

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4388 OF 2000**

Shri Vitthal Maruti Bulunge,
Adult, Indian Hindu Inhabitant
R/o. Surur, Taluka Wai,
District Satara.

.....Petitioner.

Vs.

1 State of Maharashtra

2 Shri Shamrao Ganpati Bulunge,
Since deceased, his legal heirs
and representatives

A) Madhukar Shamrao Bulunge,

B) Shivaji Shamrao Bulunge,

C) Arvind Shamrao Bulunge,

All adults, Indian Hindu
Inhabitants, residing at Surur,
Taluka Wai, District Thane.

.....Respondents.

Smt. Sujata Mogre for the Petitioner.

Smt. V.S. Nimbalkar AGP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 24th JULY, 2019.

ORAL JUDGMENT:-

By the present Petition under Article 227 of the

Constitution of India, the Petitioner has questioned correctness of Judgment and Order dated 29th December, 1999 passed by the learned Member of Maharashtra Revenue Tribunal, Pune, (MRT, Pune) in Revision Application No. MRT NSII4/92 (B-22/92) confirming the Orders passed by the two Revenue Authorities below it.

2 Heard Smt. Mogre, the learned counsel for the Petitioner, Smt. Nimbalkar, the learned AGP for the Respondent-State. Respondent Nos.2-A to 2-C are absent, though duly served.

3 The admitted facts on record in nutshell can be stated as under:-

i) The suit land in question is Gat No. 925 admeasuring 0.16 ares lying and situate at Village Surur, Taluka Wai, District Satara. The said land was sold to the father of the Petitioner namely Shri Maruti Ganapati Bulunge, (Mali) as Karta of Joint Hindu Family under Section 32-G of the Bombay Tenancy and Agricultural Lands Act (for short, "*the B.T.A.L. Act*") on 15th January, 1962. Mutation Entry No. 4058 was effected in that behalf, on 15th June, 1963 and the name of the father of the Petitioner was entered into Revenue record as Kabjedar in other rights column of 7/12 extract.

ii) In the year 1965-1966, the consolidation scheme was implemented in village Surur and three different parts of the suit land were formed. The record indicates that, on 19th May, 1982 a transaction of Mortgage with conditional sale was entered into between the Petitioner with his uncle Shamrao Bulunge i.e. the Respondent No.2 herein, however the possession of the suit land remained with the Petitioner. It is the contention of the Petitioner that, the said transaction was a hollow transaction and it was a family arrangement amongst the members of the Joint Hindu Family.

iii) A Mutation Entry No. 1449 was effected in the Revenue records on 18th July, 1982 pertaining to the said transaction of mortgage dated 19th May, 1982. That, on 24th Mach, 1988 a Deed of Reconveyance was executed between the Respondent No. 2 and the Petitioner. Mutation Entry No. 2187 dated 27th January, 1992 has been effected in the revenue records.

iv) The record further indicates that, in the meantime i.e. on 4th June, 1989, the Tenancy Awal Karkun, Wai initiated *suo moto* action under Section 84-C of the B.T.A.L. Act for the aforestated transaction of Mortgage Deed dated 19th May, 1982 and a notice in that behalf was issued to the Petitioner. It was stated in

the said notice that, while effecting the said transaction dated 19th May, 1982, the permission as contemplated under Section 43 of the B.T.A.L. Act, was not obtained by the Petitioner or the Respondent No.2 and therefore, the land is required to be forfeited to Government under Section 84-C of the B.T.A.L. Act. On 26th September, 1989, the Tenancy Awal Karkun, Wai passed order under Section 84-C and directed that, the Suit land be forfeited to the Government.

v) The Appeal No. 56 of 1991 preferred by the Petitioner under Section 76 of the B.T.A.L. Act, has been rejected by the Sub-Divisional Officer, Mahabaleshwar Sub-Division, Wai by its Order dated 17th December, 1991.

vi) The Revision Application No. MRT NSII4/92 (B-22/92), preferred by the Petitioner has met with fate of dismissal by Judgment and Order dated 29th December, 1999 passed by the learned Member of the MRT, Pune.

4 As noted above, the transaction of Mortgage with conditional sale was entered into between the Petitioner and Respondent No.2 on 19th May, 1982. Mutation Entry No. 1449 was effected by the Revenue Authorities in respect of the said transaction on 18th July, 1982 and the Tenancy Awal Karkun, Wai has initiated

suo-moto action under Section 84-C of the B.T.A.L. Act on 4th June 1989 i.e. after a lapse of about 7 years. These three dates are important for decision of the present Writ Petition.

5 The Supreme Court in the case of *Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim* reported in (1997) 6 SCC 71, has held that, *suo-moto* enquiry by the Mamlatdar under Section 84-C of the B.T.A.L. Act should be initiated within a reasonable time.

This Court in various decisions has followed the said decision of the Supreme Court. For the sake of brevity few of them can be taken into consideration.

In the case of *Waman Atmaram Lavand & Anr. Vs. Dattatraya @ Dattu Baba Lavand & Ors.* reported in 2009 (5) Mh.L.J. 442, the learned Single Judge of this Court has held that, the initiation of proceedings under Section 84-C of the B.T.A.L. Act after six years is unacceptable. It is further held that, it is true that, there is no limitation prescribed under Section 84-C of the B.T.A.L. Act for commencing an enquiry. However, it is well settled that, when the period of limitation is not prescribed under the provisions of law, action must be initiated within a reasonable time. The decision of the Supreme Court in the case of *Mohamad Kavi Mohamad Amin (Supra)*

has been followed in the said decision.

In another decision rendered by the learned Single Judge of this Court, in the case of *Appa Dadu Patil through his power of Attorney Holder Dnyanu Dada Patil Vs. State of Maharashtra & Anr.* reported in 2011(2) Mh.L.J. 739, the *suo moto* inquiry under Section 84-C of the B.T.A.L. Act in the said case, was initiated after a lapse of three years from the date of alleged agreement between the parties thereto and by relying on the decision in the case of *Mohamad Kavi Mohamad Amin (Supra)*, it is held that, the said enquiry was not conducted within a reasonable period of time.

A perusal of aforestated decisions would clearly indicate that, a period of three years for conducting *suo moto* inquiry by the Tahasildar under Section 84-C of the B.T.A.L. Act, has been held to be a reasonable period.

6 In the present case, as noted earlier, a *suo moto* enquiry has been initiated by the Tahasildar, Wai after a lapse of about 7 years, which cannot be said to be a reasonable period. The proceedings under Section 84-C of the B.T.A.L. Act, having been initiated after an unreasonable period cannot be sustained in law.

The Petition filed by the Petitioner would succeed on the aforstated ground alone.

7 In view of the above, the impugned Judgment and Order dated 27th December, 1999 passed by the MRT, Pune in Revision Application No. MRT NSII4/92 (B-22/92) and dated 17th December, 1991 by the Sub-Divisional Officer, Mahabaleshwar Sub-Division, Wai and dated 26th September, 1989 by the Tenancy Awal Karkun, Wai, under challenge are hereby quashed and set aside. In the circumstances, the proceedings under Section 84-C of the B.T.A.L. Act initiated by the Revenue Authorities against the Petitioner is quashed and set aside in its entirety.

Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)