

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1741 OF 2018

1. Rajendra Bhiku Mangle, Age : 62 yrs.
Occu. : Rtd. & Agri.
R/o. Plot No.9, Viki Society, Karmala,
Tal. Karmala, Dist. Solapur.

...Petitioner

Versus

1. State Of Maharashtra
Through Principal Secretary,
Revenue Department, Mantralaya,
Mumbai
2. Divisional Commissioner
Pune Division, Council Hall, Pune.
3. Collector, District Collector Office,
Siddheshwar Peth, Solapur.
4. Tahasildar, Karmala, Tal. Karmala,
Dist. Solapur.

...Respondents

Ms. Trupti Goswami, I/b Mr. M. B. Gawade, for the Petitioner.
Mr. P. P. More, AGP for the State/Respondent nos.1 to 4.

**CORAM: R. M. BORDE &
N. J. JAMADAR, JJ**

**RESERVED ON: 15th APRIL, 2019
PRONOUNCED ON: 25th APRIL, 2019**

JUDGMENT:- (Per N. J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith. With the consent of
the Counsels for the parties heard finally.

2. This petition raises a short question as to the date which shall be reckoned for computing unearned income for grant of permission to sell Tenure II land; whether it should be the date of application or the date of the order passed by the competent authority?

3. The petition arises in the backdrop of the following facts:

The Petitioner is the holder of the agricultural land bearing Gat No.164/3/B/2 admeasuring 3H. .03Are. situated at mouje Karmala, Taluka Karmala, District Solapur. It is a Tenure II land. To meet the pressing necessities of life, the Petitioner had agreed to sell the said land to Mr. Kedar Dnyaneshwar Rasal, by executing a registered agreement for sale. The Petitioner, thus, submitted an application to Respondent no.3 seeking permission for sale of the land, on 8th November, 2011. The said application was not processed for a long period. The Petitioner resorted to the Right to Information Act to get the desired information about the action on the said application. It was informed that the unearned income to be paid to the Government on account of the sale of the said land came to be worked out, on 8th November, 2012. Yet, as no formal decision was taken on the said application, the Petitioner was required to approach the authorities by making grievance

in the 'Lokshahi-Din'. After internal correspondence between Respondent nos.3 and 4, ultimately, by the impugned order dated 2nd June, 2015, the Petitioner was informed that for regularization of the breach of condition of the holding the Petitioner shall deposit 75% of the unearned income as computed on the date of the order i.e. 2nd June, 2015, totalling Rs.10,52,168/-.

4. The Petitioner raised grievance about the delay in processing the application dated 8th November, 2011 and requested the authorities to compute the unearned income as on the date of the application, instead of the date of the order. As the authorities did not consider the said request favourably, the Petitioner has approached this Court.

5. Though effective opportunity was given to the State, no counter has been filed on behalf of the Respondents. Even otherwise, the facts appear to be rather incontrovertible.

6. From the perusal of the impugned order, it becomes evident that the Tahasildar, Solapur, proceeded to pass the order as if the grievance made by the Petitioner in the 'Lokshahi-Din' held on 11th August, 2014, about non processing of the application for permission to sell the said land, was the basis of the order. There is no reference to the application dated

8th November, 2011, in the impugned order. It proceeds on the premise that the permission was being granted on account of the grievance application made on 11th August, 2014 in the 'Lokshahi-Din'.

7. A copy of the application tendered for consideration in the 'Lokshahi-Din', dated 17th June, 2014, is placed on record by the Petitioner. It reveals that the Petitioner had narrated the grievance in the context of the non-consideration of the application dated 8th November, 2011. The failure of the authorities to take an appropriate decision on the application of the Petitioner dated 8th November, 2011 was the cause for the Petitioner to make a grievance for consideration in the 'Lokshahi-Din'. In this backdrop, it is evident that, the authorities could not have construed the said grievance as the application for grant of permission.

8. Upon a careful perusal of the record, we have noticed that the Petitioner's application dated 8th November, 2011 was kept pending for an inordinately long period. The Petitioner was, in fact, made to run from pillar to post. He resorted to the provisions under the Right to Information Act to know the status of the application. The Petitioner availed the mechanism of 'public grievance and hearing' provided by way of 'Lokshahi-

Din'. It does not appear that the application of the Petitioner dated 8th November, 2011 was not processed for any deficiency, and want of compliance on the part of the Petitioner. In the circumstances, the computation of unearned income as per the valuation prevailing on the date of the order seems to be unjust and inequitable. The Petitioner cannot be made to suffer for the inaction on the part of the authorities.

9. A useful reference in this context can be made to a judgment of this Court in the case of ***Yogesh Bhika Chaudhary vs. State of Maharashtra and others, in Writ Petition No. 3019 of 2016***, decided on 28th September, 2017, by a Division Bench of this Court at Aurangabad. In the said case, the Petitioner therein, had filed an application seeking permission under Section 36-A of the Maharashtra Land Revenue Code, for transfer of the land, on 5th Mach, 2009. No action was taken thereon. The Petitioner therein was made to approach the High Court in Writ Petition No.894 of 2015. The authorities were directed to decide the application within four months from the order dated 23rd January, 2015, in the said petition. Yet, the authorities took One year to decide the said application and the Petitioner was directed to pay *nazrana* on the valuation of the property as of the year 2015.

10. After referring to the judgment of the Apex Court in the case of ***Union of India and another vs. Mahajan Industries Limited***,¹ and of the Bombay High Court in the case of ***Trimbakrao Magutrao Deshmukh vs. State of Maharashtra and another***², this Court held that the Petitioner cannot be penalised for the fault of the Respondents in deciding the said application and the date of the application should be reckoned as the date for charging the *nazrana*.

11. The aforesaid judgment applies with equal force to the facts of the instant case. There is material on record to indicate that the Petitioner was diligently pursuing the application for permission by making repeated grievances. The authorities were, therefore, not justified in computing the unearned income on the basis of the valuation of the land as on the date of the order. Hence, the petition deserves to be allowed.

12. The Writ Petition stands allowed.

The impugned order to the extent it directs to deposit 75% of the unearned income on the basis of the valuation of the land as on the date of the order stands quashed and set aside.

1 (2005) 10 SCC 203.

2 2009 (2) Bom. C.R. 467.

The Respondents shall calculate the unearned income on the basis of the valuation of the land as on the date of the application i.e. 8th November, 2011.

Rule made absolute in aforesaid terms. There shall be no order as to costs.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]