

**(2009) 07 BOM CK 0105**

**In the Bombay High Court**

**Case No : Writ Petition No. 3840 of 1995**

Satramadas Ramdas and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 13-07-2009

**Acts Referred:**

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 14, 33

**Citation :** (2010) 3 BomCR 894 : (2009) 6 MhLj 968(1)

**Hon'ble Judges :** Nishita Mhatre, J

**Bench :** Single Bench

**Advocate :** S.P. Kanuga, for the Appellant; S.N. Patil, AGP for Respondent Nos. 1 to 5, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Nishita Mhatre, J.—The petitioners are aggrieved by the order dated 13.7.1995 passed by the Secretary of the Government of Maharashtra, Revenue and Forest Department exercising powers vested in him as Secretary (Relief and Rehabilitation) under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. By this order, the allotments made in favour of the petitioners granting excess area to them has been cancelled and the rent is resumed to the Government.

2. The petitioners are displaced persons who arrived in India after partition. They were allotted accommodation in barracks which were available in 1947. These barracks were part of the compensation pool of properties created u/s 14 of the Displaced Persons (Compensation and Rehabilitation) Act 1954. The Petitioners were sold these rooms by the Managing Officer in 1965. A policy was introduced by the Central Government to allot each displaced person an area which was double the built up area in his occupation. Besides this, it was declared that the adjacent strip of land contiguous to the tenement allotted could be sold to the owners of the tenements or rooms in order to maintain uniformity of the tenure of the plot. This policy was adopted by the Government of Maharashtra in 1973

and a circular to that effect was issued on 27.4.1973.

3. The Managing Officer drew up a list of owners of rooms to whom strips of lands contiguous to their rooms could be sold. The Managing Officer was then vested with the powers to dispose of these strips of land in accordance with circular of 27.4.1973. Accordingly, on the basis of the recommendations and the government clearance obtained by the Managing Officer, the petitioners were allotted additional strips of land. They paid the purchase price determined by the officer and have erected the structures on these plots. The petitioners contend that they are residing in these plots from 1988.

4. It appears however that after being sold these strips of land, the Managing Officer who succeeded the earlier one cancelled the allotment and the sale of the adjacent strips of land to the petitioners on the ground that such strips of land were not part of the compensation pool of properties. This order was passed on 2.11.1988. Being aggrieved by the order of the Managing Officer the petitioners approached the Chief Settlement Commissioner in revision. By an order dated 11.2.1990, the Chief Settlement Commissioner reversed the order of the Managing Officer and held that such strips of land were part of the compensation pool of properties and that the sale of such lands was governed by the policy of the Government as stated in the circular of 27.4.1973. The Chief Settlement Commissioner observed that these strips of land were sold to the petitioners after obtaining the requisite sanction from the government and therefore, the question of cancellation of the sale effected in their favour did not arise. Accordingly, the conveyance deeds were issued in favour of each of the petitioners in 1990. Some of them have in turn sold their rooms to bonafide purchasers.

5. Suddenly in 1995, the Secretary of the Government of Maharashtra, Revenue & Forest Department issued an order cancelling the order of the Chief Settlement Commissioner on the ground that he had erroneously held that displaced persons were not entitled to the excess area i.e. the strips of land contiguous to their tenements. It is this order which has been impugned in the present petition.

6. The learned advocate for the petitioners submits that the impugned order has been passed by the Secretary to the Government of Maharashtra without having any jurisdiction to do so. He submits that once a conveyance was executed with the displaced persons, the question of exercising any powers u/s 33 of the aforesaid Act did not arise. He relies on the judgment of this Court in the case of Ramchand Gobindram Gurnani, since deceased through his heirs and legal representatives Vs. The State of Maharashtra and Others, and in Writ Petition No. 2890 of 1999 decided on 28.6.2000.

7. A perusal of the provisions of Section 33 of the Act indicate that the power is vested with the Central Government under that section to call for the record of any proceeding under the Act and to pass orders in relation thereto.

8. There is no material on record to indicate that such power has been delegated

to the State Government and/or its Secretary. Admittedly, the power has been exercised u/s 33 of the aforesaid Act and, therefore, in my opinion, the exercise of such power by the Secretary to the Government of Maharashtra is without jurisdiction. The other aspect of the matter is whether the Secretary, assuming he had been vested with such powers by delegation, could have reopened or reviewed the cases after the conveyance was executed in favour of the displaced persons. It is now well settled that such powers of review cannot be exercised after a conveyance has been executed. In the case of Ramchand Gobindram Gurnani and Ors. (supra), it was held that once the property including the open land vests in the allottee it cannot be set aside u/s 33 of the Act. A fresh enquiry ordered by the Secretary was wholly unnecessary. A similar view has been taken by the Division Bench in the case of Hargundas L. Harchandani Ors. v. The Authorised Chief Settlement Commissioner and Ors. Writ Petition No. 5810 of 1998 decided on 30.1.1999. Therefore, the question of exercising jurisdiction u/s 33 of the Act after the conveyance was executed and the purchase price has been paid, does not arise.

9. The next submission of the learned advocate for the petitioners is that even assuming the Secretary did have the power to exercise the jurisdiction u/s 33 it could not be exercised after a lapse of almost 5 years from the date on which the conveyance was executed in favour of each of the petitioners. He submits that the provisions of Section 33 could be invoked only within a reasonable time and not after an inordinate delay of five years. It is true that no period of limitation has been prescribed in Section 33 and, therefore, it would be open to the Government to call for the record at any time in any proceedings and pass orders which in its opinion required to be passed. However, it is well entitled that where limitation is not prescribed in the statute the Government is expected to act within reasonable period and not after an inordinate delay. In the case of The State of Gujarat Vs. Patil Raghav Natha and Others, , the Supreme Court was considering the provisions of the Bombay Land Revenue Code and held that the Commissioner must exercise the revisional powers within a few months of the order being passed by the Collector. In that case, it was held that three months was a reasonable period. Thus, in my opinion, the Secretary could not have in any event, assuming he had such jurisdiction, exercised his jurisdiction u/s 33 after an inordinate delay of 5 years.

10. Admittedly, the Government of Maharashtra has adopted the policy of the Central Government for allotment of lands to displaced persons. That policy is encompassed in the circular dated 27.4.1973. Those who had crossed over the border in the wake of partition were entitled to properties out of a pool of properties which formed a compensation pool. Under the circular, the Government had assured the displaced persons that common land which was not disposed of and was adjacent or contiguous with the existing plots would be disposed of to the plot holders and/or the owners of the tenaments. Thus, the lands which were adjacent to their tenaments were offered to the occupiers or owners of those tenaments and conveyances were executed with them for the

sale of the strips of land. The Settlement Commissioner had accordingly held that the lands being adjacent to the tenements allotted to the petitioners had rightly been offered to them by the Managing Officer and it was incorrect on the part of the successor in office to have revoked the earlier order.

11. The Secretary of the State Government unfortunately has ignored the policy of the government as envisaged in the circular of 24.4.1973, while holding that the strips of land were not part of the compensation pool of properties and, therefore, the displaced persons were not entitled to those strips. This is in clear breach of the aforesaid circular which lays down the policy of the State Government.

12. In these circumstances, the order of the Secretary of the State to Government of Maharashtra, Revenue and Forest Department dated 13.7.1995 is set aside. The writ petition is allowed. Rule made absolute in terms of prayer clause

(a). No order as to costs.