

(2011) 03 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 1967 of 1993

Raghvendra Yeshwantrao Deshmukh

APPELLANT

Vs

The State of Maharashtra, The Divisional Commissioner, The
Additional Commissioner and The Tahsildar and Chairman,
Surplus Land Determination

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 17(1),
17(2), 21, 45(2), 54(2)

Citation : (2011) 3 ALLMR 763 : (2011) 6 BomCR 571 : (2011) 4 MhLj 415

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

Bench : Single Bench

**Advocate : A.R. Kale, holding for A.R. Joshi, for the Appellant; K.B. Choudhary,
A.G.P., for the Respondent**

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This petition is filed challenging the notice at Exhibit F to the petition dated 05061993 issued by the Additional Commissioner, Aurangabad Division, Aurangabad, initiating suo moto inquiry.

2. The Petitioner herein is a resident of Belkund, Taluka Ausa, District Latur. The Petitioner was served a notice u/s 17(1) and (2) calling upon him to furnish the return of his agricultural lands held, for the purpose of determination as to the holding. The Petitioner filed his return and after due inquiry, the Petitioner is declared non surplus holder by order dated 03041976 passed by the Surplus Land Determination Tribunal, Ausa (For short, "S.L.D.T." The State Government filed Revision before the Additional Commissioner, Aurangabad Division, Aurangabad. The Petitioner herein filed say in the said revision. The Additional Commissioner by its order dated 18051977 was pleased to set aside order dated 03041976 passed by the S.L.D.T. Ausa and was further pleaded to remand the case for S.L.D.T. Ausa.

3. It is the case of the Petitioner that after remand of the case to the S.L.D.T., after proper inquiry as regards the holding of the Petitioner and after scrutiny of the documentary evidence produced by the Petitioner and even by visiting the spot/land and by taking spot inspection again came to the conclusion that the Petitioner is not a surplus holder.

It is the case of the Petitioner that all of sudden, in the year 1993, the learned Additional Commissioner issued notice to the Petitioner for suo moto inquiry. It is the case of the Petitioner that, in the said notice, main questions which are posed by the learned Additional Commissioner, were identical and raised in the first provisional proceedings. The Petitioner herein filed say before Respondent No. 3 Additional Commissioner and reiterated his submission. It is the case of the Petitioner that Respondent No. 3 Additional Commissioner by its judgment and order dated 29031993 was pleased to set aside of S.L.D.T. and again remanded matter to the S.L.D.T. for making fresh inquiry and passing fresh order. Hence this writ petition.

4. Learned Counsel appearing for the Petitioner submits that, while ceiling proceedings were closed way back in the year 1987, notice u/s 54(2) the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (For short, "said Act") has been issued somewhere in the month of March 1990. According to Counsel for the Petitioner, admittedly suo moto inquiry is initiated after lapse of 13 years from the date of order passed by the S.L.D.T. and therefore, such notice being beyond statutory period provided under the Act, cannot be acted upon and has no jurisdiction to conduct suo moto inquiry after lapse of statutory period. The Additional Commissioner has not called record within three years and has not applied his mind to the documents and to the facts of the case. Therefore, learned Counsel for the Petitioner submits that this petition deserves to be allowed.

5. On the other hand, learned A.G.P. submitted that the authority has acted within its power and therefore, this Court may not interfere in the suo moto proceedings initiated by the Additional Commissioner, Aurangabad Division, Aurangabad.

6. I have heard learned Counsel for the Petitioner and learned A.G.P. for the State. From the perusal of the documents placed on record, it is admitted position that notice issued by the Additional Commissioner is after 12 years from the order passed by the S.L.D.T. From the perusal of the documents placed on record, it does not reflect or appears that the Additional Commissioner has called record and proceedings within three years and after applying his mind has issued notice. Therefore, in my opinion, notice issued by the Additional Commissioner itself was void ab initio and beyond statutory period of limitation, hence deserves to be quashed and set aside and as a consequence of quashing and setting aside notice dated 05061993, the impugned order cannot survive.

7. This Court had occasion to interpret provisions of Section 45(2) of the said

Act, in the following decisions:

In the case of *Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr.* 1989 Mh.L.J.1011 the Full Bench of this Court held that the proviso to Section 45(2) of the Maharashtra Agriculture Lands (Ceiling on Holdings) Act, restricts the exercise of jurisdiction u/s 45(2) to those cases where the record is called for within the period of 3 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. It is further held that it is after applying his mind that the provisional authority will have to call for the record of the enquiry or proceedings after conscious application of mind to the facts and circumstances of each case. Where admittedly the necessary application of mind on the part of the Commissioner was much beyond the period of 3 years of the order impugned, it will have to be held that the records were not called within the period of 3 years. In such a case the Commissioner will have no power to exercise the provisional jurisdiction.

Yet in another decision in the case of *Bansilal Ramgopal Bhattad v. State of Maharashtra and Other* 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 *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim*, .

Yet in another reported case of *Lotan Fakira Patil v. State of Maharashtra and Others* 2002 (2) Mh.L.J.255 this Court in the facts of the case held notice u/s 45(2) of the Act for suomotu revision was issued on 25.03.1982 and not within the period of three years from the date of order of the S.L.D.T. dated 03.07.1978 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 *Champabai Patwari and Another Vs. State of Maharashtra and Others*, this Court held that the first proviso to subsection (2) of Section 45 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 lays down two conditions which are required to be satisfied before the State Government or its delegate could invoke the provisional 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 3 years has not elapsed from the date of the order or declaration made by S.L.D.T. In the facts of that case the 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 was 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 8-10 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.

Yet in another case of Shalikram Dagduba Solunke etc. v. State of Maharashtra and Another 2004 (1) Mah.L.R. 310 this Court held that exercise of provisional 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 suomotu 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 said Act.

8. Therefore, viewed from any angle, notice issued by the Additional Commissioner, Aurangabad Division, Aurangabad for suo moto inquiry and also order impugned in this petition, cannot be sustained.

9. In the result, Writ Petition is allowed in terms of prayer Clause (D). The impugned order and notice issued by the Additional Commissioner, Aurangabad Division, Aurangabad is quashed and set aside. Writ petition is allowed and disposed of.

10. Rule made absolute as indicated above.