
(2004) 12 BOM CK 0037
In the Bombay High Court
Case No : W. P. No. 2279 of 1992

Prabhakar Talatule

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 20-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 21

Citation : (2005) 3 ALLMR 451 : (2005) 2 MhLj 390

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

Bench : Single Bench

Advocate : R.R. Deshpande, for the Appellant; Mandpe, A.G.P., for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this petition Under Article 226 of the Constitution of India the petitioner challenges Order dated 9-9-1992 passed by Maharashtra Revenue Tribunal in Ceiling Appeal No. 59 of 1992 thereby upholding Order dated 13-7-1992 passed by Surplus Land Determination Tribunal, Parsheoni (S. L. D. T.).

2. It appears that in proceedings Under amended Ceiling Act 67.5 Acres of land of the petitioner was declared as surplus and the matter came before this Court in Writ Petition No. 560 of 1989. On 27-1-1992 the said petition was disposed of by permitting the petitioner/land holder to make choice. It appears that thereafter the petitioner appeared on 27-2-1992 before the S. L. D. T. and as records were not received the matter was taken up on 1-4-1992 on which date the petitioner submitted Form No. VII and VIII giving his choice. On 6-4-1992 the petitioner submitted an application therein pointing out that in view of consolidation proceedings his holding is reduced by 8.89 acres and the said fact should be taken into consideration by S. L. D. T. The petitioner also offered to resubmit Form No. VII and VIII accordingly. The petitioner placed reliance upon 1983 Mh. L. J. 38 in support of his demand. However, it appears that on

14-7-1992 S. L. D. T. declared the land as surplus as per original position by ignoring reduction in area on account of consolidation proceedings. The petitioner, therefore, filed appeal before M. R. T, and made grievance about not granting him opportunity in the matter and about not giving him chance to file Form No. VIII. He contended that 8.89 acres land should have been excluded from his holdings. However, M. R. T. rejected the appeal on 9-9-1992. Thus both these orders have been challenged in this writ petition. While admitting writ petition on 11-11-1993 this Court has restricted stay only to the extent of 8.89 acres.

3. It appears that in spite of stay during pendency of the petition the respondent No. 1 had distributed the land found to be surplus by it and therefore, the petitioner was required to move civil application for direction to handover possession back to him. The Advocate for the petitioner states that in pursuance of orders dated 6-9-1993 passed by this Court, the land has been taken back from the possession of distributors by the State Government and it has been placed back in his possession on 16-9-1993 he has today produced on record Panchanama dated 16-9-1993 to show that Government took back possession from allottees and possession receipt dated 16-9-1993 by which petitioner was placed in possession of this land. All this is required to be recorded because the Court record does not show that any such Orders were passed on 6-9-1993 by this Court. From the record it appears that the said Civil Application was not considered at any time and no Orders are passed on it by the Court.

4. Adv. R. R. Deshpande appearing for petitioner points that after the limitation of the area as surplus by S. L. D. T., consolidation has taken place and as per records of consolidation proceedings area of Survey No. 7, 24, 29 of Mouza : Ghatkhairi has been reduced. He invites attention of the Court to Annexure "A" in that regard to show that total reduction in area of these survey numbers is 8.89 acres. He contends that as this has occurred subsequent to the limitation of surplus land by sale deed in view of the judgment reported at 1983 Mh. L. J. 38, Hanumant v. State of Mah. S. L. D. T. as also M. R. T. should have permitted him to retain 8.89 acres of land and by not doing so there is refusal to exercise the jurisdiction.

5. As against this, learned A. G. P. argues that in earlier writ petition Orders were passed by High Court by observing that there is no controversy about position that 67.5 acres of land have been declared surplus. He further contends that petitioner cannot now be permitted to turn around and to contend that his land should be reduced by 8.89 acres. He further argues that consolidation proceedings were within the knowledge of petitioner when he approached this Court and reduction in area was also within his knowledge and as such the grounds sought to be raised are not subsequent event to enable the petitioner to claim reduction in surplus area determined by S. L. D. T. He therefore, prays for dismissal of the petition.

6. Perusal of the judgment of this Court mentioned above particularly paragraph

No. 7 thereof reveals that the Division Bench has rejected argument of Government that after all land-holders got market value of the property and thus would be put to no loss in case acquired property is not included within ceiling limit. The Division Bench has observed that surplus area is determined u/s 21 and thereafter it vests to State Government any event such as acquisition etc. that takes place after this must stand altogether on a different footing, irrespective of the consideration of extent of period in holding the inquiry. Acquisition after the enquiry is over will have absolutely no relevance to the point at issue. That is the legislative wisdom reflected in the scheme of the Act and it is none of the Court's function to question it. The Division Bench has concluded that Under these circumstances, acquired lands could not be included in calculating area of ceiling limit. Therefore, it was pleased to quash the impugned Orders. It is to be noticed that thus, the Division Bench has found that on account of subsequent event on which the landholder has no control if the area of land is reduced, the petitioner landowner is entitled to inclusion of that much area. Here insofar as consolidation proceedings are concerned, the respondents have not filed on record any reply or documents to show that reduced area of land was taken into consideration by S. L. D. T. while determining surplus land. Thus, it is clear that area has been reduced subsequent to the determination by S. L. D. T. Even applications filed by petitioner before S. L. D. T, reveal this. However, those applications are not considered by S. L. D. T. and Order of S. L. D. T. does not show any application of mind insofar as this issue is concerned. In view of law laid down by Division Bench as above and in view of the fact that as per petitioner on 16-9-1993 the petitioner has been placed back in possession of 8.89 acres of land by Government, the impugned Orders dated 9-9-1992 passed by Maharashtra Revenue Tribunal, Nagpur and the earlier Order dated 13-7-1992 passed by Surplus Land Determination Tribunal, Parsheoni are hereby quashed and set aside. The matter is remanded back to S. L. D. T. Parsheoni or other competent Authority in this respect to permit the petitioner to retain the land equal to 8.86 acres land as mentioned in Panchanama and Possession Receipt dated 16-9-1993. The S. L. D. T. /Competent Authority to complete this inquiry as early as possible and in any case within a period of two months from today. As already stated above this Order is passed on the premise that the petitioner has been restored back possession of 8.86 acres of land. If the petitioner is not restored back with possession, S. L. D. T. /appropriate authority will not be bound to comply with these directions.

In the meanwhile status-quo in relation to possession of 8.86 acres of land as on today shall continue only if S. L. D. T /appropriate authority is required to hold enquiry