(2002) 11 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 5801 of 1988

Sridhar Damodar Kamalaskar (Wani) deceased by heirs Babulal Sridhar Wani and Others — APPELLANT

Vs

Sonu Gunaji Dhumase and Others — RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 7

Citation : (2003) 1 ALLMR 712 : (2003) 2 BomCR 50 : (2003) 2 BOMLR 24 : (2003) 2 MhLj 41

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Y.R. Naik, for the Appellant; P.N. Karlekar and C.R. Sonawane, AGP for respondent Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is directed against the order of the Additional Commissioner, Nasik, dated 27th October, 1988 by which the learned Commissioner has exercised revisional powers conferred on him u/s 7 of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short "the said Act") and reversed the order of the Tahsildar. The Tahsildar had dropped proceedings for restoration of land in favour of the respondent No. 1, the tribal transferor. In brief the facts are as follows:--

2. The respondent No. 1, Sonu Gunaji Dhumase, transferred his land admeasuring 5 H. 99 R. along with Pot Kharaba 0.12 R. in favour of the petitioners. The transaction is said to be dated 16th July, 1973, during the prescribed period.

3. In proceedings u/s 36(3) of the Maharashtra Land Revenue Code, the respondent No. 3 made a statement to the Tahsildar that he is not willing to be restored possession of the land. The Additional Tahsildar therefore dropped the said proceedings. Thereafter it appears that the Assistant Collector passed the

order dated 27th August, 1976, in suo motu proceedings directed restoration of the land back to the respondent No. 1. The petitioners carried the matter to the Maharashtra Revenue Tribunal who noted the contradictory conduct of the respondent. The Maharashtra Revenue Tribunal observed that the respondent had given a statement on oath that he does not want the land and also gave a contradictory undertaking that he would cultivate the land if it was restored. The undertaking was given under a thumb impression. The Maharashtra Revenue Tribunal, therefore, set aside the order of the Assistant Collector and remanded the matter for fresh decision.

4. After remand the Tahsildar, Kalwan appears to have disbelieved the undertaking of the respondent on which he had made a thumb impression and though the respondent stated that he want possession of the suit land, the Tahsildar dropped the proceedings. This order of the Tahsildar is dated 10th February, 1982.

5. Thereafter no action was taken. The Additional Commissioner, Nasik, however on 18th November, 1987 i.e. after a period of about more than five years issued notices in exercise of his revisional powers. The revisional powers of the Commissioner are conferred by Section 7 of the Act which reads as follows:--

"7. Revision.--Where no appeal has been filed within the period provided by Sub-section (2) of Section 6, the Commissioner may suo motu or on the direction of the State Government at any time, --

(a) call for the record of any inquiry or proceeding of any Collector for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, such Collector, as the case may be, and

(b) pass such order thereon as he thinks fit:

Provided that, no such record shall be called for after the expiry of three years from the date of such order except in cases where directions are issued by the State Government, and no order of the Collector shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

The question therefore is whether the Additional Commissioner was entitled to exercise his revisional powers u/s 7 after a period of about more than five years.

6. Mr. Naik, learned Counsel for the petitioners submitted that, and in my view rightly, the Commissioner is not entitled to call for the records after a period of three years have expired from the date of the order except where directions are issued by the State Government. Admittedly, in this case no directions are issued by the State Government. Mr. Karlekar, learned Counsel for the respondents, however, submitted that the act of Commissioner in calling for the records was within time because the records had been forwarded to the Commissioner on 15th July, 1982 by the Collector.

7. Having considered the matter at length, I am of view that in the first place there seems to have been a gross legal impropriety in which the matter seems to have proceeded before the Commissioner. Even if it did so, it cannot be termed as the exercise by the Commissioner calling for the records as contemplated by the proviso to Section 7. A similar revisional provision has been considered by the Full Bench of this Court in Manohar Ramchandra Manapure and Ors. v. State of Maharashtra1989 Mh.LJ. 1011 where this Court held as follows :--

"It cannot be equated with the mechanical, clerical or ministerial act of calling for the records of all the proceedings irrespective of the fact whether they were 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. The object behind prescribing of limitation for calling for the record is not to upset the settled position at a very late stage. Calling for the record will require some positive act on the part of the authority but it must ultimately depend upon the facts of each case as to when the record was actually called for by the concerned authority. The proviso cannot be construed so as to include in its import all the proceedings namely right from the initiation to the ultimate order. 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."

A similar view has been taken by the learned Single Judge of this Court in the case of Smt. Gool Noshir Davierwala and Ors. v. The Additional Commissioner, Konkan Division and Anr., in Writ Petition No. 2177 of 1986 decided on 4th September, 2002.

8. Though these decisions were u/s 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, it would apply equally to exercise of revisional powers u/s 7 of the Act since both the revisional powers i.e. Section 45(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act and Section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act are in pari materia.

9. Mr. Karlekar, learned Counsel for the respondents, however, relied on a decision of the Division Bench of this Court in Kisan Gangaram Lunde v. Additional Commissioner, Poona and Anr., reported in 1977 U.C.R. 313. In that case the Commissioners order was challenged on the ground, inter alia, that he had no jurisdiction to pass an order after three years from the date of declaration under the Ceiling Law. This Court repelled that challenge and held that the proviso to Section 45(2) does not require the Commissioner to pass an order within three years from the date of declaration and that once papers are called within a period of three years, there is nothing in proviso to prevent the Commissioner from passing an order thereafter. This case has no application to the facts of the present case.

10. In the present case the Commissioner did not at any stage call for the records within the period of three years. The Collector seems to have sent the record for reasons which are not clear at all. The Commissioner has observed in his order that the Collector, Nasik submitted case papers to the Commissioner''s office for revision on 15th July, 1982. It appears very strange indeed that the Collector sent papers to the Commissioner for revision. In any case, this cannot be considered to be calling for the records within the meaning of Section 7 for the purpose of revision. The Commissioner admittedly did not take any cognisance till 18th November, 1987 i.e. for a period of five years after the Collector is said to have sent the records.

11. In the circumstances, I find that the exercise of the revisional power by the Commissioner in the facts of the present case was not permissible and the order in revision is therefore liable to be set aside. The petition, therefore, succeeds. Rule is made absolute in terms of prayer Clause (a). In the circumstances of the case, there shall be no order as to costs.

12. The respondent is at liberty to resort to such proceedings as may be advised, if entitled to in law.

P. A. to give ordinary copy of this order to the parties concerned.

