

(2003) 07 BOM CK 0132

In the Bombay High Court

Case No : Writ Petition No. 3476 of 1989

Namdeo Shripat More since deceased through LRs. Manikrao
Namdevrao More and Others

APPELLANT

Vs

Surplus Land Determination No. 2 Tribunal and Others

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 21(1), 45(2)

Citation : (2004) 2 MhLj 1041

Hon'ble Judges : Naresh H. Patil, J

Bench : Single Bench

Advocate : R.N. Dhorde, for C.K. Shinde, for the Appellant; S.K. Kadam, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—The petitioner has taken exception to the judgment and order passed by the Additional Commissioner, Nashik Division, Nashik in Ceiling Revision Case No. 225/1982 dated 27th May, 1987, The facts in brief, are as follows :

The petitioner filed return in form No. III u/s 12 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Ceiling Act). He had shown land admeasuring 102 acres and 2 gunthas to be in his possession. The Chairman, Surplus Land Determination Tribunal, Karjat (hereinafter referred to as the S.L.D.T.) in his order in case No. Malthan 515 declared that the landholder's holding was more than the ceiling limit and hence, he declared 7 acres and 19 gunthas land of the petitioner as surplus. The S.L.D.T. excluded survey No. 173/2 admeasuring 13 acres and 2 gunthas situated at village Shelgaon, Tq. Paranda, District Osmanabad from the holding of the landholder.

2. The S.L.D.T. in its order, was of the opinion that the petitioner was residing at

Malthan and since last 18 years though his name was shown as Kabjedar of survey No. 173/2 but, he did not cultivate the said land. According to the provisions of Section 2(14) of the Ceiling Act, the person who is in actual possession of the land, is to be held to be holder of the said land. Since the petitioner was not found to be in actual possession of the land, the land at Shelgaon was excluded from consideration of his holdings. The land situated at Shelgaon and land acquired for road was deleted while considering the ceiling area by the S.L.D.T. It was held that 7 acres and 19 gunthas of land was found to be in excess of the ceiling limit with the holder.

3. It is contended that the Additional Commissioner, Pune Division, Pune by communication dated 9th April, 1979 addressed to the Additional Tahsildar, Karjat, District Ahmednagar asked to place before him the 7/12 extracts of the lands transferred in the name of the wife of the petitioner between the period from 1969-70 to 1975-76. It was directed to submit this record prior to 20th April, 1979. The Additional Tahsildar, Karjat was asked to submit any other record regarding transfer of the lands and mutation entries, if any, regarding the concerned lands. Copy of the said communication was issued to the Talathi, Shelgaon, taluka Paranda, District Osmanabad who was asked to furnish the copies of the mutation register at Sr. No. 539, 639 and 520. The record of the land held by Namdeo More since 1969-70 to 1975-76, its transfer, mutation and other necessary documents were also called. Copy of the said letter was also forwarded to the Tahsildar, Paranda, District Osmanabad. It is contended by the petitioner that Nashik Division, Nashik started functioning from 20th February, 1981.

4. The petitioner filed reply. By communication dated 5-4-1984, the office of the Additional Commissioner, Nashik had communicated that the land which was held to have been used for road purposes, admeasuring 1 acre and 16 gunthas was not utilised for the said purpose, neither there was proceedings under the Land Acquisition Act initiated in respect of the said land. The land in survey No. 173/2 was shown in the name of the petitioner who cultivated it till 1974-75. Prima facie, the Commissioner found that 25 acres and 11 gunthas of land was found to be in excess of the ceiling limit and hence, a show cause notice was issued to the petitioner and his wife. They were directed to remain present on 11-5-1984. The petitioner filed his reply on 18-6-1984, which is at page 43 of the record and proceedings. The communication from the office of the Additional Commissioner dated 5-4-1984 is at page 35 of the record and proceedings.

5. The Additional Commissioner by his judgment delivered on 27th May, 1987 in exercise of powers u/s 45(2) of the Ceiling Act, modified the order of the S.L.D.T. and declared that the petitioner was surplus landholder to the extent of 25 acres and 11 gunthas including the land 7 acres and 19 gunthas which was already declared as surplus by the S.L.D.T. Karjat. The Addl. Commissioner directed the Tahsildar, Karjat to take possession of the 17 acres and 32 gunthas from the landholder after obtaining his choice u/s 16 of the Ceiling Act.

6. The Additional Commissioner, Nashik Division, Nashik had filed affidavit-in-reply dated 8th July, 1988 to the petition.

7. Shri R.N. Dhorde, learned Counsel appearing for the petitioner submitted that the action on the part of the Additional Commissioner, Pune to call for the record in this matter is itself null and void and suffers from non application of mind. The record and proceedings were not called within a reasonable time after passing of the order by the S.L.D.T. on 27-4-1976. The Record and Proceeding was called by the Additional Commissioner mechanically. By making reference to the communication issued by the office of the Commissioner dated 9-4-1987, it was contended that the petitioner had demanded a copy of the Commissioner's order calling record but, the Tahsildar, Karjat was unable to issue the copy of the said order as it was not found in the record maintained by the office of the Tahsildar. In the submission of the learned Counsel, no such order was passed by the Additional Commissioner for calling the records and in case, it was called for, then the record maintained by the Tahsildar ought to have noticed such a communication. The impugned order passed by the Addl. Commissioner, Nashik is passed after 11 years of the earlier order passed by the S.L.D.T. and after 8 years after calling the record and proceeding by the Addl. Commissioner i.e. on 9-4-1979. The proceedings initiated by the learned Addl. Commissioner are vitiated on the ground of abnormal delay and deserves to be quashed and set aside on that ground alone. He submitted that even on merits, the conclusion arrived at by the Addl. Commissioner are not warranted and not supported from the material placed on record. It was further contended that "Pot Kharab" lands were also counted in the holding of the petitioner. It is general practice that "Pot Kharab" (barren) lands are not included in the holding of the person.

7A. On behalf of the State, the learned A.G.P. Shri Kadam submitted that there was no ambiguity on the part of the Addl. Commissioner to call for the record and proceedings in this case. The reading of the communication itself shows that there was application of mind and some specific documents were called far along with other relevant material to scrutinize the case of the petitioner in exercise of the powers u/s 45(2) of the Ceiling Act. In view of the settled position in law, the State could exercise its revisional powers u/s 45(2) of the Ceiling Act by calling the record and proceedings within a period of three years from the date of passing of the order by the S.L.D.T. In this case, the record and the necessary documents were called for the purposes of scrutiny by the Addl. Commissioner within the stipulated period of three years. As regards the request made by the petitioner to the Tahsildar, Karjat for securing the copy of the Commissioner's letter, it was submitted that the said request was made by the petitioner on 29th July, 1987 whereas, the Commissioner had already passed orders to call for record and proceeding by communication dated 9th April, 1979. There is no dispute on the point that the petitioner appeared before the Addl. Commissioner on 18-6-1984. Shri Kadam, learned A.G.P. appearing for the respondents - State did not concur with the arguments advanced by the petitioner that there is general practice to exclude Tot Kharab" lands from the holding of the landholder.

The procedure was rightly followed by the authorities and the choice was given to the landholder at the time of delimitation of surplus land.

8. The learned Counsel appearing for the petitioner firstly, submitted that the exercise of powers u/s 45(2) of the Ceiling Act by the Addl. Commissioner is not within a reasonable period. The power ought to have been exercised within three years as submitted under the provisions of Section 45(2) of the Ceiling Act. This controversy is already resolved by the judgment of Full Bench in the case of Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr. reported in 1989 Mh.L.J. 1011, and the judgment delivered by the Division Bench of this Court in the case of Shri Dhondiram V. Kotalwar v. The State of Maharashtra and Ors. in Writ Petition No. 639 of 1988. It is now settled that an order passed by the Commissioner calling for record indicating application of mind ought to be exercised within a period of three years from passing of the order by the S.L.D.T. The limitation of three years is not applicable to issuance of notice by the Divisional Commissioner to the parties concerned after the order of calling for record and proceedings was passed. Determination of the issue of exercise of revisional powers u/s 45(2) of the Ceiling, is the third stage which need not be completed within a time frame of three years.

9. The learned Counsel appearing for the petitioner led emphasis in view of the observations made in the case of Manohar Ramchandra Manapure (*supra*) that the order of calling of record by the Commissioner could not be a mechanical, clerical or a ministerial act. It requires conscious application of mind on the part of the competent authority qua particular proceedings. It is further observed in the said judgment that the record is not to be called for merely satisfying the curiosity or for storing. It further observes that the State Government is not appointed as roving Commission but, is expected to exercise judicial or quasi-judicial powers. As regards the case at hand, the order of calling of record by the Additional Commissioner refers to the specific documents of the transactions concerning the wife of the petitioner by giving particular dates. The Additional Commissioner had also asked for copies of mutation registers having mutation No. 539, 639 and 520, the necessary record concerning transaction of the land held by the petitioner from 1969-70 to 1975-76. The order calling records indicates that there was application of mind on the part of the Commissioner. There is sufficient indication in the order that the order could not be termed as a mechanical exercise or a clerical one. I have perused the copy of the notice issued by the Additional Commissioner to the petitioner and his wife dated 5-4-1984. It also mentions that the Additional Commissioner has examined the order passed by the S.L.D.T. and said decision was sought to be revised and there are number of reasons mentioned in the said communication made by the Additional Commissioner to revise the order passed by the S.L.D.T.

10. Shri Dhorde, the learned Counsel for the petitioners placed reliance on the judgment in the case of Bansilal Ramgopal Bhattad v. State of Maharashtra and Ors. reported in 2001 Mh.L.J. 68. Based on the principle laid down in Bansilal's

case (supra). It submitted that invoking of suo motu power by the Additional Commissioner u/s 45(2) of the Ceiling Act was beyond the stipulated period of three years and/or beyond unreasonable period. In the said judgment, the order of the S.L.D.T. was passed on 21st February, 1976. By an order dated 10-12-1985, the petitioner in the said petition received notice purported to be issued u/s 17(1) of the Ceiling Act. The S.L.D.T. by its order dated 3-2-1986 decided the matter against the petitioner. Later on, the Additional Commissioner, Konkan Division, by an order dated 18-11-1986 suo motu issued notice u/s 45(2) of the Ceiling Act. By the said notice, the petitioner therein was called upon to show cause as to why the order dated 3-2-1986 should not be revised. In the said case, as the S.L.D.T. had passed order on 21st February, 1976, it was not open for suo motu proceedings by calling record after lapse of nine years period. This was not to be considered to be a reasonable period. The principles laid down in the case of Bansilal Ramgopal (supra) relied upon by the learned Counsel for the petitioner, on facts, cannot be made applicable to the present case. The question as regards what would be the reasonable period to decide the case would always depend on the facts, circumstances and merits of each case.

11. In view of the facts of this case, the sole issue which deserves to be addressed is whether the Additional Commissioner was justified in deciding the revision petition in the year, 1987, after near about eight years of its order calling for record and proceedings in the matter, in the year, 1979. It is settled position in law that u/s 45(2) of the Ceiling Act, there is no limitation on the State or its authorities for final disposal of the proceedings of suo motu revision. The question is then what is the reasonable period of limitation in absence of any statutory provision in that regard.

12. In this case, the S.L.D.T. had passed order u/s 21 of the Ceiling Act on 27-4-1976. The Additional Commissioner, Pune had called for the record and proceedings of the case by a communication dated 9th April, 1979, addressed to the Additional Tahsildar, Karjat. Thereafter, the record further shows that notice was issued to the petitioner on 5-4-1984 by the office of the Divisional Commissioner, Nashik. The petitioner appeared on 11-5-1984 and sought further adjournment, which seems to have been granted. On 18-6-1984 the petitioner filed reply to the suo motu proceedings initiated by the State and prayed for withdrawal of the proceedings. He filed certain documents along with his reply.

13. Though the State has filed reply to the petition, there is no explanation on the issue of delay in disposal of the suo motu proceedings. In paragraph 16 of the reply, it is contended by the State that the letter to the Additional Tahsildar, Karjat for supplying the village record was issued by the office of the Divisional Commissioner on 9-4-1979. The learned A.G.P. appearing for the State was also not in a position to demonstrate, either from the reply or original record and proceedings, the reasons justifying disposal of the proceedings by the Additional Commissioner after near about eight years of calling the record and proceedings.

14. The petitioner was issued notice in the year, 1984 and the impugned order

was passed by the Additional Commissioner, Nashik in the year, 1987, In this way, the order passed by the S.L.D.T. u/s 21(1) of the Ceiling Act in the year, 1976 was disturbed by the Addl. Commissioner by causing interference in the year, 1987 i.e. after near about eleven years. There is no explanation at all as to why the authority did not exercise the powers of suo motu revision u/s 45(2) of the Ceiling Act within a reasonable time frame.

15. In the case of Manohar Ramchandra Manapure (supra), it was observed that the State Government or its delegate are expected to exercise said power within a reasonable time depending upon the facts and circumstances of each case. The object behind prescribing the limitation for calling for the record is not to upset settled position at very late stage. In the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, , suo motu inquiry u/s 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 was initiated by the Mamlatdar, after a period of near about one year. The Mamlatdar initiated suo motu proceedings in the year, 1973 regarding the transaction of execution of sale deeds in the year, 1972 of the concerned immovable property. While giving reference of the decisions in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, , the Supreme Court observed that where no time-limit is prescribed for exercise of power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time.

16. The Division Bench of this Court had considered the provisions of Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 in the case of Automotive Research Association of India and Another Vs. State of Maharashtra and Others, , While considering the period of limitation u/s 34 of the said Act, reference was made to the provisions of Section 45(2) of the Ceiling Act. It was observed that the period of three years was reasonable for exercising the powers by the State, In the case of Vandana Mohan Gunjal and Another Vs. State of Maharashtra and Others, , the Division Bench of this Court placed reliance on the judgment of this Court in the case of Automotive Research Association of India (supra) and observed that the exercise of power by the State Government u/s 34 of the Urban Land (Ceiling and Regulation) Act, 1976, within three years from the date of the order can always be termed as reasonable.

17. Passing of order by the Additional Commissioner, Nashik in the year, 1987 will cause interference in the settled position of the rights of the parties determined by the S.L.D.T. in the year, 1976. In view of the facts of the case and in absence of any explanation on the aspect of delay in disposing of the revision, the petition deserves to be allowed on this count alone without adverting to the other issues raised by the petitioner.

18. Shri Dhorde, learned Counsel for the petitioners submitted that the lands which are shown as Tot Kharab" (barren) ought to have been taken into consideration for delimiting the surplus holding of the petitioners. According to him, it is a general practice followed by the authorities and such "Pot Kharab" land need not be included in the holdings of the petitioners. I do not find any

support to this proposition, made by the learned Counsel for the petitioners, in the provisions of the Ceiling Act. The learned A.G.P. appearing for the State denied that there is such a general practice followed by the authorities. The petitioner could not establish exclusion of "Pot Kharab" land from the purview of the definition of "land" occurring in Section 2(16) of the Ceiling Act.

19. In this view of the matter, the petition is allowed. The impugned order dated 27th May, 1987 passed in Ceiling Revision Case No. 225 by the Additional Commissioner, Nashik is quashed and set aside. Rule is made absolute in the above terms. No order as to costs.