

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9457 OF 2024

Smt. Tarabai Ramchandra Bajare and ors. ... Petitioners
V/s.
Asst. District Collector, Solapur and anr. ... Respondents

Mr. Avinash B. Avhad with *Mr. Mahesh V. Rawool, Mr. Abhijeet Gosavi, Mr. Sachin D. Gawade and Mr. Sahil S. Ghute, Advocates for the Petitioners.*

Mr. R. S. Pawar, AGP for the State/Respondents No.1 and 2.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 February, 2025.

P.C. :

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the petition is taken up for hearing and disposal.

2. The petition challenges order dated 26th May, 2006 passed by Additional Collector directing cancellation of allotment of land made in favour of the Petitioners under provisions of Section 27 of the Maharashtra Agricultural Land Ceiling Act, 1961 (**the Act**). The Petitioner initially filed appeal against order dated 26th May, 2006 before the Divisional Commissioner who advised the Petitioners to file appeal before Maharashtra Revenue Tribunal (**MRT**). Accordingly, the Petitioners filed Ceiling Appeal

No.102 of 2006 before MRT which has dismissed the same as not maintainable vide order dated 26th August, 2017. Accordingly, the present petition is filed challenging the orders passed by the Additional Collector on 26th May, 2006 and by the Tribunal on 23rd August, 2017.

3. I have heard Mr. Avhad, learned counsel appearing for Petitioners and Mr. Pawar, learned AGP appearing for Respondents No.1 and 2/State.

4. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that certain lands situated at village Tirwandi, Taluka-Malshiras, District-Solapur owned by Shri Nana Bala Murkute were declared as surplus under the provisions of the Act. Under provisions of Section 27 of the Act, the surplus land came to be distributed by the Tahasildar in favour of third parties. Petitioners came to be granted part of the surplus lands out of survey No.46 at Village Tirwandi, Taluka-Malshiras, District-Solapur.

5. It appears that a complaint was filed about grant of surplus lands before Lok Aayukta and the Divisional Commissioner directed conduct of inquiry under the provisions of Section 47A of the Act by Collector, Solapur. The Collector in turn directed Sub-Divisional Officer to conduct re-inquiry. After conduct of re-inquiry, it was found that except the land allotted to Smt. Yamunabai Ramchandra Murkute, the allotment of lands to other beneficiaries was improper and the Additional Collector accordingly directed redistribution of a surplus land. Petitioners filed Writ Petition No.611 of 1981 in this Court challenging the order of the Additional Collector. The Writ Petition was allowed on 28th August, 1981 setting aside

the order for redistribution of land. This Court directed grant of opportunity to hearing to all the beneficiaries and to take a fresh decision. It appears that after conduct of fresh inquiry Tahasildar Malshiras submitted his report dated 31st January, 1985. However, no action was taken on the said report for a considerable period of time.

6. After passage of about 20 long years, the authorities acted on some complaints submitted in the year 2005 and reopened the matter by issuing show cause notices dated 4th January, 2006 for recovery of possession of the land. Based on the said show cause notice, Additional Collector has passed impugned order dated 26th May, 2006 directing that the lands allotted to the Petitioners in survey No.46/2C admeasuring 4 acre 20 gunthas was improper and directing recovery of possession thereof.

7. The Petitioners initially preferred appeal before the Divisional Commissioner who advised them to file appeal before the MRT. The MRT has however dismissed the appeal as not maintainable by order dated 23rd August, 2017. To my mind, there appears to be atleast two errors in the order dated 26th May, 2006 passed by the Additional Collector. Firstly, the power of revision by calling for records of inquiry under Section 27 can be exercised by the Divisional Commissioner under provisions of Section 45A of the Act. Secondly, there is a time limit of one year under proviso to Section 45A of the Act for the initiation of the proceedings under the Act. Section 45A of the Act provides thus :-

“45A. Power of revision of Commissioner in inquiries and proceedings under section 27.

(1) Subject to the provisions of this section, the Commissioner may suo motu or on an application made to him by an aggrieved person or on a reference made in this behalf by the State Government, at any time –

(a) call for the record of any inquiry or proceedings under [section 25 (except in cases where an appeal has been filed), or as the case may be, section 27] for the purpose of satisfying himself as to the legality or propriety of any inquiry or proceedings (or any part thereof), and
(b) pass such order thereon as he deems fit after giving the parties concerned a reasonable opportunity of being heard:

Provided that, except in the case of a reference from the State Government no such record shall be called for after the expiry of a period of one year, (from the date the award of compensation is made by the Collector under section 25, or as the case may be, the grant of land is made by the Collector under section 27.)

(2) Where the inquiry or proceedings referred to in sub-section (1) is held by an officer, or by a Tribunal of which the Chairman is an officer, below the rank of an Assistant or Deputy Collector, the powers of the Commissioner under sub-section (1) may be exercised by the Collector to whom such officer is subordinate.

(3) Where any order is passed by the Collector under sub-section (2), the same may, in the manner and subject to the conditions laid down in sub-section (1), be revised by the Commissioner.”

8. In the present case, though the power of setting aside distribution of surplus land under Section 27 of the Act is conferred on the Divisional Commissioner, the same appears to be exercised by the Additional Collector.

9. Secondly, the distribution of land under Section 27 of the Act had taken place vide an order dated 30th September, 1966 and such distribution could not be reopened by way of proceedings initiated in the year 2005. This is not a case involving reference made by the State Government but it appears that the authorities had acted upon complaints made to them from

time to time. It also becomes difficult to believe that there is any connect between the original proceedings initiated on 14th December, 1978 by the State Government under Section 45A of the Act and the proceedings which started in the year 2005 leading to the impugned order dated 26th May, 2006.

10. As observed above, the earlier order dated 19th August, 1980 passed by Sub-Divisional Officer directing cancellation of distribution of land was set aside by this Court by order dated 28th August, 1981. This Court had granted liberty to conduct a fresh inquiry after grant of opportunity of hearing to the beneficiaries. Though such re-inquiry was conducted and report thereof was submitted by the Tahasildar on 31st January, 1985, apparently no action was taken on the said report. There was a long hiatus for over 19 long years and the Collector decided to act on the basis of some complaints made to him in the year 2005 for the purpose of passing of order dated 26th May, 2006. It therefore becomes difficult to connect the earlier proceedings initiated in the year 1978 with the proceedings leading to the final order dated 26th May, 2006. It is otherwise incomprehensible that land allotted to a person under Section 27 of the Act in the year 1966 could have been withdrawn by passing an order in the year 2006.

11. The impugned order thus suffers from twin irregularities of incompetence of authority as well as exercise of power beyond the time limit fixed under Section 45A of the Act. Impugned order is thus unsustainable and liable to be set aside.

12. The Petition accordingly succeeds. Order dated 26th May, 2006 passed by the Additional Collector is set aside.

13. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no orders as to costs.

(SANDEEP V. MARNE, J.)