

**(2012) 06 BOM CK 0054**

**In the Bombay High Court**

**Case No :** Writ Petition No. 2025 Of 1991 With Civil Application No. 7380 of 2009 in Writ Petition No. 2025 of 1991

Narayan Deshmukh, Smt. Sagarbai Deshmukh, Kishor Deshmukh, Ankush Deshmukh and Prashant Deshmukh

**APPELLANT**

**Vs**

The State of Maharashtra, The Deputy Collector, Land Reforms, Jalna, The Additional Commissioner, Aurangabad Division, Aurangabad and The Maharashtra Revenue Tribunal, at Aurangabad <BR> Laxman Itkare and Others Vs Narayan Deshmukh and Smt. Sagarbai Deshmukh and Others

**RESPONDENT**

---

**Date of Decision :** 11-06-2012

**Acts Referred:**

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 17, 18, 19, 20

**Citation :** (2013) 1 ALLMR 215 : (2012) 5 BomCR 245

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

**Bench :** Single Bench

**Advocate :** V.D. Salunke, for the Appellant; K.M. Suryawanshi, A.G.P., Mr. P.R. Katneshwarkar, Advocate for the applicants in C.A. No. 7380 of 2009., for the Respondent

---

## **Judgement**

S.S. Shinde, J.—This writ petition takes exception to the judgment and order passed by the Additional Commissioner, Aurangabad Division, Aurangabad dated 26th February, 1988 in Case No. 1979ICHR254, judgment and order passed by the Deputy Collector (Land Reforms), Jalna dated 13th March, 1990 in Case No. 88/L.R./ICH/CR5 and further to the judgment and order passed by the Maharashtra Revenue Tribunal, Aurangabad dated 30th January, 1991 in Case No. 85/A/90/Jalna. The petitioners herein are the resident of village Ambhoda (Deshmukh) Taluka Partur District Jalna. It appears that, during the pendency of this writ petition, original petitioner Narayanrao died and therefore, his legal heirs are brought on record and they are prosecuting this petition.

The original landlord Narayan filed returns u/s 12 of the Maharashtra Agricultural

Lands (Ceiling on Holdings) Act, 1961 (For Short, "Ceiling Act"). In his returns, he has shown his total holdings to the extent of 178 Acres and 2 Gunthas. Seven family members were shown in the said returns.

The Surplus Land Determination Tribunal, Partur (For short, SLDT, Partur) instituted proceedings against the petitioner on 2nd December, 1975 in File No. 75PTR625 and after making full-fledged inquiry, the SLDT, Partur came to the conclusion that, the Survey No. 69A admeasuring 5 Acres and 17 Gunthas should not be counted in the holdings of the land holder as it is held by one Shri. Kalu s/o Nama. Holding of other family members is also considered and to that effect findings are recorded by the SLDT, Partur. The SLDT, Partur decided the matter on 23rd March, 1976 and declared the original landlord surplus to the extent of only 1 Acre and 14 Gunthas of land.

2. It is the case of the petitioners that, the Additional Commissioner, Aurangabad Division, Aurangabad by exercising powers u/s 45(2) of the Ceiling Act reopened the suo motu inquiry. It is further case of the petitioners that, said inquiry is initiated after 14 years from the date of passing of the order by the SLDT, Partur. It is the case of the petitioners that, first time, notice was issued in respect of the said inquiry to the petitioners in the year 1988. It is further contention of the petitioners that, though the notice reveals that, memorandum of revision was opened on 19th January, 1979, notice of revision is sent and served on the petitioners first time in the year 1988 i.e. after 12 years of the judgment and order passed by the SLDT, Partur. It is the submissions of the petitioners that, the Additional Commissioner, Aurangabad Division, Aurangabad has no jurisdiction or power to start or reopen suo motu inquiry u/s 45(2) of the Ceiling Act after period of three years after judgment of the SLDT. Even for calling the Record and Proceedings, the Additional Commissioner has to apply his mind within period of three years and then only call for the record from the concerned authority. It is the case of the petitioners that, the Additional Commissioner did not call for record and even notice was not served on the petitioners within three years as contemplated under the provisions of Section 45(2) of the Ceiling Act.

3. According to the petitioners, remand of the matter by the Additional Commissioner to the Deputy Collector (Land Reforms) Jalna was without jurisdiction. The Additional Commissioner had no authority or power to pass such order. It is further case of the petitioners that, on remand, the Deputy Collector came to the conclusion that, the petitioner is holding 116 Acres and 4 Gunthas land. The petitioners have also stated other details in respect of the decision of the Deputy Collector (Land Reforms), Jalna in paragraph 5 of the writ petition. It is the case of the petitioners that, the land of the petitioners situate within two districts and therefore, only the Collector was competent authority to make such inquiry. The Deputy Collector was not competent to make inquiry in respect of the land of the petitioners which is situated in two districts. The petitioners have also placed on record copy and judgment passed by the Deputy Collector (Land Reforms), Jalna dated 13th March, 1990.

4. The petitioners herein challenged the said judgment and order of the Deputy Collector (Land Reforms), Jalna before the Maharashtra Revenue Tribunal, Aurangabad (For short, "MRT, Aurangabad"). After hearing the parties and after perusal of the record and proceedings, the MRT, Aurangabad remanded the matter back to the Deputy Collector (Land Reforms), Jalna for fresh consideration. Being aggrieved by the said judgment and order passed by the MRT, Aurangabad dated 30th January, 1991, this writ petition is filed by the petitioners.

5. According to the Counsel for the petitioners, in the first place, the Additional Commissioner has no jurisdiction or power to initiate suo motu inquiry after lapse of 14 years from the order of SLDT, Partur, passed in the year 1976. Another contention of the Counsel appearing for the petitioners is that, mother of the original landlord-Narayanrao had equal share in the property and said aspect has not been considered either by the Deputy Collector (Land Reforms), Jalna or MRT, Aurangabad. It is submitted that, the issue regarding mother's share has been considered by this Court in the case of Kamalbai vs. State of Maharashtra reported in Mh.L.J. 1977, 450 and this Court has taken a view in the said judgment that, the mother's share which was equal to that of the wife could not be ignored and had to be excluded in determining surplus land. Therefore, the learned Counsel for the petitioners submits that, the judgment and order of the Deputy Collector (Land Reforms), Jalna and also M.R.T. Aurangabad deserves to be interfered and set aside since the share of the mother of the original petitioner Narayanrao has not been taken into consideration. Secondly, he submits that, it was incumbent upon the Deputy Collector (Land Reforms), Jalna to issue notice to the mother of the original petitioner Narayanrao and after hearing the mother of Narayanrao, necessary orders should have been passed. It is further submitted that, if mother's share is excluded, in that case, the Deputy Collector (Land Reforms), Jalna in second round of litigation, could not have declared the petitioner as surplus holder.

According to the Counsel for the petitioners, MRT, Aurangabad ought to have set aside the judgment of the Deputy Collector (Land Reforms), Jalna and there was no question of remand of the matter to the Deputy Collector (Land Reforms), Jalna once again. The learned Counsel for the petitioners invited attention of this Court to the various pronouncements of this Court, which take a view that, the Additional Commissioner has no power to initiate suo motu inquiry after lapse of three years period from the decision by the S.L.D.T.

In support of the aforesaid contention, the Counsel for the petitioners placed reliance upon the exposition of this Court in the case of Manohar Ramchandra Manapure and others vs. State of Maharashtra and another reported in 1989 Mh.L.J. 1011. The learned Counsel also invited attention of this Court to the unreported judgment of this Court in the case of Anurat s/o Ginaji Jadhav vs. The State of Maharashtra and others in Writ Petition No. 1293 of 1992 dated 10th March, 2011 and also to the judgment of this Court in the case of Champabai w/

o Shankarrao Patwari and another vs. State of Maharashtra and others reported in 2004(1) Mh.L.J. 148. He further submits that, said judgment in case of Champabai w/o Shankarrao Patwari and another vs. State of Maharashtra and others (supra) was assailed before the Hon'ble Supreme Court, however, said judgment is confirmed by the Supreme Court. Therefore, according to the learned Counsel for the petitioners, this writ petition deserves to be allowed.

6. On the other hand, learned A.G.P. for the respondent State would submit that, proceedings were initiated within three years from the date of judgment of the SLDT, Partur. The record was called by the Additional Commissioner on 19th January, 1979. It is submitted that, since the record is called by the Additional Commissioner within three years from the date of decision of S.L.D.T. Partur, the judgments which are cited by the Counsel for the petitioners, have no application in the facts of the present case. Therefore, relying upon the judgment of the Deputy Collector (Land Reforms), Jalna and also the judgment of the M.R.T. Aurangabad, the learned A.G.P. would submit that, the writ petition is devoid of any merits, same may be dismissed.

7. The learned Counsel for the applicants in Civil Application No. 7380 of 2009 invited attention of this Court to the contents of the said application and submitted that, pursuant to the order passed by the Deputy Collector, in the year 1990, the applicants in C.A. No. 7380 of 2009 are allotted the said land. The learned Counsel also submitted that, even their names are recorded in the 7/12 extract in ownership column. Therefore, according to the Counsel for the applicants in C.A. No. 7380 of 2009, this writ petition deserves to be dismissed.

8. I have given due consideration to the rival submissions. It is not necessary to refer in detail to the submissions of the petitioners on other aspects since mainly this petition deserves to be allowed on the ground that, the Additional Commissioner had no jurisdiction or power to initiate suo motu inquiry after lapse of three years from the date of judgment of the SLDT, Partur in the year 1976. It is admitted position that, the SLDT, Partur has passed the order on 23rd March, 1976 in File No. 75/PTR/625 thereby declaring the original petitioner Narayanrao surplus to the extent of 1 Acre and 14 Gunthas, that judgment and order has attended finality. It is admitted position that, there was no challenge to the said judgment and order either by the present petitioners or the respondents. It is also not in dispute that, since the said land to the extent of 1 Acre and 14 Gunthas is below 2 acres, there was no further order of allotting the said land to any beneficiaries in pursuance of the decision of the SLDT, Partur, since said piece of land was considered as fragment.

9. At this juncture, it would be relevant to reproduce hereinbelow the provisions of Subsection (2) of Section 45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, which reads thus :

45(1) In all matters....

(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 to 21 (both inclusive) or u/s 27 for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under those sections or of any order thereon as it deems fit, after giving the party a reasonable opportunity of being heard.

Provided that, nothing in this subsection 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 affect any land which is alleged that the land declared surplus and distributed according to the provisions of the 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.

In the case of Manohar Ramchandra Manapure and others vs. State of Maharashtra and another [1989 Mh.L.J. 1011], the Full Bench of this Court had occasion to deal with the provisions of the aforesaid provisions and Full Bench has taken a view that, the proviso to Section 45(2) of the Ceiling Act restricts the exercise of jurisdiction u/s 45(2) to those cases where the record is called for within the period of three 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. The State Government is not appointed as roving Commission, but is expected to exercise judicial or quasijudicial powers. The object behind prescribing of limitation for calling for the record is not to upset the settled position at a very late stage. Calling for the record will require some positive act on the part of the authority but it must ultimately depend upon the facts of each case as to when the record was actually called for by the concerned authority.

10. In the facts of the present case, it is admitted position that, notice was issued to the petitioners in the year 1988. It is true that, the Additional Commissioner did call for record in the year 1979. However, nothing is brought on record to suggest that, said calling of the record by the Additional Commissioner was with conscious mind or the Additional Commissioner has applied his mind to the facts of the case and after such exercise, such record was called. It is admitted position that, there was no notice to the petitioners within three years. It has come on record that, notice was issued to the petitioners in the year 1988.

This Court in another pronouncement in the case of Champabai w/o Shankarrao Patwari and another (supra) held that, the first proviso to subsection (2) of Section 45 of the Ceiling Act 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 three years has not elapsed from the date of order or declaration made by S.L.D.T. In the facts of that case, this 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 were 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 to 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. The said judgment was challenged before the Supreme Court, however, said challenge failed.. In the facts of the present case also, nothing has been brought on record by the respondent authorities to suggest that, there was conscious application of mind by the Additional Commissioner to the facts of the case before calling the record. Therefore, the principle laid down in the case of Champabai w/o Shankarrao Patwari and another (supra) by this Court has full application to the facts of this case.

11. It is not necessary to burden this judgment by reproducing other judgments of this Court where the view is taken that, if suo motu proceedings are initiated after period of three years from the decision of the S.L.D.T., same cannot be sustained in law.

This Court had occasion to interpret provisions of Section 45(2) of the Ceiling Act in following decisions : In the case of Bansilal Ramgopal Bhattad vs. State of Maharashtra and Others [2001 (1) Mh.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 1997(6) SCC 71.

Yet in another reported case of Lotan Fakira Patil vs. State of Maharashtra and Others [2002(2) Mh.L.J. 255], this Court in the facts of the case held, notice U/ Sec. 45(2) of the Act for suo moto revision was issued on 25031982 and not within the period of three years from the date of order of S.L.D.T. dated 03071978 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 Shalikram Daduba Solunke etc., vs. State of Maharashtra and another [2004(1) Mah.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 deceased through his L.R. Vijaykumar Vs. The State of Maharashtra and The Additional Divisional Commissioner*, this Court held that in a suo motu 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 Ceiling Act.

12. Therefore, the point raised in this petition is no more *res integra* and is covered by the aforementioned authoritative pronouncements of this Court. Therefore, in the facts of this case, it will have to be held that, suo motu inquiry initiated by the Additional Commissioner taking recourse to Section 45 of the Ceiling Act was beyond the period of three years from the decision of the SLDT, Partur. Notice was issued to the petitioners in the year 1988 i.e. after 14 years from passing of the order by the SLDT, Partur in the year 1976. Though record was called within three years, said was without conscious application of mind.

13. Apart from the above, I find considerable force in the arguments of the Counsel for the petitioners that, mother's share should have been excluded by the Deputy Collector (Land Reforms), Jalna in Case No. 88/L.HR./ICH/CR5 dated 13th March, 1990. It appears that, the judgment of this Court in the case of *Kamalbai (supra)*, was not brought to the notice of the Deputy Collector or M.R.T. As per the said authoritative pronouncement, the mother is entitled for the share. Paragraph 7 and 11 of the said judgment reads thus :

7. The Tribunals have erroneously assumed that in a case like the present one, the mother ought to have made a claim before the Tribunal for the purposes of section 3(3)(c)(ii) of the Act before her share can be recognised while calculating the surplus land. Such an assumption, in my opinion, is unwarranted by the provisions of law. The law only requires a calculation to be made of the surplus land on the basis of a fictional or notional partition to be conceived by the mind only for the purpose of calculating the holding.

11. Therefore, it must be held that the mother was holding the land jointly with Kamalabai and the minor daughters of the deceased Govindrao. It is unnecessary to embark upon an inquiry as to what would happen if any one abandons or surrenders his share in the facts and circumstances of this case.

14. Therefore, on this ground also, the judgment of the Deputy Collector and also M.R.T. is required to be interfered and deserves to be quashed and set aside.

15. The learned Counsel for the petitioners is also justified in placing reliance upon the judgment of this Court in the case of *Shalikram Solunke (supra)*. In the said judgment also, this Court has considered provisions of Section 45(2) of the

Ceiling Act and proviso thereunder. Therefore, viewed from any angle, the judgment and order passed by the Deputy Collector (Land Reforms), Jalna in Case No. 88/L.HR./ICH/CR5 dated 13th March, 1990 and judgment and order passed by the Maharashtra Revenue Tribunal, Aurangabad in the Case No. 85/A/90/Jalna dated 30th January, 1991 remanding the matter back to the Deputy Collector (Land Reforms), Jalna deserves to be set aside.

16. Civil Application No. 7380 of 2009 is filed by the applicants therein. It is their contention that, the land belongs to petitioner which is declared surplus is allotted to them and they are shown owner in revenue record and therefore, this petition may be dismissed.

This Court on 4th March, 2010 observed in its order that, said application be heard alongwith the writ petition and if so allowed, the third parties may be given opportunity of hearing without impleadment.

17. The petitioners have filed reply to the said application and stated that, there was no order pursuant to the decision by the Deputy Collector or S.L.D.T. thereby actually allotting the said land in favour of the applicants. The Counsel for the petitioners also invited attention of this Court to the affidavit in reply and submitted that, the persons namely Laxman Motiram Itkare and Ratan Jemla Chavan are having their own land and therefore, there is no question of allotment of surplus land to those persons since they were holding land in their name at the relevant time. Therefore, according to the Counsel for the petitioners, the petitioners are in continuous possession of the land which is subject matter of this petition and therefore, the application deserves no consideration. The learned Counsel also invited attention of this Court to the judgment of this Court in the case of Baburao Jaiwantrao Mundhe and another vs. The State of Maharashtra and others in Special Civil Application No. 906 of 1978 dated 1st October, 1985. According to the Counsel for the petitioners, this Court has taken a view that, even if surplus land is allotted, possession of such land is required to be restored with the original land holder.

18. So far contention of the applicant in Civil Application No. 7380 of 2009 is concerned, in my opinion, there is no convincing or clinching evidence which is brought on record in the nature of actual allotment orders to hold that, the surplus land is allotted to them. However, it is not necessary to enter in that controversy, since basic judgment and order of the M.R.T. and also Deputy Collector deserves to be set aside, for the reasons already recorded hereinabove. The applicants in Civil Application No. 7380 of 2009 have no any right to assert. Therefore, in my considered opinion, the contention of the applicants in Civil Application No. 7380 of 2009 deserves no consideration. The applicants were not party either before the Deputy Collector or before the M.R.T.. First time, application is filed in the year 2009 before this Court for intervention. Therefore, for the reasons aforesaid, judgment and order passed by the Maharashtra Revenue Tribunal, Aurangabad dated 30th January, 1991 in Case No. 85/A/90/Jalna, judgment and order passed by the Deputy Collector (Land Reforms), Jalna

dated 13th March, 1990 in Case No. 88/L.R./ICH/CR5 and judgment and order passed by the Additional Commissioner, Aurangabad Division, Aurangabad dated 26th February, 1988 in Case No. 1979ICHR254 is quashed and set aside. Writ Petition is allowed in terms of prayer clause (C) and (D). Rule made absolute on the above terms. Writ Petition stands disposed of, however, no order as to the costs. In view of disposal of Writ Petition No. 2025 of 1991, Civil Application No. 7380 of 2009 also stands disposed of.