

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2996 OF 1992
WITH
CIVIL APPLICATION NO. 11096 OF 2014

1. Kiran Vyankatrao Patil
Age major, Occ. Agriculture
R/o Shiroor, Tq. Vaijapur,
District Aurangabad.

2. Smt. Kalawatibai Vyankatrao
Patil, Age major, Occ. Household
R/o Nandgaon, Dist. Nasik.

3. Jayashree Vyankatrao
Patil, Age major, Occ. Household
R/o Nandgaon, Dist. Nasik.

4. Ravindra Vyankatrao
Patil, Age major, Occ. Agril.,
R/o Nandgaon, Dist. Nasik.

..Petitioners

Versus

1. The State of Maharashtra

2. The Additional Commissioner,
Division Aurangabad.

3. The Chairman,
S.L.D.T. Vaijapur, District
Aurangabad.

4. The Maharashtra Revenue
Tribunal at Aurangabad.

..Respondents

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Advocate for Petitioner : Shri C.V. Thombre
AGP for Respondents 1 to 3 : Shri N.T. Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

Dated: July 27, 2017

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ORAL JUDGMENT :-

1. By this petition, the petitioner has putforth prayer clause

(b) (*in verbatim*) as under:-

“(b) That, issuing Writ *critorarias*, the order passed by Additional Commissioner dt. 20/11/88 in case No.1978/ICH/R 1110, order passed by Hon. Member M.R.T. Aurangabad in case no.160/A/90-A, dt. 16/4/1991 and the order passed by surplus land determination tribunal Vaijapur, dt. 12/3/1990 case no.543/75 may be quashed and set aside.”

2. The petitioner has primarily raised an issue of the limitation as is laid down by the learned Full Bench of this Court in the matter of Manohar Ramchandra Manapure Vs. State of Maharashtra [1989 Mh.L.J. 1011].

3. The record reveals that the first decision by the Surplus Land Distribution Tribunal (“SLDT”) under Section 21 of the Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961 (“the said Act”) was delivered on 5.5.1976, concluding that deceased Sitabai Madhavrao Patil was not holding any surplus land. The Additional Commissioner in Case No.1978/ICH/R/

1110 by order dated 20.11.1988 under Section 45(2) of the said Act, has concluded that the landholder Sitabai had 52 acres of land and 64 acres of land was surplus. The order of the SLDT was set aside and the matter was remanded back to the Tribunal.

4. Thereafter, by order dated 27.3.1989, the Tribunal concluded that 52 acres 24 gunthas of land was surplus. The matter reached the MRT, which, once again remanded the matter to the Tribunal by its order dated 26.9.1989. The Tribunal then delivered its order on 12.3.1990 that 52 acres and 26 gunthas are in excess and Sitabai has that portion of surplus land. Thereafter, when challenged, the MRT delivered its judgment on 16.4.1991 setting aside the order of delimitation and remanding the matter to the Tribunal for the second time. The said order is impugned in this petition.

5. The learned Full Bench of this Court in the case of Manohar (supra), while dealing with the scope of revisional jurisdiction under Section 45(2) of the said Act, concluded that the revisional authority is expected to apply its mind to the order passed by the Tribunal under Section 21, declaring that the landholder has surplus land or otherwise. The observations of the learned Full Bench in paragraph Nos. 7, 8 and 9 read as under:-

“7. We find further internal evidence available for construing section 45(2) read with the proviso in the manner we have construed it in section 44-A of the Ceiling Act. Section 45-A was inserted in the Ceiling Act by Maharashtra Act No. XXI of 1975. It confers the powers of revision upon the Commissioner in enquiry and proceedings under sections 25 and 27 of the Act. In this proviso also a limitation is prescribed for calling for the record. However, an exception is made in case of a reference from the State Government. Said section lays down that in case the Commissioner decides to exercise the revisional powers suo motu or on an application made to him by an aggrieved person, then he cannot summon the record after the expiry of the period of one year from the date of the award of compensation or grant of the land by the Collector. This clearly indicates that the Legislature has not treated calling of a record as a ministerial act, but a conscious act on the part of the revisional authority after due application of mind. As already observed, the record is to be called for a specific purpose namely, for satisfying as to the legality or propriety of the enquiry or proceedings of the declaration or part thereof. Therefore, it is quite obvious to us that after applying his mind, 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.

8. So far as the decision of another Division Bench in Pedre Januario Carles's case is concerned, the said decision

will have to be read in its context. We do not feel that it lays down a general law in that behalf. The Division Bench in the said case was concerned with the provisions of Goa, Daman and Diu Land Revenue Code, 1968 including section 192 and section 32(2)(c) of the said Code. Section 192 of the said Code was somewhat similarly worded as that of section 45(2) read with the proviso. However to the case before the Division Bench section 32(2) of the Code applied which dealt with deemed permission after the lapse of ninety days. The Division Bench also placed reliance on the ruling reported in State of Gujrat vs. Patel Raghava Natha, : AIR 1969 SC 1297. In paragraph 12 of the said judgment while construing somewhat similar provisions of the Bombay Land Revenue Code, this is what the Supreme Court observed :

12. It seems to us that section 65 itself indicates the length of the reasonable time within which the Commissioner must act under section 211. Under section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few

months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961, i.e. more than a year after the order, and it seems to us that this order was passed too late."

It appears from the judgment of the Division Bench in Pedre Januaric Carles's case that in view of these observations of the Supreme Court the Division Bench held that to the cases covered by section 32(2)(c) of the Goa, Daman and Diu Land Revenue Code, even for exercising revisional jurisdiction under section 192 of the Code a period of one year as prescribed by the proviso could be treated as a reasonable period. Therefore, the observations of the Division Bench in that case should be confined to the facts of that case. In our view, by interpretative process it cannot be held that though the proviso in specific terms lays down that no record shall be called after the expiry of one year from the date of the order sought to be revised and even though the record is called during the said period, no order could be issued thereafter. By interpretative process a limitation could not have been laid down even for passing an order or giving a decision in all cases. To that extent, we find it difficult to agree with the view taken in Pedre Januaria Carles's case. However, it must be held as observed by the Supreme Court in State of Gujrat vs. Patel Raghav

(cited supra) or in Mansaram vs. S. P. Pathak, : AIR 1983 SC 1239 that the State Government or its delegate are expected to exercise said power within a reasonable time depending upon the facts and circumstances of each case.

9. *In the case before us, admittedly the necessary application of mind on the part of the Commissioner was much beyond the period of three years of the impugned order. In the view we have taken, therefore, it will have to be held that the records were not called within period of three years. In view of this admitted position, it is clear that the Commissioner had no powers to exercise the revisional jurisdiction. On this short ground, therefore, the rule will have to be made absolute.”*

6. Similar view has been taken by the learned Single Judge of this Court by relying upon the law laid down by the learned Full Bench, in the matters of Lotan Fakira Patil Vs. State of Maharashtra [2001 Bom.C.R. 589- (Supp.2)], Champabai Shankarrao Patwari Vs. State of Maharashtra [2004 (2) BCR 749] and Narayan Tatyarao Deshmukh Vs. State of Maharashtra [2012 (5) Mh.L.J. 700].

7. The observations of the learned Full Bench have, therefore, crystallized the law in Manohar (supra). It is concluded that if necessary application of mind on the part of the

Commissioner (Revisional Authority) was beyond the period of three years, from the date of the order of the Tribunal under Section 21, the Commissioner had no power to exercise revisional jurisdiction. It was concluded that the records were not called within the period of three years and that was an admitted position.

8. I have perused the record received from the office of the Tribunal. I do not find any record pertaining to the decision of the Commissioner, dated 20.11.1988. The judgment of the Commissioner, dated 20.11.1988, indicates that the case was registered specifically on 20.6.1978, which is within two years and one month from the decision of the Tribunal under Section 21. The petitioner has raised a ground relying upon the view taken by the learned Single Judge of this Court in the matter of Champabai (supra) and Lotan (supra). In both these cases, the record revealed that the revisional authority had issued notice after 8 to 10 years post the order under Section 21.

9. Ex-facie, it appears from the judgment dated 20.11.1988 before me, that the revisional authority has registered the case on 20.6.1978. Nevertheless, the judgment was delivered on 20.11.1988, which is after about 12 years from the date of the

order under Section 21 of the said Act. Neither the record reveals nor is the petitioner aware, as to when did Sitabai receive the notice from the Additional Commissioner in the Revision under Section 45(2) of the said Act.

10. So also, I am of the view that the Tribunal could not have ignored the fact that the matter was remanded to the MRT on three occasions and it should have refrained from once again remanding the matter to the Tribunal. It could have called for the necessary records from the SLDT and the Additional Commissioner and could have verified this aspect of limitation besides the other aspects by going through the record threadbare.

11. Considering the above, I deem it appropriate to quash and set aside the impugned judgment dated 16.4.1991. Case Nos. 160/8/98, 166/8/98 and 167/8/98 are remitted to the office of the Maharashtra Revenue Tribunal, Aurangabad for a decision afresh. Shri Thombre, learned Advocate submits that when the petitioners attempted to bring the L.Rs. of Sitabai on record, the report called for by this Court indicated that she has not left behind any legal heir.

12. The Maharashtra Revenue Tribunal, Aurangabad shall, therefore, issue notices to the litigating sides for considering the matters afresh. Needless to state, the record from the Chairman, Surplus Land Distribution Tribunal and Additional Tahsildar, Vaijapur in Case No.548/75 decided on 5.5.1976 and the record from the office of the Additional Commissioner Aurangabad in Case No.1978/ICH/R/1110, decided on 20.11.1988 shall be called for. The Tribunal shall, therefore, decide the matter after considering the record and shall refrain from remanding the matter to the Tribunal once again, unless for compelling reasons.

13. As the petitioners have been protected by this Court by the interim order dated 27.11.1992, in terms of prayer clauses (C) and (D), the said protection shall continue till the Maharashtra Revenue Tribunal, Aurangabad decides the said cases.

14. Rule is made partly absolute in the above terms.

15. R & P received from the office of Maharashtra Revenue Tribunal, Aurangabad shall be returned to the Maharashtra Revenue Tribunal, Aurangabad forthwith.

16. In view of the disposal of the Writ Petition itself, Pending Civil Application also stands disposed off.

(RAVINDRA V. GHUGE, J.)

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