

(2011) 03 BOM CK 0150
In the Bombay High Court
Case No : Writ Petition No. 2257 of 1992

Shaikh Ahmed

APPELLANT

Vs

The State of Maharashtra and The Additional Commissioner,
Aurangabad Division

RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 12, 13(2), 17(1), 17(2), 21

Citation : (2011) 4 BomCR 412

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

Bench : Single Bench

Advocate : E.P. Sawant, for the Appellant; P.P. More, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This petition takes exception to the notice dated 05.08.1992 issued by the Additional Commissioner, Aurangabad Division, Aurangabad bearing No. 1979/ICHR/528.

2. The Petitioner is resident of Parbhani, Tq. & Dist. Parbhani. The Petitioner filed return u/s 12 of the Maharashtra Agricultural Land (Ceiling on Holdings) Act 1961. The Petitioner received notice u/s 13(2) of the said Act which was issued on 29.10.1976 and say to the effect is submitted by the landholder on dated 13.11.1976 before the Deputy Collector (Land Reforms) Parbhani. Thereafter, the Petitioner submitted the return before the S.L.D.T. Parbhani. Thereafter notice u/s 17(1) and 17(2) dated 01.09.1977 and 05.09.1977 issued to the Petitioner and his brother and they submitted their say. The S. L. D. T. after going through the relevant record came to the conclusion that the Petitioner and his brother as non surplus land holder vide judgment and order dated 27.09.1977.

3. It is the further case of the Petitioner that, the Additional Commissioner/ Respondent No. 2 by exercising powers u/s 45(2) of the Ceiling Act reopened the enquiry i.e. initiated a suo moto proceeding in the matter and reopened the

proceedings. The Petitioner submitted that, the Respondent No. 2 has no jurisdiction or powers to start or reopen the suo moto enquiry u/s 45(2) of the Ceiling Act after the period of 3 years from the date of judgment and order passed by the S.L.D.T. The Additional Commissioner must apply his mind within a period of 3 years by summoning the landholder and to start the enquiry. The commissioner must complete the enquiry within a period of 3 years from the date of the order passed by the S.L.D.T. It is further submitted that, in the present case, the Additional Commissioner has not called the record of the S.L.D.T. within a period of 3 years. The Additional Commissioner has issued the notice of suo moto enquiry for the first time after 15 years i.e. on 05.08.1992. Therefore, the counsel for the Petitioner submitted that, this writ petition may be allowed and notice dated 05.08.1992 may be quashed and set aside.

4. On the other hand the learned Additional Government Pleader vehemently opposed the petition and submitted that, the notice is rightly issued by the Additional Commissioner, Aurangabad u/s 45(2) of the said Act. Therefore, this writ petition is devoid of any merits and same may be dismissed.

5. I have given due consideration to the rival submissions of the learned Counsel for the parties. It is admitted position that the S.L.D.T. passed the order initially on 27.09.1977 thereby the Petitioner and his brother were declared as non surplus land holders. It is also admitted position that the suo moto notice was issued by the Additional Commissioner on 05.08.1992. Therefore, said notice for suo moto enquiry was after the period of about 15 years from the date of order passed by the Competent authority on 27.09.1977. There also appears to be non-application of mind on the part of the authority. It further appears that, documents and facts of the case are not properly seen by the Additional Commissioner before issuing notice for suo moto enquiry. Therefore, in my opinion, since the notice issued by the Additional Commissioner on 05.08.1992 was beyond the statutory period prescribed u/s 45(2) of the Ceiling Act, the said notice deserves to be quashed and set aside.

6. This Court had occasion to interpret provisions of Section 45(2) of the Said Act in following decision

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 revisional 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 revisional 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 suo moto revision was issued on 25.03.1982 and not within the period of three years from the date of order of 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 revisional 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) Mh.L.R. 310, this Court held that exercise of revisional 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.

7. Therefore, in the light of aforesaid discussion the notice dated 05.08.1992 bearing No. 79/ICHR/528 issued by the Additional Commissioner, Aurangabad Division, Aurangabad is quashed and set aside. The petition is allowed in terms of prayer clause "C". Rule is made absolute in above terms. The writ petition stands disposed of.