IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1141 OF 1997

The Khandoba Devsthan Tuljapur,
District Osmanabad,
Through It's Secretary
Vishwanath Dattatraya Dhepe
R/o Andur. … Petitioner

Versus

1. The State of Maharashtra

2. The Tahsildar and the Chairman,
Surplus Lands Determination Tribunal
And Lands Distribution Tribunal
Tuljapur, Dist. Osmanabad.

3. Shri Khandoba Cooperative Farming
Society Ltd. Andur, Taluka Tuljapur,
District Osmanabad, Through its
Chairman, Vijay Govindrao Mokase,
Age 43 ys. Occ. Agri.
R/o Andur, Tq. Tuljapur,
Dist. Osmanabad. … Respondents

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Advocate for Petitioner : Mr. A. R. Borulkar
AGP for Respondents – State : Mr. Y. G. Gujarathi
Advocate for Respondent No.3 : Mr. S. V. Warad

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JUNE, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The petitioner is aggrieved by the action of respondent

No.2 of issuing notice to the petitioner under Section 17(2) of the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 (for short 'the said Act').

3. Facts leading to the present petition can briefly be stated thus:

The petitioner is a Devasthan and registered Public Trust under the provisions of Bombay Public Trusts Act, 1950, having Registration No. A-1203, dated 24-04-1965. The petitioner is owner of certain lands situated at Andur, Taluka Tuljapur, District Osmanabad, as mentioned in the memo of the petition. It is the case of the petitioner that the said lands belonging to the petitioner are in actual possession of respondent No.3 Khandoba Cooperative Farming Society and are being cultivated by respondent No.3 since 1960.

4. The Deputy Collector, Land Reforms, Osmanabad, by order dated 31-07-1972 passed in case No.1968/ICH/ENO.144, declared the petitioner as surplus holder to the extent of 225 Acres 23 Gunthas land. The Maharashtra Revenue Tribunal, Aurangabad by judgment dated 15-11-1972 quashed and set aside the order passed by the Deputy Collector, Land Reforms, Osmanabad dated 31-07-1972.

5. An enquiry was held by the Surplus Land Determination Tribunal, Tuljapur, District Osmanabad under Sections 14 to 21 of

the Maharashtra Agricultural Lands (Ceiling on Holdings) Amendment Act, 1972 and by order dated 17-02-1987, the petitioner is declared as non-surplus holder and the enquiry initiated against the petitioner was dropped.

6. Thereafter, respondent no.2 issued notice dated 20-03-1997 (Exhibit-C) under Section 17(2) and initiated enquiry under Section 14 of the said Act and called upon the petitioner to submit it's say and objections, if any to the said notice. Survey Nos.445, 446, 448 and 449 belonging to the petitioner are mentioned in the schedule annexed to the said notice.

On the same day i.e. on 20-03-1997 another public notice (Exhibit-D) was issued by respondent No.2, wherein it is mentioned that the land survey numbers mentioned in the annexure to the said notice are declared as surplus under Section 31 of the said Act and they are available for distribution for people from scheduled caste and scheduled tribe or nomadic tribe category, as per Section 27(4) of the said Act. Hence, the interested landlords/persons were called upon to apply for distribution of the said surplus lands. The last date for submitting application was given as 28-03-1997 and the lands were to be distributed on 29-03-1997. These notices are impugned in the present petition.

7. Heard Mr. A. R. Borulkar, learned advocate for petitioner, Mr. S. V. Warad, learned advocate for respondent No.3 and the

learned Assistant Government Pleader for respondents – State at length. Perused the documents placed on record.

8. It is not in dispute that the Maharashtra Revenue Tribunal has declared the petitioner as non-surplus holder in an enquiry held under Section 14 of the Act, 1961 and has set aside the order passed by the Deputy Collector, Land Reforms, which declared the petitioner as surplus holder to the extent of 225 acres 23 gunthas. This order appears to have become final as there is nothing on record to show that this order was challenged by the State before appropriate forum.

9. It is a matter of record that Surplus Land Determination Tribunal, Tuljapur held an enquiry under Sections 14 to 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Amendment Act, 1972. This enquiry was initiated on the basis of return filed by the petitioner under Section 12 of the said Act, in the prescribed form. Thereafter, notices under Section 17(1) and 17(2) were published and served on the concerned parties. In the enquiry held pursuant to the said notices, the Tribunal has found that the entire land is not in actual possession of the petitioner. The petitioner had no control regarding possession and cultivation of the said land. The entire land was found to be in actual possession of Khandoba Cooperative Farming Society Ltd./respondent No.3 between the period from 26-09-1970 to 02-10-1975. The Tribunal, therefore,

concluded that since the control regarding possession and cultivation on the entire land is of respondent No.3, respondent No.3 is owner of the land for the purpose of Ceiling Act. The Tribunal, therefore, declared the petitioner as non-surplus holder and dropped the enquiry under Section 14 of the said Act by decision dated 17-02-1987. There is nothing on record to show that the decision of the Tribunal is challenged by respondent No.1 before appropriate forum. Reply filed by the respondent – State to the petition is silent on this aspect.

10. When two competent forums held the petitioner as non-surplus holder, respondent No.2 has committed serious error apparent on the face of record in issuing the impugned notices. The action of issuance of impugned notices by respondent No.2 is vitiated on account of non-application of mind and respondent No.2 has exceeded jurisdiction in issuing the impugned notices.

11. The impugned notices cannot be sustained also on the ground that Section 17(2) prescribes 15 days period, the same is also not followed while issuing the impugned notices. The impugned notice at Exhibit-C is issued on 20-03-1997 and only nine days period is given to the petitioner to submit it's objections/say. Respondent No.2 failed to give statutory period of 15 days to the petitioner.

12. On the other hand, without even waiting for reply/objection of the petitioner, respondent No.2 erroneously proceeded to issue notice at Exhibit-D, on the same day, thereby calling upon the landless persons to file their application for distribution of the surplus lands belonging to the petitioner mentioned in the annexure thereto. The said notice states that the lands mentioned in the annexure are declared surplus. It is, therefore, clear that without waiting for reply/objection of the petitioner respondent No.2 has already declared the lands as surplus. This also indicates that respondent No.2 had pre-determined that the petitioner is surplus land holder to the lands mentioned in the annexure to the notices. Action of respondent No.2 in issuing notices is unreasonable, irrational and unsustainable in the law and facts of the present case.

13. For the aforesaid reasons, writ petition is allowed in terms of prayer clause A(1), which reads thus:

> *"A(1) That Writ of mandamus be issued commanding the respondents 1 and 2 to withdraw, recall and cancel the notices dated 20/3/1997 at Exh-"C", "D" and "E"."*

14. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)

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