

(2005) 01 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 2367 of 1991

Nusratulla Baig and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 3 ALLMR 95 : (2005) 4 BomCR 361 : (2005) 2 MhLj 1049

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

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; S.G. Loney, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—The petitioners in this petition under Article 227 of Constitution of India, are children of Mirza Hafizullah Baig, who expired on 25-6-1986 and Smt. Ajija Begum, who expired on 31-5-1989. There was a divorce between Mirza Hafizullah Baig and Smt. Ajija Begum on 5-8-1969 and the case of petitioner is that they were residing separately since then.

2. The challenge in present petition is to the order dated 29-6-1999, passed by Divisional Commissioner, Amravati in Ceiling revision whereby said authority has, in exercise of jurisdiction u/s 45 of Ceiling Act, found that there was no such divorce between the said couple and therefore Smt. Ajija Begum was not entitled to hold lands separately. It has been, therefore, held that field S. No. 249/1 and 250 of village Kali (d) admeasuring 17 acres 19 gunthas and 30 acres 08 gunthas are in fact surplus. This order has been challenged in present petition and on 25-9-1991 the petition has been admitted and interim order has been given in favour of petitioners.

3. The petitioners have filed Civil Application No. 3209/04 for permission to amend the writ petition seeking leave to add additional grounds on the basis of

material which is already available on record. The application is allowed. Similarly, learned A.G.P. has filed pursis placing on record the order sheet prepared by office of Additional Commissioner to show the application of mind by that authority within period of three years. Said pursis is also taken on record.

4. Advocate J. N. Chandurkar, appearing for petitioners has basically raised three grounds. The first is initiation of proceedings u/s 45 of Ceiling Act is after expiry of three years and therefore cognizance of matter taken by the Divisional Commissioner is barred. In this connection he further submitted that it is necessary to have conscious application of mind by Divisional Commissioner within said period of three years and records of revision produced do not exhibit any such conscious application of mind. In this connection, he has relied upon the Division Bench (sic Full Bench) judgment of this court reported at 1989 Mh.L.J. 1011. Second ground raised by him is that the same land cannot included twice in the holding of any person while calculating his total holding and for that proposition he has relied upon provision of Section 3(4) of Ceiling Act and he has also relied upon ruling which is reported at 1981 Mh.L.J. 23 in support of this contention. With reference to record page 62,55,56 and 58 he has stated that land Survey No. 250/1 and 249/1 have been included in holding of Smt. Ajija Begum and also in holding of Narayan Ramdhan and Kaniram. Lastly, he has stated that whether there is a divorce between Mirza Hafizullah Baig and Smt. Ajija Begum is a question which cannot be gone into by the Revisional Authority while deciding the revision u/s 45(2) of the Ceiling Act. He contends that there is ample material on record to show that such a divorce did take place in the year 1969 itself and the authority therefore could not have held anything against this material on record. He also points out the observations made by the Additional Commissioner in the impugned order to show as to how those orders reveal non-application of mind.

5. On the other hand, learned A.G.P. Shri Loney states that insofar as initiation of inquiry u/s 45(2) of the Ceiling Act within 3 years is concerned, the perusal of record reveals that the subordinate of Additional Commissioner prepared a note in this respect and the note contains all details as to why inquiry u/s 45(2) of the Ceiling Act is necessary. He states that said note is approved by Additional Commissioner within a period of three years and, therefore, it cannot be said that the proceedings are initiated after expiry of three years. In relation to the contention that some lands have been included twice in the holding of petitioner and, also in the holding of persons named above, he states that those persons have purchased the land during pendency of ceiling proceedings and therefore those sales are required to be ignored, insofar as holding of Smt. Ajija Begum is concerned. He, therefore, stated that these lands were included in holding of Ajija Begum as per this section. He argues that Section 3(4) of the Ceiling Act prohibits inclusion of same land into the holding of same person twice. He further states that this section has not been breached in the facts of the present case.

6. Insofar as the divorce between the parties is concerned, his contention is that

the Additional Commissioner has specifically found that even after divorce, Smt. Ajija Begum has been using the name of her husband and as such the story of divorce was only a fabricated story to enable her to retain land separately along with her husband. He points out that the Additional Commissioner has found that these lands were not given to her in mehr also and those were not her separate properties. He, therefore, contends that no case for intervention in writ jurisdiction is made out.

7. Insofar as the interest of Smt. Ajija Begum is concerned, the order dated 29-6-1991 passed by the Additional Commissioner, records adverse finding that there was no Talaq between Smt. Ajija Begum and Mirza Hafizullah Baig. This finding had been recorded by Additional Commissioner in revisional jurisdiction without recording any evidence and without giving any opportunity to parties to prove that there was, in fact, such a divorce. It is doubtful whether such a finding could have been recorded by Additional Commissioner in any jurisdiction with him. A question of status of a person ought to have been left for decision by Civil Court and that has not been done. Be that as it may, as has been demonstrated by Advocate Chandurkar again the non-application is apparent. If one peruses the records of Surplus Land Determination Tribunal, it is found that the Deed of Divorce executed by Mirza Hafizullah on 5-8-1969 is very much filed on record. It further seems that insofar as use of name of her husband by petitioner after divorce is concerned, the purchasers from her namely Nathu Kaniram Rathod and Ramdhan Medsing Chavhan have filed affidavits pointing out that because the lands were recorded in the name of Smt. Ajija Begum wife of Hafizullah Baig, they insisted for execution of sale deed by vendor by using the same name as otherwise it would have created a problem for them in getting their names mutated in revenue records and further it would have also cast a cloud upon their title. Both these affidavits are also very much on record. Coupled with these, there is an independent affidavit of Smt. Ajija Begum in which she has also explained the circumstances in which she was required to use name of her husband while executing the sale deed. The explanation given in this affidavit is plausible and the perusal of order of Additional Commissioner reveals that said explanation has not been even considered by him. If the property is standing in particular name, person who is going to purchase that property is bound to insist for vendor to use the same name in which the property is standing and there is nothing objectionable in it. It appears that Smt. Ajija Begum was required to use name of her husband in this situation. The observations made by Additional Commissioner that she had not explained why she had used name of her husband after the divorce is, therefore, perverse and cannot be sustained.

8. The perusal of order of S.L.D.T. dated 31-5-1986 also reveals that the S.L.D.T. has, in fact, recorded statement of four persons and has done due inquiry. It is to be noticed that the matter was received back by S.L.D.T. after remand made by member, Maharashtra Revenue Tribunal, Nagpur on 21st October, 1985. The fresh inquiry was conducted by Surplus Land Determination Tribunal, Mahagaon

and during that inquiry statements of four persons were recorded and also affidavits were taken. After due inquiry and also after local inquiry the Surplus Land Determination Tribunal has recorded that the husband and wife were residing separately and there is Talaq between them. Thus, the finding recorded by Surplus Land Determination Tribunal is based upon evidence which was found during inquiry. In such circumstances learned Additional Commissioner had not given any reason as to why such finding could not have been accepted. The entire order of Additional Commissioner is based upon only surmises. The said order is, therefore, quashed and set aside.

9. As the order of Additional Commissioner is quashed and set aside on one of the grounds raised by Advocate Chandurkar, it is not necessary for this court to consider other grounds raised by him.

10. Writ Petition is accordingly allowed. The order dated 29-6-1991, passed by the Additional Commissioner, Amravati Division, Amravati is hereby quashed and set aside. Rule is made absolute in above terms. No order as to costs.