

(2005) 03 BOM CK 0135

In the Bombay High Court

Case No : Writ Petition No's. 944 and 982 of 1993

Ramchandra Gopal Belekar and Another

APPELLANT

Vs

Commissioner, Amravati Division

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 17, 18, 19, 20, 21

Citation : (2005) 3 MhLj 546

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

Bench : Single Bench

Advocate : A.M. Deshmukh, in W.P. No. 944 of 1993 and J.N. Chandurkar, in W.P. No. 982 of 1993, for the Appellant; S.S. Doifode, AGP in W.P. No. 944 of 1993 and A.S. Sonare, AGP in W.P. No. 982 of 1993, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—Both these writ petitions challenge the order dated 30-11-1992 passed by the Commissioner, Amravati Division, Amravati, in exercise of Revisional power u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as the Ceiling Act).

2. The grievance made by the learned counsel for the petitioners is that provisions of Section 45(2) of the Ceiling Act prescribe the limitation of three years from the date of declaration u/s 21 of the Ceiling Act and here the order passed by the Commissioner is about 8 years thereafter and there is absolutely nothing on record to show that the Commissioner applied his mind within a period of three years from the date of order of Surplus Land Determination Tribunal. As the order impugned is common and point being raised is common, both the petitions are taken up for hearing together. The parties were heard on 30-3-2005 and thereafter on 31-3-2005.

3. The order of Surplus Land Determination Tribunal determining surplus land in this case is based on the order dated 4-1-1984 and as per said order, the

petitioner in Writ Petition No. 982 of 1993 is found surplus to the extent of 76.01 acres. The petitioner in other writ petition is one of the purchasers from minor daughter of the petitioner in Writ Petition No. 982 of 1993. Shri Chandurkar, Advocate for the petitioner has on 2-3-2005 moved Civil Application No. 1566 of 2005 in Writ Petition No. 982 of 1993 seeking leave to add grounds in this respect in writ petition.

4. I have heard Shri Chandurkar, Advocate for the petitioners in Writ Petition No. 982 of 1993, Shri Deshmukh, Advocate for the petitioners in Writ Petition No. 944 of 1993 and Shri Doifode and Shri Sonare, Assistant Government Pleaders for the respondents in writ petitions respectively.

5. The documents filed with the petitions reveal that after the order of Surplus Land Determination Tribunal dated 4-1-1984, the Commissioner has passed the order on 30-11-1992 and as per said order, the petitioner landholder declared surplus by 100.39 acres in addition to 76.01 acres earlier.

6. The counsel for the petitioners point out that order sheet dated 29-12-1984 in this respect reveals that the Additional Commissioner has opened proceedings u/s 45(2) of the Ceiling Act for the first time. The respondents could not file any return before this Court and the records of Revisional authority are also not available. The petitioners have, however, produced certified copies of order sheets maintained by the Revisional authority. By placing reliance upon the said order sheets, argument is that there is no application of mind within three years from 4-1-1984. In support of this contention, reliance has been placed upon Full Bench decision of this Court in the case of Manohar v. State of Maharashtra reported at 1989 Mh.L.J. 1011 and subsequent judgment of this Court in the case of Lotan Fakira Patil Vs. State of Maharashtra and Others, , wherein this Full Bench ruling has been followed. The provisions of Section 45(2) of the Ceiling Act read as under :

"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 passed u/s 27, and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard;

Provided that, nothing in this sub-section 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, the possession of such land has not been taken under Sub-section (4) of Section 21 and a period of three years from the date of such declaration or part thereof has not elapsed."

7. In Lotan Fakira Patil Vs. State of Maharashtra and Others, , the learned Single Judge of this Court has considered the effect of this provision in detail and has

observed in the facts of the case before him that the impugned order did not disclose as to on what particular date or during which days or when during said period from 18-6-1980 to 24-3-1982 the scrutiny of the records was made by the authority and applied its mind to arrive at prima facie finding about the petitioner being holder of surplus lands. In the same para little later, it is observed that "merely saying in the impugned order that the authority had scrutinized the records and had arrived prima facie finding that the petitioner was holder of surplus land consequent to receipt of letter dated 17-6-1980 would not disclose the fact that the authority had in fact, applied its mind within the period of three years and more so, when the notice in question on application of mind was issued on 25-3-1982."

8. In 1989 Mh.L.J. 1011 (supra), the Full Bench has observed that mere calling of records is not sufficient. The Full Bench has stated that the meaning assigned to the word "call" in Oxford English Dictionary, Vol.2 and Chambers Twentieth Century Dictionary is "to summon". "It contemplates some action or application of mind on the part of the State Government or its delegate before calling for the record. It cannot be equated with a mechanical, clerical or ministerial act of calling for the records of all the proceedings irrespective of fact whether they are 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 quasi-judicial powers. When the order sheet by which proceedings are initiated by the Additional Commissioner on 29-12-1984 is seen, the order sheet states that records of Ceiling case in relation to the petitioner were scrutinized and records disclose that Tribunal failed to dispose of the case without proper scrutiny resulting in erroneous decision. It has therefore, become necessary to take up the matter for revision u/s 45(2) of the Ceiling Act to check up the correctness of order dated 4-1-1984 passed by the S.L.D.T. The learned counsel for the petitioners state that thus, there is no application of mind insofar as facts of present case are concerned and this is a cyclostyled order sheet which can be used in all cases.

9. As against this, the respective Assistant Government Pleaders argued that the form of order sheet is only cyclostyled but the relevant details are filled in hand writing and therefore, application of mind is apparent. They further contend that notice was issued to the petitioner to remain present on 31-1-1985 and accordingly on 31-1-1985, the petitioner has appeared and thus there is application of mind within three years from the order of S.L.D.T. Both the learned AGPs therefore, state that the reliance as placed on the rulings by the petitioners is misconceived and those rulings are not attracted in the facts and circumstances of the present case.

10. The perusal of order sheet itself reveals that the order sheet is cyclostyled and it is recorded that the scrutiny of particular ceiling case discloses that the Tribunal has failed to dispose of the case without proper scrutiny resulting in erroneous decision. Thus, the non-application of mind is apparent even in this

part of the cyclostyled note. The application of mind which is warranted in view of the above rulings is in relation to holding of the petitioners and therefore, with reference to the findings recorded by the S.L.D.T. on 4-1-1984. Merely stating that the S.L.D.T. has failed to dispose of the case properly and its decision is erroneous, cannot show that there is any application of mind in the facts and circumstances of the case. The application of mind will be demonstrated only if the authority considers particular portion of the order and finds at least prima facie that portion or finding that it is not correct in view of some other material which it has before it and thereafter states that exercise of revisional jurisdiction u/s 45(2) of the Ceiling Act is warranted. The cyclostyled proforma in which the revision has been opened can be applied to any case and with slight modification to cases under other Acts also. The entire order sheet is produced on record by the counsel for the petitioners and the said order sheet on last date i.e. on 30-11-1992 states that orders are passed and should be communicated to the parties.

11. Both the Assistant Government Pleaders were given time to go through the order sheet to demonstrate that before 4-1-1987 there is application of mind either by the Additional Commissioner or the Commissioner. The AGPs point out that the phrase a Commissioner in Ceiling Act also defines Additional Commissioner. After perusal of order sheet, the application of mind as contemplated above could not be demonstrated. I have perused the entire order with the assistance of AGPs and I find that such application of mind before 4-1-1987 is not at all apparent. The argument of the learned AGPs for remanding the matter back to respondent No. 2 - Commissioner for fresh decision needs to be considered here.

12. The learned AGPs state that the order sheet as opened on 29-12-1984 though does not disclose all reasons, it cannot be said that there is no application of mind at all by the authority. It is their contention that in such circumstances to find out whether there is any application of mind or not within three years, the matter needs to be remanded back. Their argument is that there is grave irregularity insofar as order passed by the S.L.D.T. is concerned and therefore, revisional power u/s 45(2) of the Ceiling Act is warranted.

13. The learned counsel for the petitioners oppose this request. They contend that in view of the limitation prescribed by Section 45(2) of the Ceiling Act, there is no question of remanding the matter back to the Revisional authority for that purpose. The perusal of judgments above reveal that the limitation of three years has been prescribed for particular purpose, if there is no application of mind within three years, the same cannot be allowed to be supplemented later on after the expiry of period of three years. Whatever reasons are given on 29-12-1984 cannot be supplemented and complemented at this stage. The order sheet dated 29-12-1984 needs to be read as it is and if there are any errors, the matter cannot be remanded back for rectification of those arrears. The request for remand, therefore, cannot be accepted.

14. As there is no application of mind as warranted by Section 45(2) of the Ceiling Act within three years, the impugned order dated 30-11-1992 cannot be sustained. The same is, therefore, quashed and set aside. Writ Petitions are allowed. Rule is made absolute in above terms. There shall be no order as to costs.