

(2011) 03 BOM CK 0251

In the Bombay High Court

Case No : Writ Petition No. 3157 of 1992

Keshavrao Deshmukh

APPELLANT

Vs

The State of Maharashtra, The Divisional Commissioner,
Aurangabad Division and The Surplus Land Determination
Tribunal

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 21, 45, 45(2)

Citation : (2011) 03 BOM CK 0251

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

Bench : Single Bench

Advocate : M.B. Bharaswadkar, for the Appellant; K.B. Choudhari, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—The Petitioner herein is a resident of village Lohgaon, Tal. & Dist. Parbhani. It is case of the Petitioner that as per the provisions of the Maharashtra Agricultural Lands (Ceiling Holdings) Act, u/s 12, the Petitioner had submitted returns within prescribed period before the Surplus Land Determination Tribunal, (S.L.D.T.), Parbhani. Thereafter, the enquiry regarding the surplus holding of land by the Petitioner was initiated by the Tribunal in the year 1976/1977. Considering the documents produced by the Petitioner, the S.L.D.T. declared the Petitioner as nonsurplus holder and dropped the proceedings against the Petitioner.

2. It is further case of the Petitioner that in the year 1979 the Divisional Commissioner, Aurangabad has suo moto initiated proceedings u/s 45(2) of the said Act by notice dated 06.06.1979. The Petitioner filed his say to that notice. The Divisional Commissioner, Aurangabad, remanded the matter to S.L.D.T., for fresh decision. Accordingly, the S.L.D.T. decided the matter and declared the Petitioner as nonsurplus holder by its judgment and order dated 18.01.1980.

3. It is case of the Petitioner that the Divisional Commissioner, Aurangabad Division, Aurangabad, initiated suomoto enquiry u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, against the Petitioner by issuing notice dated 17.11.1992, after lapse of period near about 12 years from the date of judgment and order of S.L.D.T. Said notice is under challenge in this petition. The Petitioner has taken as many as eight grounds in the petition and ultimately prayed for quashing of notice dated 17.11.1992, issued by the Divisional Commissioner, Aurangabad Division, Aurangabad.

4. It is admitted position that the notice issued by the Divisional Commissioner is dated 17.11.1992 and the decision of the S.L.D.T. is of 18.01.1980. Admittedly, suo motu enquiry is initiated after lapse of about 12 years period.

5. The point raised in this petition is no more res integra. The notice issued by the Divisional Commissioner is beyond statutory period. Therefore, the petition should succeed on this ground alone. Apart from this, on perusal of notice Exh.B, it does not reflect that said notice is issued with proper application of mind to the documents and facts of the case. Therefore, the petition should succeed. The impugned notice dated 17.11.1992 is liable to be set aside.

6. This Court had occasion to interpret provisions of Section 45(2) of the said Act, in the following decisions:

In the case of Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr. 1989 M.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 revisional 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 revisional jurisdiction.

Yet in another decision in the case of Bansilal Ramgopal Bhattad v. State of Maharashtra and Ors. 2001 (1) M.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 Ors. 2002 (2) M.L.J. 255, this Court in the facts of the case held notice u/s 45(2) of the Act for suomotu revision was issued on 25.03.1982 and not within the period of three years from the date of order of the 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 w/o. Shankarrao Patwari and Anr. v. State of Maharashtra and Ors. 2004 (1) M.L.J. 148, 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 Anr. 2004 (1) M.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 s/o. Laxmandas deceased through his L.R. Vijaykumar s/o. Gowardhandas v. State of Maharashtra and Anr. 2008 (6) M.L.J. 571, 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.

7. Therefore, in the light of aforesaid discussion the the impugned notice dated 17.11.1992 in Case No. 83/ICHR1 is quashed and set aside. The petition is allowed in terms of prayer Clause (B). Rule is made absolute in above terms. The writ petition stands disposed of.