

(2001) 03 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No's. 4489 of 1996 and 1622 of 1997

Udhav Uttam Patil

APPELLANT

Vs

Daga Holkya Bhil since deceased through L.Rs. and Others

RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 84C
Constitution of India, 1950 — Article 46
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B
Limitation Act, 1963 — Section 12, 14, 4, 5
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 45(2)
Maharashtra Land Revenue Code, 1966 — Section 242, 36, 36(2)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 10, 10A, 2(1), 3, 3

Citation : (2001) 3 ALLMR 841 : (2001) 2 BomCR 597 : (2001) 4 BOMLR 249 : (2001) 3 MhLj 916

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : P.M. Shah and R.B. Raghuwanshi, for the Appellant; S.S. Shete, V.D. Sapkal, A.G.P. and P.M. Shinde, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—Rule. Respondents wave service. By consent of the parties, rule made returnable forthwith.

2. This group of petitions raises a common challenge regarding the right of the Divisional Commissioner to reopen the inquiry already concluded by the Collector under the provisions of Section 3 of the Maharashtra Restoration of Lands to the Scheduled Tribes Act, 1974 (the Act for short), by invoking the powers u/s 7 of the said Act. By the said impugned notices dated 13th August, 1996 the Additional Divisional Commissioner, Nasik Division at Nasik has proposed a suo motu revision of the judgment and order passed by the Deputy Collector after about twenty years. It is contended that the judgment and order passed by the Deputy Collector had become final and the impugned show cause notices

proposing to reopen the settled position are illegal and such powers cannot be allowed to be invoked after a gap of about twenty years or after a reasonably long period. The relevant provisions of sections 3, 4 and 7 of the said Act read, as under :--.

"3. (1) Where due to transfer--

(a) the land of a Tribal-transferor, is held by a non-Tribal- transferee, or

(b) the land acquired in exchange by a Tribal-transfer or is less in value than the value of the land given in exchange,

and the land so transferred is in possession of the non-Tribal- transferee, and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or Authority, the Collector, either suo motu at any time, or on the application of a Tribal transferor made within thirty years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that--

(i) the lands of the Tribal transferor and non-Tribal transferee, so exchanged shall be restored to each other; and the Tribal-transferor, or as the case may be the non-Tribal transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4); or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal transferee, and restored to the Tribal transferor, free from all encumbrances, and the Tribal transferor shall pay such transferee and other persons claiming encumbrances the amount determined under clause (b) of subsection (4) :

Provided that, where land is transferred by a Tribal transferor In favour of non-Tribal transferee before the 6th day of July. 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal transferor.

Explanation.-- Where the lands of a Tribal and non-Tribal are purported to have been transferred to each other, otherwise than by exchange, but the date on which the instructions for such transfers are registered is the same or, where such instruments are registered on different dates, but the interval between the dates of registration is thirty days or less, then, notwithstanding anything contained in such instruments, for the purposes of this section, such transfers shall be deemed to be by way of exchange.

4. Where any land of a Tribal is, at any time on or after the 1st day of April, 1957 and before the 6th day of July, 1974; purchased or deemed to have been purchased or acquired under or In accordance with the provisions of the relevant tenancy law by a non-Tribal transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession

of a non-Tribal transferee and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribal made within thirty years from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-section (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal transferee in respect of such land in accordance with the relevant tenancy law shall be refunded to such non-Tribal transferee either in lump sum or in such annual installments not exceeding twelve (with simple interest at 4-1/2 percent, per annum) as the Collector may, direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-Tribal transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal transferor.

7. 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."

3. Before dealing with the merits of the challenge to the impugned notices, as raised by the petitioners, it would be desirable to trace the legislative history "of the Act. By a Government Resolution the State Government appointed a committee to inquire into and report to the State Government inter alia on how far the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy law i.e. the Bombay Tenancy and Agricultural Lands (Virdarbha Region) Act. 1958, the Hyderabad Tenancy and Agricultural Lands Act. 1950 and the Bombay Tenancy and Agricultural Lands Act, 1948 had been effective in giving protection to the persons belonging to the Scheduled Tribes as well as to suggest among other things suitable amendments therein, if any of the existing

provisions were found to be inadequate. The said committee submitted its report on 7th April, 1972 and drew the attention of the Government to the difficulties experienced by the administration in view of the scheme of section 36 of the Maharashtra Land Revenue Code, 1966 (for short, L.R. Code). According to section 36(2), occupancy of persons belonging to such Scheduled Tribes could not be transferred except with the previous sanction of the Collector. However, these provisions were not found sufficient and persons belonging to the Scheduled Tribes, because of their poverty, lack of education and general backwardness, had been exploited by various persons who could take advantage of the sad plight of these tribals. The committee, therefore, recommended that provisions should be made for restoring to the persons belonging to Scheduled Tribes the land which had been duly transferred to non-tribals. The Government accepted these recommendations and considered it necessary to provide for restoration of the lands which have gone into the hands of the non-tribals to their original tribal owner's.

4. Sub-section (1) of section 3 of Act originally provided a period of limitation of three years for the Collector, either suo motu, at any time, or on the application of a tribal- transferor, for making such inquiry. By Maharashtra Act No. 1 of 1991 the said provision was amended and the period of three years was changed to thirty years, after the Supreme Court turned down the challenge to the constitutional validity of the Act in the case of Lingappa Pochanna Appeal war v. State of Maharashtra and another. In the said decision the Supreme Court, in para 16 observed, thus:

"16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudents know it. Legislators, Judges and administrators are now familiar with the concept of distributive Justice. Our Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice, in the sphere of law-making connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principles : From each according to his capacity, to each according to his needs. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by Imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."

5. The Supreme Court further held that the Act is nothing but a remedial

measure in keeping with the policy of the State for rendering social and economical justice to the tribals whose lands were taken away by way of transfer under the ordinary laws in various ways by following the process and forms of law. However, the result was devastating and by such unequal transactions, which were grossly unconscionable and unjust, tribals lost their lands to non-tribals and were rendered landless, the Apex Court went on to observe :

"It is implicit in the nature of the legislation that the law regards such transactions as unconscionable and oppressive and directs restoration of the property to the tribal transferor treating the transfer to be *rum est*. It is axiomatic that a contract is liable to be set aside due to bargaining power if some one, without independent debates, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate when his bargaining power is previously impaired by reason of his own need or circumstances or by his own ignorance or infirmity, coupled with undue influence or pressures brought to bear on him by or for the benefit of the other."

6. The learned counsel for the petitioners contended that even if the scheme of section 7 of the Act empowers the Commissioner *suo motu* or on the direction of the State Government to exercise revisionary powers, at any time, the words "at any time" must be given a restrictive meaning and the said duration cannot be expanded beyond reasonable period. They further contended that originally in the scheme of the Act the Collector was required to exercise the powers within a period of three years from the commencement of the Act for making an inquiry as he thought fit, the provisions of section 7 will have to be read in consonance with the original period of limitation set out u/s 3(1) of the Act and it would be an absurdity if another period of 30 years is given to the Commissioner to exercise his powers u/s 7 by the implication of the amended provisions of section 3(1) of the Act which provided for a limitation period of 30 years, almost two generations will pass through and the ownership and possession, by following the legal provision's recognising such transactions, which were settled for sixty years, could not be unsettled by invoking the powers of revision u/s 7 of the Act. In support of these contentions the petitioners have relied upon a judgment of the Supreme Court in the case of *State of Gujarat v. Patel Raghav Natha and others*, and in the cases of *Mohammad Kavi Mohamad Amin v. Fatmabai Ibrahim* as well as judgments of this Court in the case of *State of Maharashtra and another v. Khatau Makanji and Company Pvt. Ltd. and others*, *Sheikh Gafoor Shaikh Khoja v. State of Maharashtra and others*, and *Bansilal Ramgopal Bhattad v. State of Maharashtra and others*,.

7. In short, the petitioners contend that the power of revisions u/s 7 of the Act are required to be exercised within reasonable period and not at any time at the whims and fancies of the Commissioner or the State Government and the words "at any time" must be interpreted as "within a reasonable time" and such reasonable time cannot be more than five to six years from the commencement of the Act or alternatively two to three years from passing of the order by the

Collector u/s 3 of the Act.

8. The Deputy Commissioner (Resettlement), Nasik Division, Nasik has filed an affidavit in reply and opposed the petitions. It has been submitted that in view of the Maharashtra Amendment Act No. 1 of 1991 published in the Government Gazette dated 1st January, 1991 the Collector has been authorised to exercise his powers u/s 3 within a period of thirty years from the commencement of the Act and, therefore, so long as the revision powers by the Commissioner, suo motu or at the instance of the State Government, u/s 7 of the Act are invoked within such period of 30 years from the date of the commencement of the Act, it ought to be presumed that the powers have been exercised within a reasonable period. It has been further submitted that the instant petitions, challenging the show cause notices, do not deserve to be entertained and the Additional Divisional Commissioner is bound to consider the factual as well as legal position as may be put before him by the petitioners while contesting the said notices. The petitions are premature and no decision has been taken by the Additional Divisional Commissioner while issuing the impugned show cause notices. The revision proceedings are being undertaken as per the Government Memorandum dated 31st August, 1994. The notices are legal and have been issued solely to protect the interest and welfare of the tribals.

9. The moot question for consideration is what should be the meaning of the term "at any time" as incorporated in Section 7 of the Act for exercising the revisionary powers by the Commissioner. There is no dispute that such statutory powers cannot be exercised after a reasonable period and at any time. The concept of "reasonable period" is a subjective connotation and may vary from case to case. In some cases the reasonable period may be about three years and there is no reason as to why in some other set of cases the reasonable period cannot be treated to thirty years. Keeping in mind the basic objectives of the State Legislature while enacting the Act and that the limitation period is basically taken from the date of commencement of the Act, the term "reasonable period" will have to be interpreted to give full meaning to the intentions behind the Act. The welfare of the tribal and the steps to be taken by the State Government for achieving such welfare are of paramount importance while framing the Act and, therefore, when the provisions of the Act are put to, use, they must be given a wider meaning and any restrictive interpretations would frustrate the basic policy of distributive justice as embodied in the Act. The Act was framed in the year 1974 and it was brought into force with effect from 1st November, 1975.

10. The term "transfer" has been defined in Section 2(1)(i) of the Act and it means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the first day of April, 1957 and ending on the 6th day of July, 1974 either--

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter vivos, or

(b) under a decree or an order of a Court,

(c)

The term "tribal" means a person belonging to a scheduled tribe within, the meaning of the explanation to section 36 of the Maharashtra Land Revenue Code and includes his successor in interest. Whereas the term "Non-Tribal Transferee" includes his successor in interest and if he or his successor has, on or after the 15th day of March, 1971, transferred land in favour of any person, whether a Tribal or non-Tribal, includes also such person.

11. Section 6 of the Act provides for a remedy of appeal and states that an appeal against any decision or order passed by the Collector be made to the Maharashtra Revenue Tribunal, constituted under the Maharashtra Land Revenue Code and such appeals shall be made within a period of 60 days from the date of receipt of decision or order of the Collector. It further states that the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such an appeal. Section 7 of the Act which provides the power of revision is applicable only where no appeal has been filed within the period provided by section 6(1) of the Act which means that if no appeal has been filed within a period of 60 days against the order passed by the Collector, the Commissioner may suo motu or on the directions of the State Government at any time exercise the powers of revision u/s 7 of the Act. Section 9 of the Act states that every decision or order passed by the Collector under it, subject to an appeal to the Maharashtra Revenue Tribunal u/s 6 and the decision thereon, shall be final and conclusive and shall not be questioned in any suit or proceedings in any Court. Whereas u/s 9A of the Act no pleader shall be entitled to appear on behalf of any party in any proceedings under the Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal and the expression "pleader" includes an Advocate, Vakil or any other legal practitioner. Section 10 of the Act states that no Civil Court shall have jurisdiction to settle, decide or deal with any question which under the Act is required to be decided or dealt with by the Collector, the Commissioner or the Maharashtra Revenue Tribunal or the State Government. Section 10A of the Act is another equally important provision and it has to be read in addition to the provisions of sections 3, 4 and 7 of the Act. The said provision reads, as under :

"10A. Notwithstanding anything contained in section 5 or any other provision of this Act or in any other law for the time being in force, where possession of any land is to be restored to any Tribal transferor or non-Tribal transferee, under any provision of this Act, it shall always be lawful for the Collector to evict any person not entitled to possession of the land or any person wrongfully in possession thereof, at any time, in the manner provided in section 242 of the Code."

(Emphasis provided)*

12. In the case of Bansilal Ramgopal Bhattad (supra) this Court, while interpreting the provisions of section 45(2) of the Maharashtra Agricultural Lands

(Ceiling on Holdings) Act. 1961 held that the suo morn proceedings for revision initiated almost after nine years were without authority of law and hence void. This Court referred to the judgment of the Supreme Court in the case of Mohamed Kavi Mohamed Amin v. Fatmabai Ibrahim, (supra) in which it has been held that if an authority is vested with the power to take an action, without providing for any limitation, even in such case it is the duty of the authority to take an action within a reasonable time and if the action is taken after unreasonable time or belatedly the same is vitiated In law. This Court, in the case of Radhabai Balkrishna Deshpande and another v. Babu Dhondu Shewale deceased by L.Rs. Bhika Dhondu Shewale and others, while interpreting the provisions of section 84C of the Bombay Tenancy and Agricultural Lands Act! 1948 rule that the suo motu proceedings initiated under that section after a lapse of about fifteen years, cannot be sustained, again by relying upon the judgment of the Supreme Court in the case of Mohamed Kavi Mohamed Amin (supra).

The learned counsel for the petitioners have placed strong reliance on both these judgments and submitted that in the Instant cases as well, the suo motu revision proceedings proposed to be initiated by the Commissioner vide impugned notices are vitiated and, therefore, the impugned notices are required to be quashed and set aside.

13. Under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation. The very existence of Scheduled Tribes as a distinctive class and the preservation of their culture and way of life, based as it is upon agriculture which is inextricably linked with ownership of land, requires preventing an invasion upon their lands and legislations like the Act or similar statutes are some of the measures undertaken by different State Governments and are aimed at to fulfil the constitutional guarantee of State Policy enshrined under Article 46 of the Constitution. The Act is nothing but an instrument of distributive justice and is intended to alleviating oppression, redressing bargaining imbalance, cancelling unfair disadvantages and generally overseeing and ensuring probate and fair dealing. It seeks to reopen transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances and also seeks to restitute the parties to their original position, as observed by the Apex Court in the case of Lingappa (supra). It is on the touchstone of these objectives in enacting the special legislation that the term "at any time" will have to be interpreted to fix a reasonable period so as to exercise the revisional powers. As is seen from the provisions of section 10A of the Act the word "at any time" has also been incorporated therein and it is intended that such powers to be exercised should not be hit by a period of general limitations. The members of the Scheduled Tribe which suffered the inherent disadvantages of Illiteracy, ignorance and oppression for generations require special care and attention to be given by a welfare State like ours for their upliftment and the Act is intended to be a measure to achieve this objective. The transactions between 1stApril, 1957 and 6th July, 1974 have

been brought within the purview of the Act. Similarly, the definition of "non-tribal transferee" contained in section 2(1)(i) refers to the transactions that have taken place after 15th March, 1971. The Act itself has been brought into force from 1st November, 1975 covering the transfers from 1st April, 1957 to 6th July, 1974 i.e. a period of about 17 years. These are some of the unique features of the Act and, therefore, due regards must be had to such provisions while prescribing a reasonable period of limitation to exercise the powers of revision u/s 7 of the Act.

14. In this regard the affidavit filed by the Government emphasises that so long as the action of revision is proposed within a period of 30 years from the date the Act has been brought into force i.e. from 1st November, 1975, it should be treated to be a reasonable period to commence such an inquiry. Though thus submissions do not appear to be unreasonable or unjust, it would also necessary to set out an outer period of limitation with reference to the date from which the Collector has concluded his inquiry either u/s 3 or section 4 of the Act and a period of about 3 years to exercise the powers of revision u/s 7 from the date of such orders would not be reasonable. To read the provisions more harmoniously and for the welfare of the tribals, justice demands that such provisions must be read with flexibility and the rule of rigidity should have no place. Ends of justice would be met if we set out a period of 30 years from the commencement of the Act (i.e. from 1st November, 1975) or a period of three years, from the conclusion of inquiry by the Collector u/s 3 or section 4 of the Act so as to exercise the powers of revision u/s 7 either suo motu. or at the instance of the State Government. These interpretations of reasonable period must be read in alternative to each other and if any of them is satisfied in a given case it ought to be held that the revision power has been exercised within a reasonable period and it cannot suffer by inordinate delay. In this regard we may safely rely upon a judgment of the Supreme Court in the case of Hindustan Times Limited v. Union of India and others, wherein it was held that for exercising powers u/s 14B of the Employees Provident Funds Act even after a period of 15 years it cannot be presumed that the authorities had dropped the proceedings and such delay would not vitiate the proceedings initiated by the competent authority. In the instant case, though the revision powers are being sought to be exercised after about twenty years from the date of closing the proceeding by the Collector, however, the powers are being exercised within a period of less than thirty years from 1st November, 1975 and hence it ought to be held that the powers are being exercised within a reasonable period. In any case on merits, the petitioners have a forum before the Commissioner to reply and contest the factual aspect regarding the validity of transfer or otherwise or the applicability of the Act etc. and it is not necessary to examine the challenge on merit in these petitions.

15. In the result, the action of issuing the Impugned notices is held to be valid and it does not suffer from the vice of limitations or is not vitiated on account of inordinate delays. The writ petitions are, therefore, rejected. It is made clear that the Commissioner shall consider the challenge of the petitioners to the impugned notices on their own merits and after giving due opportunity of hearing to the

parties concerned. Let the proceedings be completed expeditiously and preferably within a period of six months from receipt of writ from this Court.

16.Rule discharged with no order as to costs.