



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1813 OF 1993

Babasaheb s/o Balwant Bawane, died
through his legal heirs :

1. Shakuntalabai w/o Babasaheb Bawane,
Age: Major, Occ: Household,
2. Rajkumar s/o Babasaheb Bawane,
Age: Major, Occ: Agri.,

Both r/o. Girwali, Tq. Ambajogai,
Dist. Beed.

3. Sheela w/o Prakashrao Deshmukh,
Age: Major, Occ: Household.,
4. Vaijayantimala w/o Rameshrao
Deshmukh, Age: Major,
Occ: Household,
5. Shobha w/o Ashokrao Bhosale,
Age: Major, Occ: Household.,
6. Rekha w/o Shivajirao Deshmukh,
Age: Major, Occ: Household.,

Nos. 3 to 6 R/o Parli-Vaijinath,
District Beed.

7. Asha w/o Ajitrao Ghatge,
Age: Major, Occ: Household,
R/o. 101, Malkhare Residency,
Vidya Nagar, Aurangabad.

...APPELLANTS

VERSUS

1. The State of Maharashtra.
2. Addl. Divisional Commissioner,
Aurangabad Division,
Aurangabad.
3. Chairman,
Surplus Land Determination
Tribunal Ambajogai.

...RESPONDENTS

...
Ms. Vanita H. Sangole, Advocate h/f
Smt. M.A. Kulkarni, Advocate for petitioners.
Mr. K.B. Choudhary, A.G.P. for respondents.
...

CORAM: S.S. SHINDE, J.

DATE : 9TH MARCH, 2011

ORAL JUDGMENT :

The writ petition is filed challenging order dated 25-02-1993 passed by the Additional Divisional Commissioner, Aurangabad Division, Aurangabad at Exhibit-E to the petition.

2. The petitioner is a resident of Girwali (Bawani). The petitioner filed his return under Section 12 of the Maharashtra Agriculture (Ceiling on Holdings) Act, 1961 (For short, "Said Act") to

respondent No.3 Surplus Land Determination Tribunal (For short, "S.L.D.T."). Respondent No. 3 by order dated 30-01-1976 assessed holding of the petitioner as 108 acres and 8 gunthas and declared the petitioner as surplus to the extent of 16 Acres 32 Gunthas excluding an area of 5 acres of Potkharaba and benefit of 3 members u/s.6 of the said Act was given to the petitioner. In pursuance of the said order, the land of the petitioner was distributed and possession was handed over to the allottees. To that effect, panchnama was also prepared.

3. It is the case of the petitioner that respondent No. 2 Additional Divisional Commissioner, Aurangabad Division, Aurangabad (For short, "Additional Commissioner") reopened the case, by issuing notice for suo moto revision under Section 45(2) of the said Act and order dated 08-12-1980 remanded the matter back to respondent No. 3 for fresh inquiry.



After remand, respondent No. 3 by order dated 30-03-1983 maintained the previous order dated 30-01-1976 maintaining that the petitioner is surplus holder to the extent of 16 acres 32 gunthas.

4. Thereafter, on 01-12-1992 the petitioner received notice from the Additional Commissioner for suo moto inquiry under Section 45(2) of the said Act. The petitioner herein appeared before respondent No.2 and submitted his objections contending therein that suo moto revision is not maintainable. By order dated 25-02-1993 the Additional Commissioner set aside order of the S.L.D.T. passed on 30-03-1983 and remanded the case to the S.L.D.T. for declaring holder as additional surplus land holder for 15 acres 30 gunthas after giving holder of opportunity of being heard. Said order is under challenge in this petition.

5. Learned Counsel for the petitioner



submitted that, said order impugned in this petition was passed by respondent No.2 after lapse of period of nine years from the second order passed by the S.L.D.T. on 30-03-1983. It is further submitted that, the mandate of provisions of sub section 2 of Section 45 of the said Act, has not been followed by the Additional Commissioner. According to learned Counsel for the petitioner, once having been exercised powers of suo moto revision by respondent No.2, it was not open for respondent No.2 to reopen the case again issue notice for suo moto inquiry after lapse of period of nine years from order dated 30-03-1983 passed by the S.L.D.T. It is further submitted that, order impugned in this petition is passed by the Additional Commissioner without calling record from the S.L.D.T. or without application of mind, therefore, said order cannot be sustained. Learned Counsel further submitted that, point raised in this petition is no more res-integra and answered by this Court by authoritative pronouncements in various judgments,

therefore, Counsel would submit that, this petition may be allowed.

6. On the other hand, learned A.G.P. for the State submitted that, order passed by the Additional Commissioner is with conscious mind and after perusing the record, therefore, this Court may not interfere in the impugned order.

7. I have given due consideration to the rival submissions. Perused the pleadings in the petition and also annexures thereto and record made available for perusal. It is not in dispute that the S.L.D.T. on 30-01-1976 after following proper procedure has passed order declaring the petitioner surplus holder to the extent of 16 acres 32 gunthas. It is also not in dispute that no appeal is preferred by the petitioner challenging the said order of the S.L.D.T. Surplus land to the extent of 16 acres 32 gunthas was distributed and allotted by the Government.

From the perusal of the record, it appears that respondent No.2 opened inquiry by way of provisions under Section 45(2) of the said Act by order dated 08-12-1980. In fact, this opening of the inquiry itself was not within period of three years from the date of order dated 30-01-1976 passed by the S.L.D.T. By the said order, Additional Commissioner remanded the matter back to the S.L.D.T. The S.L.D.T. again after proper inquiry passed order on 30-03-1983, thereby maintaining its earlier order dated 30-01-1976. Therefore, I find considerable force in the argument of the learned Counsel for the petitioner that there was no occasion for the Additional Commissioner to invoke provisions of Section 45(2) of the said Act, second time. In fact, it is admitted position that once power was exercised and thereafter also S.L.D.T. did maintain its earlier as back as in 1983. It is also admitted position that for the first time notice of suo moto inquiry in second round was issued by the Additional Commissioner on 01-12-1992. Even if

second order of the S.L.D.T. dated 30-03-1983 is taken into consideration, the issuance of the notice for suo moto inquiry on 01-12-1992 by the Additional Commissioner is beyond statutory period of limitation.

8. From the perusal of the record, it does not appear that the said order was passed by the Additional Commissioner with conscious mind by calling record from the S.L.D.T. and therefore, notice issued by the Additional Commissioner on 01-12-1992 was after 9 years from the date of S.L.D.T. and after 16 years from the first order of the S.L.D.T. dated 30-03-1976. Therefore, notice issued by the Additional Commissioner for suo moto inquiry and order impugned in this petition dated 25-02-1993 passed by the Additional Commissioner was beyond statutory period, hence cannot be sustained. Therefore, same deserves to be set aside.

9. This Court had occasion to interpret

provisions of Section 45 (2) of the said Act, in the following decisions:

In the case of Manohar Ramchandra Manapore & Others V/s. State of Maharashtra & Another, 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 under section 45(2) to those cases where the record is called for within the period of 3 years from the date of declaration under section 21. The starting point of limitation as prescribed in the proviso to sub-section (2) of Section 45 is the declaration or part thereof under section 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/s. 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 1997 (6) SCC 71.

Yet in another reported case of Lotan Fakira Patil V/s. State of Maharashtra and Others, 2002 (2) Mh.L.J.255, this Court in the facts of the case held notice under Section 45 (2) of the Act for suo-motu revision was issued on 25.03.1982 and not within the period of three years from the date of order of the 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 w/o. Shankarrao Patwari and Another V/s. State of Maharashtra and Other, 2004 (1) Mh.L.J.148, this Court held that the first proviso to sub-section (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/s. State of Maharashtra and Another, 2004 (1) Mah.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 s/o. Laxmandas deceased through his L.R. Vijaykumar s/o. Gowardhandas V/s. State of Maharashtra and another, 2008 (6) Mh.L.J.571**, this Court held that in suo-motu revision by Additional Commissioner, memorandum regarding revision issued on 30.11.1978 after declaration under section 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 under section 45 (2) of the said Act.

10. Therefore, in the light of discussion hereinabove and in the light of authoritative pronouncements of this Court cited supra, in my opinion, impugned judgment and order cannot be sustained and hence, cannot be sustained and same is quashed and set aside.

11. Writ Petition is allowed and disposed of.

12. Rule made absolute, in above terms.

sd/-
[**S.S. SHINDE, J.**]

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