Divisional Officer. The said withdrawal has been challenged by the respective allottees/petitioners by separate revisions before the respondent No. 1 Additional Commissioner and on 20th March, 1992 the Additional Commissioner has upheld the order of S.D.O.

3. I have heard Advocate Shri Pardhy for the petitioners in all these cases and learned A.G.Ps. Shri Kankale, Shri Thakare and Smt. Jog for respondents in

respective petitions.

4. It appears that the lands declared surplus under the provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 became available at village Wadner Gangal and as required by Section 27 of this Act lands were distributed. The Chairman and tahsildar of Surplus Lands Determination Tribunal thereafter cancelled that allotment and reallocated those lands to the present petitioners. As already stated above, it has been allotted on 2-5-1988 to petitioners Haribhau Wankhede in Writ Petition No. 1098, to Deepak Wankhede in Writ Petition No. 1100/92, Devidas Kolhe in W.P. No. 1099/92. It has also been allotted to the petitioners Smt. Raibai Wankhede in W.P. No. 1101/92 on the same dated. In so far as remaining two petitioners are concerned they are allotted their respective lands on 16-11-1987, The order of allotment of Haribhau and Deepak in W.P. Nos. 1098/92 and 1100/92 is common.

5. The Sub-Divisional Officer, Daryapur in Case No. 1/60-A(6) of 88-89 started under the provisions of Section 45-A has conducted inquiry into these allotments. He has found that both Haribhau and Deepak have been allotted land as agricultural labourer who have been rendered jobless because of acquisition of that land from its original owner in accordance with Section 27(3)(b) of the Ceiling Act. The S.D.O, has remarked that no proper inquiry was conducted by the Tahsildar on 2-5-1988 while allotting these lands either to Haribhau or to Deepak. The S.D.O. has found that Tahsildar did not obtain necessary evidence or material on record to ascertain whether these two persons were infact, working as labourer on that land and while cancelling the allotment already made, no permission of Collector as required by rules was obtained. It was further found that in the proceedings these petitioners also did not mention that the land has been allotted to them as agricultural labourers. Both the petitioners challenge this order dated 31-1-1989 in revision and the revisional authority i.e. respondent No. 1 has given same reasons while upholding the order of S.D.O.

6. Learned Advocate Pardhy appearing in these petitions argues that the Tahsildar had conducted appropriate inquiry and thereafter only he had allotted the land to these petitioners. He further states that the S.D.O. or the revisional authority did not given appropriate or proper opportunity to the petitioners to substantiate their stands and orders are passed in breach of principles of natural Justice. He further states that there is total non-application of mind because there is no provision in Ceiling Act which requires permission of the Collector to cancel the allotment already made. He invites attention of the Court to the order-sheet dated 2-5-1988 and states that perusal of the said order-sheet itself clearly reveals that the tahsildar and Chairman of Surplus Land Determination Tribunal has expressly mentioned in the order of allotment that these petitioners had applied for allotment of land alongwith certificate that they are labour on the field of original owner and that the said fact has been verified after inquiry. He therefore, contends that the stand of S.D.O. or Revisional Authority that there was no proper inquiry and there are no documents on record is per se perverse

and incorrect.

7. Arguing for petitioner Smt. Raibai in Writ Petition No. 1101/92 he contends that the allotment made in her favour has also been cancelled. He points out that exactly same reasons have been given to cancel the allotment in her favour. It is held that there was no proper inquiry whether Smt. Raibai was working as agricultural labour on the field of original owner and the revisional Authority has upheld the order in the same mode and manner. It has been recorded by the revisional authority that there is no documentary evidence on record to support the case of Smt. Raibai that she worked as labourer on the said field. Here also the learned Counsel invites retention of Court to the order of allotment dated 2-5-1988 wherein the Tahsildar and Chairman of Surplus Land Determination Tribunal expressly mentions that Smt. Raibai applied in the category of agricultural labourer which has been rendered jobless because of declaration of the said land as surplus and he further states that perusal of the order-sheet itself reveals that the application is accompanied by necessary certificates of the land owners. He further argues that in this case also no appropriate opportunity has been given to the petitioners to prove her case.

8. As against this, the learned A.G.P. while opposing the case of the petitioner states that the S.D.O. also revisional Authority have considered the entire material available on record and thereafter have only reached the conclusion that the tahsildar and Chairman of S.L.D.T. has not conducted proper inquiry to ascertain whether the petitioners were infact working as agricultural labours and whether they were entitled to allotment of the land u/s 27(3)(b) of the Ceiling Act. They contend that necessary hearing was given to the petitioners by S.D.O. and in revision before the Additional Commissioner the petitioners were represented by their Advocate. Therefore, they contend that the denial of reasonable opportunity in this respect as argued by the petitioners is not point in issue. They contend that orders are passed after giving them adequate opportunity and the petitioners never asked for any opportunity to lead any evidence or never applied for permission to produce documents in absence of such application and permission, the mode and manner in which learned lower Authorities have conducted inquiries cannot be faulted with.

9. After hearing parties, it is apparent that under the provisions of Section 27(3) (b) the person who was previously employed on an agricultural field who has been rendered unemployed as a result of such land being declared surplus is entitled to distribution of such land. Perusal of the order of allotment i.e. order of distribution dated 2nd May, 1988, clearly shows that all these petitioners applied for allotment of land as labourers who have been rendered jobless on account of declaration of that land as surplus in ceiling proceedings and their applications were accompanied by necessary certificate of surplus land holders under whom they worked. The Tahsildar and Chairman of S.L.D.T. has verified this position and it is accordingly reflected in his order-sheet. The said authority has further mentioned that it has got itself satisfied about this aspect and thereafter only the

order of allotment has been made. Thus, it cannot be said that there is no material or document on record in favour of these petitioners. However, it appears that the said document has not been considered by either S.D.O. or the revisional Authority. The learned A.G.P. in this respect argued that perhaps documents are not on record therefore, only the S.D.O. and Additional Collector have not made any reference to it.

10. It is to be noted that the allotment is of the year 1988 and the petitioners are placed in possession and are in possession since last more than 16 years as this Court while admitting the petitions protected their possession. Hence, in these circumstances, case for remand is made out. Under these circumstances, it will be in the fitness of things if all these three petitions are remanded back to the Sub-Divisional Officer, Daryapur for holding inquiry in this respect after giving due opportunity to the petitioners to substantiate their case.

11. Accordingly the impugned order dated 31-1-1989 passed by the Sub-Divisional Officer, Daryapur and the revisional order dated 20th March, 1992, passed by the Additional Commissioner, Amravati Division, Amravati against these petitioners are quashed and set aside. The matters are remanded back to the Sub-Divisional Officer, Daryapur to grant appropriate opportunity to the petitioner, as mentioned above. As the matters are very old, the S.D.O. is directed to complete this inquiry as early as possible and in any case within a period of six months from the date of receipt of this order by it.

Rule made absolute in the above terms in Writ Petition Nos. 1099 of 1992, 1100 of 1992 and 1101 of 1992.

12. The petitioner Devidas in Writ Petition No. 1098 of 1992 has been allotted the land on 16-11-1987. The learned S.D.O. in above mentioned case started by him u/s 45-A of the Ceiling Act has cancelled the allotment in his favour on the ground that his father as holding 2 Hectares and 2 Are of agricultural land. It has been therefore, held that allotment made to said petitioners u/s 27(5), (3) on 16-11-1987 is illegal and accordingly the allotment has been cancelled. In his revision the respondent No. 1 Additional Commissioner has also upheld the order of cancellation on the same ground.

13. Advocate Pardhy appearing for the said petitioners invites attention to the order of allotment dated 16-11-1987 and points out that the land has been allotted to him in his capacity as an Ex-serviceman and it is independent status recognised by Section 27, Sub-section 5(iii). He states that holding of his father is totally irrelevant in view of this provision. He further points out that by Section 27(7) an Ex-serviceman can be allotted the land u/s 27(5)(iii) only subject to the limit that his total holdings should not exceed 3 hectares of land. He states that his father is holding 2 Hectares and 2 Are of land and he has been allotted 2 Hectare and 10 Are. Therefore, even if the land of his father is clubbed together with his land, total land becomes 4 Hectares and 12 Are and hence, it exceeds upper limit only by 1 hectare and 12 Are. Therefore, the entire land allotted to

him could not have been cancelled by the learned Authority. He contends that this shows total non-application of mind. He further clarifies that this argument is without prejudice to his case that holding of his father is separate and distinct and it cannot be clubbed with his own holdings. He further states that in this case no appropriate opportunity has been given to him to prove and substantiate his case. Before revisional Authority he has expressly mentioned that 5 hectares of his land is ancestral and his father has got 5 sons and 3 daughters and therefore, even if he has given same share in the holding of his father it would be less than 1 acre. He therefore, contends that his total holding as such will never exceeds 3 hectares.

14. As against this the learned A.G.P. argued that it was open to the petitioner to prove before the Sub-Divisional Officer or Additional Commissioner that his total holding is not going to exceed 3 hectares. It is argued that the petitioner has not availed of such opportunity and has not produced on record any document and therefore, the order passed by both the authorities is just and proper. It is contended that this aspect of holding of father or its effects on allotment of land has not been considered by the Tahsildar and Chairman of S.L.D.T. while allotting the land to the petitioner and as both the authorities have passed orders concurrently, no interference is called for in this petition.

15. Perusal of order of allotment clearly shows that the applications received by Tahsildar and Chairman, S.L.D.T. were examined by the said Authority and thereafter six eligible ex-servicemen have been allotted the land. If this allotment was to be cancelled or disturbed by the Sub-Divisional Officer, he ought to have given appropriate opportunity to the said petitioner to plead the case. Merely because his father was holding 5 acres of land that is not sufficient to cancel the allotment made in favour of the petitioner. The petitioner has been allotted land which is admeasuring 2 Hectares and 10 Are and it is less than 3 Hectares, The allotment already made was sought to be cancelled and therefore, the S.D.O. ought to have recorded findings that the petitioner is joint in estate and mess with his father. In absence of such finding, the impugned orders of S.D.O. cannot be sustained. The said argument has been advanced before the revisional authority but the revisional authority has ignored it by holding that the petitioner has not produced any documents in revision to support his contention.

16. Under these circumstances both these orders are quashed and set aside. The matter is remanded back to respondent No. 2 S.D.O., Daryapur to hold fresh inquiry into the holding of the petitioner and to find out whether the land already allotted to the petitioner together with 5 acres of land of his father or his share in that land will exceeds upper limit of 3 Hectares prescribed for that purpose in Section 27(7) of the Ceiling Act. As the matter is of 1987 the learned S.D.O. is directed to complete this inquiry after giving due opportunity to the petitioner as early as possible and in any case, within a period of six months from the date of receipt of this order by it.

The impugned order dated 31-1-1989 passed by Sub-Divisional Officer, Daryapur

as also the revisional order dated 20th March, 2002, passed by the Additional Commissioner, Amravati Division, Amravati and therefore, quashed and set aside.

Rule made absolute in the above terms with no order as to costs.

In this case also Advocate Pardhy for the petitioner argued that as the impugned order is passed after expiry of one year from 16-11-1987 in view of bar prescribed u/s 45-A of the Ceiling Act the order is null and void. This argument is being considered while dealing with it Writ Petition No. 1251 of 1992.

17. Petitioner Baburao in Writ Petition No. 1249 of 1992 has been allotted land as per order dated 16-11-1987 and that allotment has been cancelled in above proceedings by the Sub-Divisional Officer, Daryapur on the ground that the petitioner is not residing at Warud but at Akola. This finding reached by the Sub-Divisional Officer has also been upheld by respondent No. 1 Additional Commissioner in his order dated 20th March, 1992, Adv. Pardhy appearing for the petitioner points out that; this finding that the petitioner is not residing at Warud and is residing at Akola has been drawn on the basis of caste certificate issued by the Tahsildar, Akola. He points out that he has produced on record various other documents which are not even looked into. He points out that the petitioner is born at Warud and he has taken education at Warud and he has got his stationary shop at Warud. He has further pointed out that he has been issued B.P.L. Card at Warud. He has further stated that he has started voting in election at Warud. Therefore, he states that by placing reliance on one document it has been concluded by the authorities that he is not residing at Warud. He contends that the said evidence is perverse. He further argues that here power of revision has been exercised beyond one year and therefore, also the impugned orders must be quashed and set aside.

18. The learned A.G.P. argues that Caste Certificate given by the Tahsildar is produced by the petitioner and it clearly shows that he is residing at Akola and not at Warud. It is further argued that the facts mentioned above by the learned Counsel for the petitioner clearly show that the petitioner is not residing at Warud. Accordingly to the learned A.G.P. all these facts are required to be stated only because the petitioner is not residing at Warud.

19. Having heard both the sides it is clear that land has been allotted to the petitioner by the Tahsildar and Chairman, S.L.D.T. on 16-11-1987 and the petitioner has pointed out that he is permanent resident of Warud. In such circumstances as by placing reliance upon one caste certificate and by ignoring other documents inference has been drawn that he is not residing at Warud, it is observed that such inference is unwarranted and perverse.

20. Under these circumstances both these impugned orders dated 31-1-1989 and 20th March, 1992 are quashed and set aside. The matter is remanded back to respondent No. 2 S.D.O., Daryapur to give petitioner appropriate opportunity in this respect to show that he is resident of village Warud and to pass appropriate order after holding due inquiry in this respect. As the matter is of

1987 the learned S.D.O. is directed to complete the said inquiry after giving due opportunity to the petitioner as early as possible and in any case, within a period of six months from the date of receipt of this order by him. Rule made absolute in the above terms with no order as to costs.

21. Mr. Bhagwan petitioner in Writ Petition No. 1251 of 1992 is also allotted land on 16-11-1987. The allotment in his favour has been cancelled on the ground that he is not resident of Warud or he is not resident of village within 8 kms. from the place Wadner Gangal where the agricultural land allotted to him is situated. It is mentioned that the petitioner is resident of Warud while the land is available at Wadner Gangal and the land should have been allotted to the claims from Wadner Gangal. The Sub-Divisional Officer has therefore, held that as per Section 27(4) of the Ceiling Act allotment made to the petitioner is illegal and has cancelled it. The revisional Authority has upheld this aspect and has found that the distance between Warud (Buz.) where the petitioner resides and the village Wadner Gangal is more than 8 kms. and therefore, as per Section 27(5) the allotment is illegal. The revisional authority has therefore, up held the order of S.D.O. The revisional authority has further held that the S.D.O. had undertaken the inquiry before expiry of the period of one year and therefore, bar u/s 45-A will not be attracted.

22. Advocate Pardhy for the petitioner points out that the distance between Warud (Buz.) and Wadner is not more than 4 kms. He points out two certificates which show distance between Warud to Wadner Gangal is 5 to 8 kms. He states that the provisions of Section 27(5)(iv) proviso lays down that if there are more than one claimant having same order of priority than one who is resident within 8 kms. of outer limit of the village in which surplus land is available is to be preferred. He states that as the village Warud where petitioner is residing is situated at a distance of less than 6 kms. allotment in favour of the petitioner was just and proper and ought not to have been withdrawn. He contends that the impugned order is thus, arbitrary and deserves to be quashed and set aside.

23. The learned A.G.P. for the respondents contends that the authorities have applied their minds to this aspect and have recorded findings that the distance is more than 8 kms. and this being question and fact it should not be interfered with in the writ petition.

24. Having heard both the parties, it is apparent that the learned lower Authorities have held that the distance between Warud (Buzruk) and Wadner Gangal is more than 8 Kms. However, the exact distance between these two places has not been pointed out or the material on the basis of which such finding has been reached is also not disclosed. The petitioner has produced on record two certificates issued by respondent Officer which show that the distance is not more than 6 Kms. Hence, considering the fact that the land is allotted to the petitioner in the year 1987 and his possession is protected by this Court while admitting the writ petition it would be in fitness of things to remand the matter back to the Sub-Divisional Officer, Daryapur to grant appropriate

opportunity to the petitioner to show to it that distance between Warud and Wadner Gangal is less than 8 Kms. The Sub-Divisional Officer shall also held proper inquiry in this respect.

25. Advocate Pardhy for the petitioner argued that the Sub-Divisional Officer has passed order on 13-1-1989 which is beyond the period of one year from 16-11-1987 and therefore, in view of bar prescribed u/s 45-A of Ceiling Act the said order is null and void.

26. From perusal of writ petitions, it is not clear whether proceedings u/s 45-A in all these writ petitions were initiated within one year or not. However, as all petitions in which this ground is raised are being remanded back, said point is left open. Petitioners are at liberty to raise it before S.D.O., Daryapur who shall take appropriate decision on it as per the law. 27. In this way of the matter impugned orders dated 31-1-1989 and 20th March, 1992 are quashed and set aside. The matter is remanded back to respondent No. 2 S.D.O., Daryapur to complete inquiry. As the matter is of 1987 the learned S.D.O. is directed to complete the said inquiry after giving due opportunity to the petitioner as early as possible and in any case, within a period of six months from the date of receipt of this order by him.

Rule made absolute in the above terms with no order as to costs.