
(2004) 03 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1691 of 2003

Motiram Bapuna Wagh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 4 ALLMR 79 : (2004) 106 BOMLR 876

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Judgement

S.T. Kharche, J.—Rule. Rule taken up for final hearing with the consent of the parties.

2. By invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, this petition is filed against the order dated 2.2.2002 passed by the Sub-Divisional Officer, Khamgaon, in M.R.C-81/Ceiling/62/2001-2002, mouza Warna, whereby the piece of agricultural land allotted to the petitioner was forfeited to the Government in view of the provisions of Section 29-A of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the Ceiling Act).

3. Relevant facts are as under:

The petitioner is an ex-serviceman retired from the military in the year 1985. One Madhukarrao Deshpande had filed return u/s 12 of the ceiling Act which was registered as Ceiling Case No. 42/75-76 of village Warna. The Surplus Land Determination Tribunal (for short S.L.D.T.) by the order dated 29.8.1978 declared 93 acres of land as surplus which was to be distributed to the applicants including the petitioner in accordance with the provisions of the Ceiling Act. The land bearings. No. 51/1 situated at Warna, admeasuring 6 acres 1 guntha was allotted to him. The original land-holder Madhukar filed appeal before the various authorities and, therefore, the possession was not given to the petitioner.

Thereafter the matter was taken up again by the S.D.O. Khamgaon, who by his order dated 5.3.1984 reduced the surplus land to 79.5 acres. Therefore, the S.L.D.T. directed the original land-holder to fill up the Form and thereafter the land which was allotted to the petitioner was changed bearing Survey No. 93/ 1 which was allotted on 2.4.1984. The land allotted to the petitioner was forfeited to the Government by the impugned order passed by the S.D.O. Khamgaon on the ground that the petitioner did not cultivate the land personally and kept it hallow. This order is under challenge in this petition.

4. The learned Counsel for the petitioner contended that the land allotted to the petitioner was not given in his possession at any time and suddenly he received the notice dated 12.5.1992 issued by the Tahsildar, Annexure B, calling upon him to pay the installment of Rs. 946/- with interest. In consequence of this notice, the petitioner paid the amount into the treasury by the challan dated 29.5.1992. The learned Counsel for the petitioner further contended that the land which was allotted to the petitioner was being used as a burial ground by the villagers and, therefore, he claimed that he should be allotted some other land and, therefore, he addressed various letters to the authorities concerned. The learned Counsel further contended that the final application was made by the petitioner on 27.4.1994 to the Commissioner. Thereafter the Collector held enquiry and addressed the letter to the Commissioner on 3.9.1996 and communicated that appropriate enquiry would be held so far as the allotment of land to the petitioner is concerned. He further contended that thereafter the S.D.O. passed the order dated 2.2.2002 by which the land allotted to the petitioner was forfeited to the Government as per Section 29-A of the Ceiling Act. He contended that the possession of the land was never given to the petitioner and, therefore, the impugned order of forfeiture of the land cannot be sustained in law. He further contended that the land which was allotted to the petitioner is being used as a burial ground and, therefore, the matter may be remanded to the S.D.O. for holding appropriate enquiry in accordance with the provisions of the Ceiling Act for allotment of the land to the petitioner.

5. Mr. Deopujari, learned A.G.P., contended that the petitioner was allotted the land bearing Survey No. 96/3, admeasuring 1.77 hectare as well as the land bearing Survey No. 2/7 admeasuring 0.13 Ares by the letter of allotment and indemnity bond dated 2.4.1984. He contended that since the petitioner was not residing at village Warna as he has been working in the Madhya Pradesh Electricity Board and living at Saunsar, the possession-cum-indemnity bond has been signed on his behalf by his brother Devidas Wagh. He contended that the possession of the land was given on 2.4.1984 and thereafter the land was under cultivation of the petitioner since 1985 to 1992 and thereafter the land was not cultivated and was kept hallow right from 1993 to 2002. He contended that the S.D.O. held the appropriate enquiry and consequently for non-cultivation of the said land on which encroachment has been made by the villagers and that the said land is being used as a burial ground, the land has been forfeited to the Government. He, therefore, contended that the impugned order passed by the

S.D.O. is just, legal and correct and no interference into the same is warranted.

6. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not in dispute that the petitioner is an ex-serviceman retired from the military. It is also not in dispute that he and others had made an application to the Tahsildar for allotment of surplus land which was available for distribution in accordance with the provisions of the Ceiling Act. The original record and proceedings have been called and I have perused the relevant documents from them. It appears that the land bearing Survey No. 96/3 admeasuring 1 hectare 77 Ares and the land bearing Survey No. 2/7 admeasuring 0.13 Ares was allotted to the petitioner by the letter of indemnity dated 2.4.1984. It is also apparent on perusal of the letter of indemnity that the said indemnity letter has been signed by the brother of the petitioner, i.e. Devidas Wagh. It appears that the land was being cultivated by the petitioner in whose name the crops entries appear in 7/12 extract for the years 1985-92. It is also not disputed that since the year 1993 the villagers have been using the said land as a burial ground and this user is said to be an encroachment on that land.

7. At this juncture, it is necessary to re-produce Sub-section (5) of Section 27 of the Ceiling Act, which contemplates ?

27(5). Thereafter, all surplus land (including surplus land which has not been granted under Sub-sections (2) and (3) shall be offered in the following order of priority, that is to say, -

(i)....

(ii)

(iii) serving members of the armed forces, and ex-servicemen, or where any such person dies before any land being granted to him by Government under this Act or any law for the time being in force or any executive orders, then the dependents;

8. Bare reading of the aforesaid provision would reveal that the surplus land is to be distributed in accordance with the provisions of Section 27 of the Ceiling Act and the petitioner is entitled to claim priority in accordance with Clause (iii) of Sub-section (5) of Section 27. However, Sub-section (3) of Section 29 of the Ceiling Act contemplates that any transfer or division of land, and any acquisition thereof, in contravention of Sub-section (1) or Sub-section (2) shall be invalid; and as a penalty there for, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government.

9. In the present case, it would reveal that the petitioner was called upon to pay installment of Rs. 946/- with interest on account of the price due for the allotment of the surplus land. The petitioner paid the said amount in the treasury by challan dated 25.9.1992. It would also reveal that in the year 1993 the

villagers started using the said land as a burial ground and, therefore, it is apparent that the petitioner was not able to cultivate the said land though for the years 1985 to 1992 the land was cultivated by him, may be through his brother Devidas. Fact remains that after the year 1992 the petitioner has been deprived of the said land and, therefore, it is not possible to accept the contention of the learned A.G.P. that the impugned order regarding forfeiture of the said land passed by the S.D.O. is just, legal and correct. In such a situation, it is obvious that the matter deserves to be remanded to the S.D.O. with a direction to consider the application of the petitioner for allotment of any other surplus land in accordance with the provisions of the Ceiling Act. In the result, the impugned order is set aside and the matter is remanded to the S.D.O. for fresh decision. The S.D.O. is directed to decide the application of the petitioner for allotment of the land in accordance with law within a period of six months. With these directions, this writ petition is disposed of. Rule is made absolute in aforesaid terms. No costs.