IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 02605 of 1998

District : Jalna

Awadhutrao Dattaraj Chavan,
Age : 47 years,
Occupation : Agriculture,
R/o. Jalna. .. Petitioner.

versus

The State of Maharashtra,
Through Deputy Collector (L.R.),
Jalna. .. Respondent.

....

Mr. Ajeet D. Kasliwal, Advocate, for the petitioner.

Mr. S.P. Tiwari, Assistant Government Pleader, for the respondent.

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 09TH MAY, 2017

ORAL JUDGMENT :

01. Heard learned counsel for the parties at sufficient length.

02. The petitioner is before this court questioning propriety, legality and validity of orders passed, by Maharashtra Land Revenue Tribunal, Aurangabad, dated 16-04-1998, order passed by Deputy Collector (Land Reforms), Jalna, dated 08-01-1997 and and

directions issued to reopen determination by the Additional Commissioner, Aurangabad, dated 13-03-1991.

03. Exercising *suo motu* powers pursuant to section 45(2) of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 [For short, "Ceiling on Holdings Act"], the Additional commissioner purported to reopen determination order of Chairman, Surplus Land Determination Tribunal, Ambad, dated 13-04-1976.

04. The authorities in the process pursuant to the same, held the petitioner to be surplus land holder of about 29 Acre, 34 Guntha particularly of lands survey no.40 and 166, situated at Lonar Bhaigaon in Badnapur taluka.

05. Learned counsel for the petitioner contends that the order passed on 13-04-1976 by the Chairman, Surplus Land Determination Tribunal, Ambad, in the then District Aurangabad (now in Jalna) had been passed properly on merits after taking into account all the land holdings of petitioner's father on relevant date and had found that the petitioner's father to be holder of 51 Acre and 13 Guntha having no surplus land. It was found that lands from survey no. 37/1, 46, 25 and 117 were not in his possession and the lands were in possession of tenants for over 15 years.

06. He further points out that the relevant revenue record has been examined by the Surplus Land Determination Tribunal, particularly observing that the lands not in possession of father of the petitioner could not be included and calculated for the purpose of his holding. It has further been observed by the Tribunal that no lands were acquired for road, canal and resettlement of Jaikwadi project. After 26-09-1970, the land owner has not acquired the transferred the lands. No lands were under irrigation.

07. Learned counsel states that land survey no.25 admeasuring 23 Acres, 2 Guntha had, in fact, gone to Gangadhar Dattaji in partition under a civil court's decree in suit no. 43 of 1955. He further submits that land holding in survey no.170 has also been erroneously considered disregarding the pencil entry in favour of other person. It is not a case that father of the petitioner has been found to be in possession of said land. All these facts have not been properly considered at all upon reopening.

08. He submits that while on the crucial date, the land holding in survey no.170 has not been specifically found to be possessed by father of the petitioner by the authorities hitherto, nor the authorities have observed about the same and the pencil entry has been discarded without giving finding on facts. He submits that while the Deputy Collector, Land Reforms, Jalna, under his order

dated 08-01-1997 has refused to exclude land holdings of survey no.170 assuming that pencil entry cannot be considered, without going into question of actual possession, which had not been petitioner's father.

09. Findings recorded by the Surplus Land Determination Tribunal about land survey no. 170 not being in possession of the father of the petitioner, has not been effectively dealt with and short work appears to have been made, observing that pencil entries could not be considered for exclusion of the land holdings.

10. He submits, Deputy Collector, however, had rightly excluded land of survey no.25 from computation taking into account relevant aspects. Deputy Collector had also excluded computation of survey no.117 as the same could not be related to the petitioner's predecessor.

11. He submits, although the Deputy Collector did not find survey no.170 in possession of the petitioner and the revenue record had been a pencil entry in the name of Narayan Narhar, yet it was included in the holdings on the relevant date and thus the Deputy Collector considered holding on the relevant date to be 130 Acre 18 Guntha. While survey no.46 and 37 were excluded as well as holding of survey no.25 having regard to that it was in the name of

Gangadhar, close cousin of the petitioner being descendant of the original owner, same was rightly excluded having regard to the decree passed by the civil court. Under the circumstances, he went on to consider that the holdings of the petitioner would be 83 Acre 34 Guntha including land survey no.40 admeasuring 25 Acre 15 Guntha and land survey no.166 admeasuring 04 Acre 19 Guntha.

12. He goes on to submit that the Maharashtra Revenue Tribunal, however, has absolutely misconceived the factual position. The Tribunal's order, according to the learned counsel, is unsustainable on any count and much less on merits. The Tribunal has botched the factual position. While the Deputy Collector had excluded survey no.25 from computation of holding of the petitioner, yet the Tribunal observes, survey no.25 has been rightly computed in the holding of the petitioner. Despite exclusion of survey no.25, the Tribunal, however, records the land holding of the petitioner to be 83 Acre 34 Guntha and, as such, purported to endorse the order passed by the Deputy Collector. Learned counsel submits that the order of the Maharashtra Revenue Tribunal is a clear depiction of non-application of mind and a cursory approach to the matter resulting into serious adverse consequences on the petitioner.

13. Learned counsel submits that apart from merits of the case, whole proceedings initiated purportedly with reference to

section 45(2) of the Ceiling on Holdings Act are untenable and could not be maintained. He submits that initiation of proceedings against the petitioner had been improper and untenable right from the beginning taking into account decision of full bench in the case of *Manohar Ramchandra Manapure & others Vs. State of Maharashtra & another (1989 Mh.L.J. 1011)* ruling that application of mind by concerned authority beyond period of three years of order on determination of holdings would be without power to exercise revisional jurisdiction.

14. This view has been followed by Hon'ble learned single judge of this court in the case of *Narayan Tatayarao Deshmukh & others Vs. State of Maharashtra & others (2012 (5) Mh.L.J. 700)* wherein Hon'ble learned single judge has observed that calling of record unsupported by conscious application of mind is untenable. Further it has been observed that there had been no notice about calling of record by the commissioner to the petitioner within three years. Hon'ble learned single judge has further referred to yet another reported judgment in the case of *Champabai Shankarrao Patwari Vs. State of Maharashtra (2004(1) Mh.L.J.148)* under which it has been observed, the Ceiling Act lays down two conditions which are required to be satisfied before exercising powers under section 45(2) by the State Government or its revisional authority. Hon'ble learned

single judge has observed that the court had held initiation of proceedings within three years without application of mind is bad in law. The notice issued after a lapse of about ten years is without explanation therefor is bad in law.

15. Learned counsel with reference to above contends that the decisions aforesaid apply on all fours to the present situation. As such, the notice issued after 1990 to the petitioner after lapse of three years from the decision in 1976 by the surplus land determination tribunal and its communication thereafter has no efficacy and the whole proceedings were untenable. In the circumstances, he urges to allow the writ petition and set aside the orders impugned in the present petition.

16. Learned Assistant Government Pleader purports to resist the request under the writ petition contending that it emerges with reference to the record in respect of the relevant period, holding of the petitioner is in excess by 29 Acre 34 Guntha. A pencil entry in respect of survey no. 170 would not be considered as observed by the two authorities hitherto.

17. Although it is being so submitted, learned assistant government pleader is not in a position to assert that during the relevant period, concerned land had been found to be in possession

of the petitioner or for that matter, pencil revenue entries had no nexus with the factual position. Aforesaid apart, he is also not in a position to overcome the observations of the full bench and the decisions rendered by the Hon'ble learned single judge of this court in respect of application of mind while invoking the powers under section 45(2). It further has to be noted in the present case that, while communication purportedly pursuant to section 45(2) had been issued in 1979, yet up to 1992-93, there had been no notice with regard to the same to the petitioner. There is no material produced to support that calling of record had been with conscious application of mind and there is no reason coming forth as to why notice to the petitioner had been delayed thereafter for about 15 years.

18. In the circumstances, the original order passed by the Surplus Land Determination Tribunal, Ambad, dated is 13-04-1976, whereas as appearing from the order passed by the Deputy Collector (Land Reforms), Jalna, dated 08-01-1997, the exercise of powers pursuant to section 45(2) of the Ceiling on Holdings Act has been under order dated 13-03-1991, which is far beyond the period acceptable and referred in aforesaid two decisions.

19. In the circumstances, it does not appear that the decisions rendered by the two authorities hitherto including the order dated 13-03-1991 exercising powers under section 45(2) of the

Ceiling on Holdings Act are tenable and, as such, cannot be sustained.

20. The writ petition stands allowed in terms of prayer clause (B) and (C). Rule made absolute in the above terms. There shall be no order as to costs.

(Sunil P. Deshmukh)
JUDGE

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