State of Maharashtra and Another

Vs

Rattanlal

Civil Appeal No. 3039 of 1984

(Kuldip Singh, V. Ramaswami-II, K. Ramaswamy JJ)

11.12.1992

JUDGEMENT

K. RAMASWAMY, J.:-

1. This appeal by special leave arises against the judgment of the single Judge of the Bombay High Court at Aurangabad in Writ Petition No. 1903 of 1980 dated June 23, 1983 : (reported in 1984 Mah LR 1). The facts lie in short compass, are stated hereunder.

The respondent filed his declaration under S. 12 of the Maharashtra Agricultural Land (Ceiling and Holdings) Act, (27 of 1961) as amended from time to time, for short 'the Act'. The Surplus Land Determination Tribunal, Partur, after enquiry under S. 17 declared that out of 63 acres 8 guntas of dry lands in Survey Nos. 29, 312 and 11 situated in Shrishti Village Partur Taluka, Parbhani District, the respondent was holding 9 acres 8 guntas surplus land. On appeal the Maharashtra Revenue Tribunal, at the request of the respondent and conceded by the representative of the State, held that instead of resuming surplus land from Survey No. 11, the same be resumed from Survey No. 29 on the western side. With that modification the Appellate Authority by its judgment dated April 13, 1976 upheld the order. The Addl. Commissioner, when the records were placed before him, on perusal thereof found that on the demise of the father of the respondent he and his mother being only heirs, are entitled to equal shares in 92 acres 29 guntas, in Survey Nos. 91, 337, 338 and 86 of his father. He found mutations of those lands in the names of several persons were not genuine and valid. The respondent did not disclose the lands of his half share in the declaration, and therefore, the Addl. Commissioner issued a show cause notice to the respondent on May 22, 1977. The respondent appeared in person and submitted his written arguments. On consideration thereof for the reasons recorded in his order dated June 9, 1980, he remitted the case to the primary Tribunal to examine the case once over and then determine the surplus land. While upholding the surplus land of 9 acres 8 guntas as confirmed by the Appellate Tribunal, he directed redetermination and delimitation which was challenged in the writ petition. The High Court held that once an appeal having been preferred by the declarant under the Act, and an order thereon was made, the Commissioner or the State Govt. is devoid of jurisdiction to determine the ceiling area. Accordingly it quashed the order in the impugned judgment. Feeling aggrieved, the State Govt. filed the appeal.

2. The only question that arises for decision is whether the Commissioner or the State Govt. has been devoid of the jurisdiction to direct the primary authority to reopen the determination of the surplus area under S. 17. S. 45 of the Act reads thus:

> "45. Control. (1) In all matters connected with this Act, the State Govt. shall have the same authority and control over the officers authorised under S. 27, the Collectors

and the Commissioners acting under this Act, as they do in the general and revenue administration.

(2) The State Govt. may, suo motu or on an application made to it by the aggrieved persons, at any time, call for the record of any inquiry or proceedings under Ss. 17 to 21 (both inclusive) for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or any part thereof) under those sections and may pass such order thereon as it deems fit, after giving the party a reasonable opportunity of being heard :

Provided that, nothing in this sub-section shall entitle the State Govt. to call for the record of any inquiry or proceedings of a declaration or part thereof under S. 21 in relation to any land, unless an appeal against any such declaration or part thereof has not been filed within the period provided for it, and a period of three years from the date of such declaration or part thereof has not been filed within the period provided for it, and a period of three years from the date of such declaration or part thereof has not elapsed

Provided further that, no order shall be passed under this section so as to affect any land which is already declared surplus and distributed according to the provisions of this Act.

Provided also that the revisional. jurisdiction under this section shall be exercised only where it is alleged that the land declared surplus is less than the actual land which could be declared surplus.

(3) The State Govt. may subject to such restrictions and condition as it may impose by notification in the Official Gazette, delegate to the Commissioner the powers conferred on it by sub-section (2) of this section or under any other provisions of this Act except the power to make rules under S. 46 or to make an order under S. 49."

3. By operation of sub-sec. (3), the Commissioner which includes Addl. Commissioner has been invested with the revisional powers of the State Govt. either suo motu or on an application made to it by an aggrieved person to call for the record of any inquiry or proceedings under Ss. 17 to 21 (both inclusive); to satisfy itself of the legality or propriety of the inquiry or proceeding of any part thereof under the sections and may pass such order thereon as it deems fit, after giving reasonable opportunity of being heard. The exercise of the revisional power is permissible under the first proviso only if an appeal under S. 21 has not been filed and three years period from the date of the order has not been expired and that the appellate tribunal had not passed any order thereon, or three years from the date of the impugned order had not elapsed. In other words the simultaneous exercise of revisional power was prohibited, while the appellate remedy was still available to the landholder, or the suo motu revisional power may not be exercised after the expiry of three years from the date of the impugned order. The proviso No. 2 says that if the lands already declared surplus was distributed as per the provisions of the Act, it need not be interfered with. Where it is alleged that the land declared surplus is less than the actual land which could be declared surplus, the revisional authority is empowered to exercise its power under third proviso. The authorities have all the general powers while exercising the supervisory jurisdiction under the Act. They have also. been expressly empowered to exercise the power either suo motu or on an application made to it by an aggrieved person. The exercise of such a power has been restricted only to the matters relating to an

inquiry or proceedings under Ss. 17 to 21 (both inclusive). It also prescribed 3 years limitation for the exercise of the revisional power. Before exercising the revisional power the affected party shall also be given reasonable opportunity of being heard. It would be open to the State Govt. or its delegate to correct any illegality or impropriety committed by the officer or authority. The obvious intendment in conferring suo motu power is to prevent suppression of the inclusion of all agricultural lands held or includible in the holding of the declarant and he/she cannot fall back upon the orders or proceedings as a defence to plead his/her own fraud or suppression of material facts in his/her declaration or the designated officer or authority cannot seek shelter under the orders or a part thereof when the offending order was steeped with illegality or impropriety. Take a hypothetical illustration that the landholder and the officer colluded and in furtherance thereof several lands were not declared in the declaration. The authorised officer declared him to be within the ceiling limit. The suppression of material facts, namely, existence of the undeclared agricultural land had come to the knowledge of the higher authorities after a long lapse of time. Should it be that limitation of three years would be a bar to exercise suo motu power or an order passed under S. 17 or 21 a bar to reopen the case. Obviously the answers are no. The limitation would start running only .from the date of discovery of the fraud or suppression of material or relevant facts or omission thereof and the order under S. 17 is not a bar to exercise revisional power. Take another illustration that in an inquiry or proceedings a land which is declared surplus but was excluded from distribution on fancy grounds so as to enable the landholder to retain the surplus land Benami etc. such cases are also liable to reopen under S. 45, though the ceiling order became final. The only inbuilt limitation provided in S. 45 is that while an appeal is pending before the Appellate Tribunal under S. 21, the revisional power under S. 45 either suo motu or on an application made by an aggrieved person could not be entertained or continued simultaneously. While the appeal is pending if it comes to the knowledge of the authorities that the declarant suppressed material facts or fraud or collusion, those facts should be placed before the Appellate Tribunal and have it adjudicated property by it or on remand to the primary authority. If after the inquiry or proceedings became final, the higher authorities discovered illegality or impropriety committed in the inquiry or proceedings, action would always be available for initiation by the competent authority and orders could be passed after reasonable opportunity of being heard given to the affected land-holder or person.

4. It is common knowledge that in the similar Land Reforms statutes existing in some States like Andhra Pradesh, the appellate power has been given to the judicial tribunals (District Judge) and thereafter the revisional power under the Act was given to the High Court. In same Act in its absence the general power under Art. 227 of the Constitution is still available. Once those orders having been passed and allowed to become final, unless a case of fraud or misrepresentation or suppression of material facts are made out, it is not open to the authorities under the Act to take recourse to exercise the suo motu revisional power to have the illegality or propriety crept in the inquiry or proceedings of the authorities corrected. In the light of the scheme of the land reform laws for expedition to determine surplus lands and distribution of it to the needy poor, the jurisdiction of even the civil courts under S. 9 of C.P.C. to entertain suits to correct the illegality or impropriety of the proceedings or enquiry under the Land Reforms Act stand excluded. In this case the Additional Commissioner did not unsettle the appellate order of the revenue tribunal. He discovered from records suppression of the existence of other lands which is includible in the return filed by the respondent. Therefore, the Addl. Commissioner initiated the proceedings suo motu, given the respondent reasonable opportunity of being heard and the respondent submitted his written arguments. After hearing him, the order was passed remitting the matter to the primary authority to consider the case in the light of its finding whether the lands would be includible in the holding of the respondent. It is perfectly within his jurisdiction, legal and fair order and the High

Court committed manifest error in holding that the Commissioner was devoid of jurisdiction to initiate suo motu inquiry after the appellate order of the revenue Tribunal had become final. The reliance placed on Madhaodas v. Commissioner, Nagpur Divn. Nagpur, (1976) 4 SCC 815; Rambhau Bapuji Jaibhaye v. State of Maharashtra, 1976 Mah LJ 443 : (AIR 1976 Bom 224), Baswantrao Appaji Choudhari v. Commr. Nagpur Division, Nagpur, 1977 Mah LJ 834 : (AIR 1978 Bom 167) and Vishnu Kisan Dingre v. State of Maharashtra, 1984 Mah LJ 340 is of no help as they are not material for deciding the point in issue. Therefore, we have not adverted to any of the decisions. The decision of this court also does not touch the point in issue except upholding the finding that the authorities have suo motu power under S. 45.

5. This court while admitting the appeal granted interim direction that it is open to the primary authority to conduct the inquiry, but directed not to pass final order. If the inquiry had already been completed and is awaiting decision of this court, it is open to the primary authority to pass appropriate order thereon according to law. If the inquiry was not conducted, it is free to conduct the inquiry and pass appropriate orders within a period of three months from the date of receipt of this order. The order of the High Court is set aside and that of the Commissioner is restored. The appeal is accordingly allowed with costs. Appeal allowed.

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