BOMBAY HIGH COURT

Baswantrao

Vs.

Commr., Nagpur Divn

Special Civil Appln. No. 91 of 1972

(Masodkar and Ginwala, JJ.)

05.09.1977

JUDGEMENT

Masodkar, J.

1. A small but important question is raised by the present petition filed by the landholder questioning the exercise of revisional power by the impugned order produced at Annexure C along with the petition, having reference to the provisions of Section 45 (2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter called the Act).

2. The order in question was made on 8-10-1971. Initially the record shows that proceedings under Section 12 of the Act in Revenue Case No. 39/60-A (5)/65-66 commenced before the Sub-Divisional Officer, Amravati, as far back as 8-5- 1963. After making an inquiry the officer concerned made an order on 17-10- 1967 holding therein that the petitioner was entitled to have a ceiling area of 140 acres and would be liable to surrender the surplus area of 4 acres 20 gunthas. That order further directed the landholder to file a retention statement as contemplated by Section 16 of the Act. This adjudication of 17-10- 1967, however, did not result into making any declaration under Section 21 of the Act, and it appears from the order-sheets that because the landholder did not file the selection form the matter was kept pending and there are several adjournments sought by the landholder including the one which shows that the records were called by the Maharashtra Revenue Tribunal and returned to the Sub-Divisional Officer on 2-6-1969 on which date the order-sheet shows that the appeal filed by the petitioner was dismissed for want of prosecution by the Revenue Tribunal. Again the matter continued to pend and several adjournments were sought by the landholder for filing the selection form which was eventually filed on 16-11-1969. On 30-1-1970 the Sub-Divisional Officer dealing with the file, on the basis of the earlier order, purported to accept the declaration as to the surplus area. It appears that simultaneously he submitted the papers to the Commissioner, Nagpur Division, on 17-12-1970, thereby pointing out the apparent error committed in the earlier order with regard to the members

of the family and the entitlement of the landholder to hold land. After receipt of this communication, the papers were perused and on the file of the Commissioner the case was opened on 30-4-1971 stating that it was necessary to take up the matter in revision under Section 45 (2) of the Act. In the order-sheet of that date mention is made with regard to the order dated 30-1-1970. After issue of notice to the landholder and granting an opportunity of being heard on all questions, the Commissioner made the impugned order, holding that there was an error in the first order with regard to the finding about the members of the family of the landholder and the consequent finding as to the entitlement of the holder to the ceiling area. Similarly the finding was recorded that there was no proper inquiry with regard to S. No. 34/1, 2 acres 34 gunthas, which appears to have been treated as uncultivable land. Thus holding, the Commissioner found that the delimitation of 4 acres 20 gunthas was not proper and the said delimitation was set aside and the case remitted back to the Sub-Divisional Officer for fresh inquiry on the points mentioned in the order and the decision of the case according to law.

3. It is not in dispute for the purposes of the present petition that a composite declaration contemplated by Section 21 of the Act had not been made when the order dated 17-10-1967 was made by the Sub-Divisional Officer and in fact the proceedings were kept pending till 30-1-1970 on which date the Sub- Divisional Officer purported to accept the retention and delimited the surplus land. Before making that order he submitted a note (to) the Commissioner for exercise of power under Section 45 (2) of the Act. If the last order made by the Sub-Divisional Officer accepting retention and delimiting surplus as on 30-1- 1970 is taken as the basis, then it is not in dispute that the proceedings initiated before the Commissioner on 30-4-1971 are not barred by limitation. But what is contended, however, is that on 30-4-1971 the Commissioner could not exercise the power to revise the order made by the Sub-Divisional Officer on 17-10-1967. By the impugned order, it is contended, the proviso to Sub-section (2) of Section 45 and the conditions of limitation for exercise of revisional power are clearly contravened and the order is rendered infirm in law. It was also submitted that as at one stage the landholder had filed an appeal before the Maharashtra Revenue Tribunal, though the same was not pressed before the Tribunal and was dismissed for want of prosecution, that fact also renders the exercise of revisional power impermissible because of the proviso to Sub-section (2) of Section 45.

4. Turning first to the matter of limitation, we have given our anxious consideration to the submission made and the phraseology available in the proviso itself. The provisions of Section 45 (2) along with the proviso read as under :-

> "(2) The State Government may, suo motu or on an application made to it by the aggrieved person, at any time, call for the record of any inquiry or proceedings under Sections 17 to 21 (both inclusive) or under Section 27 for the purpose of satisfying itself as to the legality or propriety of any inquiry or proceedings (or part thereof) under those sections or of any order passed under Section 27, 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 Government to call for the record of any inquiry or proceedings of a declaration or part thereof under Section 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, the possession of such land has not been taken under Sub-section (4) of Section 21 and a period of three years from the date of such declaration or part thereof has not elapsed." (underlining ours)

A bare reading of these provisions show that it enacts a jurisdiction in favour of the State Government or its delegate to call for the record of any inquiry or proceedings having reference to the provisions of Sections 17 and 21 or of Section 27 and make a revisional scrutiny thereof, so as to find out any illegality or impropriety and cure the same. The words "inquiry or proceedings" used herein are wide enough and are not restricted to any conclusions, decisions or orders. Formerly, the revisional scrutiny under Sub-section (2) of Section 45 was restricted to the matters of Section 27, However, by Act No. 32 of 1965 the present provision was enacted by amendment That widened the scope of the revisional jurisdiction and of scrutiny taking in the entire proceedings of inquiry from the stage of Section 17 (issue of notice) till the stage of making a final declaration. This amendment and widening of the scope of the revisional scrutiny has clearly behind it a statutory purpose. It is an enabling jurisdiction so as to reach any matters of illegality and impropriety and is meant to subserve the ends of justice under the provisions of the present Act.

5. A little relay back of the statutory provisions brought by the amendment within the ken of revising jurisdiction highlights this statutory purpose. Section 17 deals with notices and thus assures the right of participation and hearing to everyone concerned. Section 18 obliges the Collector to afford a hearing to the landholder as well other persons interested. The process of hearing partake of a regular trial, for it permits, nay directs, admitting evidence and further in the light of the hearing the Collector is invited to consider the statutory grounds enacted by clauses (a) to (1) of Section 18. Sections 19 and 20 operate upon the power of the Collector to restore land to the landholder and for that purpose the manner of consideration of the claims of the landholder. Section 21 directs that after these statutory matters referred to in Sections 18 and 20 (3) have been considered, the Collector has to make a declaration which has to contain his decisions on the matters stated in clauses (a) to (e) of Sub-section (1) of Section 21. This declaration is pivotal for further statutory processes. Sub-section (2) of Section 21 requires publication in the Gazette of the declaration. Sub-section (3) gives finality to the declaration so made under Sub-section (1) of Section 21 subject to appeal under Section 33 and revision under Section 45 (2). Sub-section (4) then entitles the State to take possession of the property either because of the surplus or because it is forfeited, and upon such taking of the possession the property is deemed to have been acquired by the State free from all encumbrances. Subsection (5) added by Act No. 27 of 1970 deals with contingencies where in certain circumstances possession is taken.

6. These provisions clearly enact a unified structured scheme of the State which, by its own

force, is intended to and much necessarily operates upon the rights and liabilities of the holder of the land. Starting with the issue of notices till the process of making the declaration under Section 21, it partakes in one original proceeding and it can only terminate upon making the declaration. The entire scheme right from the stage of Section 14 to Section 21 has one end in view and that is to find out the entitlement of the holder of the land to the ceiling area and further to find the surplus land which, because of law, requires to be taken possession of by the State. The declaration thus has formal statutory existence end Sub-section (1) of Section 21 merely states all that it shall be composed of, Clauses (a) to (e) of Sub-section (1) of Section 21 are matters of decision to be recorded by the Collector after holding the due inquiry. But together it constitutes statutory statement of the entitlement of the holder to retain land as well the entitlement of the State to take possession of the land. The declaration is thus a composite process of containing different decisions. But under the scheme of the statute decisions, apart from the declaration, have not the statutory force. The declaration under Sub-section (1) of Section 21 is the king-pin upon which the new entitlement in favour of the State or the landholder has to be found out. That it has to be viewed as a composite one is well established : See *Brajvallabh v. Mah. Rev. Tribunal*[1] and *State of Maharashtra v. Sharad*[2] In our view, therefore, there is no scope for reading in the scheme of Section 21 (1) any possibility of rendering separate decisions having any statutory validity. Though separate decisions might be reached, unless they take a composite form of the declaration contemplated by Section 21 (1), legal effect is not attached to it.

7. Legislative choice of the word "declaration" throughout the scheme of the statute is highly significant. That term has to be distinguished from the term "decision", which is used in the same clause of Sub-section (1) of Section 21 of the Act wherein the authority is directed to "make a declaration" containing his "decisions" on the matters specified in clauses (a) to (e). Though normally the use of the word "declaration" in the context of judicial or quasi-judicial proceedings would indicate the decision of the adjudicator, by such use and because of the context of the law that seeks to acquire surplus land from the landholder the term "declaration" has been clearly used to convey a formal statutory statement on the basis of which further rights are intended to become operative. Declaration partakes in the nature of a formal statement, which is meant to create, preserve or limit the rights of the parties. In the context of the statute, it would mean a statutory statement which can be the basis of creation or preservation of or limiting the rights of the persons *qua* land. As the scheme of the present enactment stands, this statutory statement is intended to affect the vested rights of the landholders. By no other mode except the one of making a declaration under Section 21 (1) of the Act which is the only enacted and prescribed law, the rights in land can be affected. Once such statutory declaration is made, that alone has a finality and collusiveness as is evident from Section 21 (3) of the Act.

8. The machine of the present law further indicates that on the basis of this declaration the new entitlement of the State to possess the property arises, which must have a foundation again in the declaration. It is on that basis that the holder of the land or any person interested in the land can

feel aggrieved and to provide him with a further remedy of subjecting the declaration either in its entirety or in part, Section 33 (1) (2) permits filing of an appeal. So also Section 45 (2) similarly provides for revision. By the very nature of this appellate and revisional jurisdiction, the law provides for the scrutiny of the declaration or any part of that declaration, and in the case of revision, even suo motu. When the provisions of Section 33 (1) (2) use the words "a declaration or any part thereof" it has simple meaning that the remedy of appeal is available against the declaration as a whole or that part by which the person may feel aggrieved. The same and identical phrase is available as used in the terms of the proviso to Section 45 (2) of the Act. It is indeed clear and apparent that the whole of the declaration as well any part thereof along with the earlier inquiry and proceedings can all be the subject-matter of a revisional scrutiny. It is only when the limitation of three years from the date of declaration is lost that such a scrutiny is excepted.

[1](1968 Mah LJ 736)

[2](1972 Mah LJ (Note) 54)

9. The total phrase available in Section 33 (1) (2) as well in the proviso "the declaration or any part thereof" does not indicate that there can be a separate decision apart from a composite declaration contemplated by Section 21 (1) of the Act. The very use of the word "thereof" clearly shows that it is the part of the declaration and to be part of something, that thing must exist. It is inconceivable that without the declaration formally enjoined to be made under Section 21 any separate decision can effectively exist or can be the subject-matter of appeal. While reading the proviso, therefore, enacting a period of limitation, it is inconceivable that the Legislature intended to creats different starting points by use of the phrase "the date of such declaration or part thereof." In fact, the point of time for the purpose of computation is the date, and that goes with the declaration. The whole phrase from "the date of such declaration or part thereof" is one composite statement of law and the words "or part thereof" go with the declaration and not with the date. For the purpose of the starting point of limitation, the date of declaration is the only relevant date of reference. This construction clearly furthers, as we indicated above, the statutory scheme that upon making the declaration certain new results, rights and entitlements ensue, and without it the law does not conceive of any such results, rights and entitlements. It is in keeping and in consonance, therefore, to read for the purpose of computation and limitation of 3 years that the declaration shall bear the date and the time shall run from that date only. No doubt, clauses (a) to (e) of sub- s. (1) of Section 21 deal with specific matters and require recording of decisions by the Collector after holding an inquiry. These decisions can be subjected to further judicial scrutiny in appeal or revision either as a whole or in part. The terms of clause (a) relate to the ceiling area which a person is entitled to hold, while clause (b) relates to the decision about the excess area with the landholder. Similarly clause (e) operates upon the right of the landholder to be restored to possession under Section 19. Clause (d) requires recording of the decision about the area, description and full particulars of the land that is delimited as surplus land. Clause (e) requires making of the decision with regard to the forfeited land to the Government. It is implicit in all these clauses that as far as possible the inquiry will be concluded, circumstances permitting, on all these aspects by one single declaration. The decisions under different matters being a part of that declaration. A careful scrutiny of these clauses further indicates that clauses (a), (b) and

(c) would go together, while clause (c) would take the matters under Sections 19 and 20 and clause (e) will concern itself with the provisions of Section 13 (3) or Section 10. It is only when this composite declaration is made that, as we stated above, the law conceived the legal consequences of affecting the property of the citizen. Though, therefore, the matter governing a given clause had been independently heard and concluded at the earlier stage of the proceedings, that by itself would not partake, unless the decision is incorporated in the declaration, to be a part of the declaration so as to affect the vested rights of the citizen *qua* land. Intrinsically, therefore, it follows that for the purpose of further scrutiny in higher jurisdictions the point of reference, as well the date for the purpose of limitation is one and single and that is the declaration and the date it bears. Further each of the parts contained in the declaration would for the purpose of limitation carry the same date and not any other date though the inquiry in fact might have been carried on and concluded at an anterior point of time.

10. Any other construction would lead to anomalous results. If we were to treat that for the purpose of the starting point of limitation the anterior date of each decision is to be taken into account, then the very enactment of the proviso and the condition of limitation would be frustrated. Once the time begins to run, it must elapse under the principle of limitation. Upon its eclipse or lapse, there is no revival of the right so eclipsed or lapsed. If that be so, by the construction that there could be an anterior date *qua* each decision of the part of the declaration permitting computation of the period of limitation though from that starting point the limitation would be lost *qua* a particular decision, the higher jurisdiction either in appeal or revision could still be invoked because the declaration is made at a latter point of time. Further, conversely, though the part might have been subjected to scrutiny in this manner, before the declaration is made, it would reopen a fresh challenge after the declaration is made. It is not necessary to conceive of such anomalous results, nor plain law permits it. There is one single date and that is the date of declaration from which time runs for the purpose of computing the period of limitation. To avoid anomaly, it is also not necessary as was suggested that we should read after the words "the date of such declaration or part thereof" the words "whichever is earlier." Such an emendaion, the intent being clear, appears to us impermissible.

11. It is inconceivable that the Legislature has introduced this starting point for the purpose of revisional scrutiny with a clear object. From the date of declaration, if the revisional scrutiny is taken within the period of three years and confined to a single part, then after the lapse of the period the scrutiny of the other part of the declaration could be beyond time and as such barred by the proviso. This could not arise if the whole declaration is within time subjected to scrutiny. Thus the phrase "part thereof" clearly serves the purpose of explaining that the provisions regarding scrutiny or the appellate scrutiny within time can relate either to the entire declaration or to any part thereof. In other words, there can be partial revision of the declaration confining it only to a part thereof and in a given case, partial eclipse of the power of revision because of the lapse of time.

12. Having fixed the stage of being aggrieved as well the point of reference after which the higher jurisdictions in appeal or revision can be invoked, the other bar set up by the learned counsel because of the filing of the appeal and its dismissal for want of prosecution can hardly be said to be relevant. The right to file an appeal was not available and the appeal itself could be incompetent. Mere filing of the appeal, in our view, would not be a bar under the proviso for exercise of the revisional power. Pari materia and similar principles available in the decision in *Rambhau v. State of Maharashtra*[3], would be relevant. The purpose of fore-closing the scrutiny in the matters subjected to the process of appeal is clearly to avoid a conflict of decisions by the authorities having jurisdiction to revise or review the declaration or any part thereof made under the provisions of Section 21 (1) and to achieve unanimity in the matters of judicial adjudication. With this object in view, the terms of the proviso with regard to the appeal are to be understood and particularly in the context of the declaration or any part thereof in issue. When once such a declaration or any part thereof had been the subject-matter of appellate scrutiny, it behoves judicial propriety that the said matter should not be subjected to further scrutiny in more or less coordinate jurisdiction. Dismissal of appeal may arise for several reasons including the one that the appeal was not properly constituted or was not competent or was not prosecuted. Such dismissal would not partake of the character of appellate scrutiny by the higher authority so as to operate as a bar for exercise of revisional power. If proper appellate jurisdictin is invoked, the law

[3]1976 Mah LJ 443

indicates, particularly by section 34, that the appellate Tribunal is empowered to make orders confirming, modifying or rescinding the declaration or any part thereof as made under Section 21. Possibly once such orders are available from the appellate authority, the revisional scrutiny would automatically be barred and would eliminate conflict.

13. We are, therefore, satisfied that the two conditions upon which reliance was placed by the learned counsel did not bar the revisional scrutiny by the Commissioner. As the facts stand in the present case, though at one stage in 1967 an order was made, no declaration as contemplated by under Section 21 (1) was made then. The order dated 30-1-1970 if it can be said to be a declaration because it concluded the inquiry on all relevant aspects of clauses (a) to (e) were to operate as a declaration, still the impugned order would not be barred by limitation. In the present case we find that no composite declaration has been made and, therefore, in law the bar of limitation is not available.

14. These being the only points, we find no merit in the present petition. Rule discharged. No order as to costs.

Rule discharged.