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Court : Mumbai

Decided On : Sep-04-2002

Reported in : 2002(4)ALLMR759; 2003(1)BomCR731; (2003)1BOMLR855; 2003(2)MhLj985

Judge : A.M. Khanwilkar, J.

Acts : Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Sections 45 and 45(2)

Appeal No. : W.P. Nos. 2177 and 2178 of 1986

Appellant : Gool Noshir Davierwala and ors.

Respondent : Additional Commissioner, Konkan Division and anr.

Advocate for Def. : C.R. Sonawane, AGP

Advocate for Pet/Ap. : H.D. Gole, Adv.

Disposition : Petition allowed

Judgement :

1. Both these petitions can be considered together as they involve common question and pertain to the same property which is the subject matter of these

proceedings.

2. It is not necessary to elaborate all the events that have given rise to the present proceedings. Suffice it to point out that the Additional Commissioner, Konkan Division, Bombay decided to take suo motu action in respect of the proceedings which was already concluded in favour of the petitioners in Writ Petition No. 2177 of 1986 in respect of the subject land under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. It is not in dispute that the declaration was made on 29-3-1976 whereas the Commissioner issued notice to the petitioners on 8-7-1985 expressing his mind that he intends to take suo motu action in exercise of the powers under Section 45 of the said Act. The Commissioner proceeded to decide the matter on merits though objection was taken on behalf of the petitioners that the powers under Section 45 could not be exercised after a lapse of three years from the date of declaration. The Commissioner has rejected that objection on the premise that after the declaration was made on 29-3-1976, papers were received in his office on 24-1-1979 and therefore, he could have exercised suo motu jurisdiction by virtue of the provisions of Section 45 of the Act. Although the Commissioner has also dealt with the matter on merits, to my mind, the present petitions would succeed on the ground that action initiated by the Commissioner in exercise of the powers under Section 45 of the Act was not within three years from the date of the declaration or part thereof and therefore, without authority of law.

3. The relevant dates have already been indicated above that the declaration was made on 29-3-1976 whereas the notice on the basis of which suo motu action was initiated was issued on 8-7-1985. Obviously, that notice has been issued after a lapse of three years from the date of the declaration. To reassure myself as to whether the notice was issued belatedly, due to some administrative reasons, and the Commissioner had already taken and informed decision within the prescribed period ; the authority was called upon to furnish the necessary information. It is conceded by the Assistant Government Pleader before this Court on the basis of instructions from the officers who are present in this court that there is no record to show that the Commissioner had taken any informed decision to initiate suo motu action prior to the issuance of notice dated 8-7-1985. If that be so, we will have to

proceed on the assumption that decision to take suo motu action was taken only on 8-7-1985. In that case, the action would be clearly impermissible by virtue of the mandate of the proviso to Sub-section (2) of Section 45 of the Act as it was not taken before the expiry of three years from the date of the declaration which was issued on 29-3-1976.

4. Learned counsel for the petitioners has rightly relied on the decision of the Full Bench of this court reported in 1989 Mh.LJ. 1011 in the case of Manohar Ramchandra Manapure and Ors. v. State of Maharashtra and Anr., that merely because records were received in the office of the Commissioner before the expiry of three years from the date of the declaration, that by itself would not authorise him to initiate suo motu action. Whereas the law requires that the authority should take an informed decision within the prescribed time to initiate suo motu action in exercise of the powers conferred under Section 45 of the Act, for the authority is required to apply its mind before the expiry of the prescribed period. The fact that the records were received in the office would only be mechanical or routine matter and not an act of taking an informed decision to initiate suo motu action within the meaning of Section 45 of the Act. Understood thus, in the present case, the Commissioner has reopened the case on the basis of the notice dated 8-7-1985 without authority of law. It will not be necessary for this court to go into any other aspect which has weighed with the Commissioner because, that will be wholly unnecessary as the proceedings could not have been initiated in law against the petitioners.

5. Accordingly, both the petitions succeed. The impugned order is set aside and the order passed by the Surplus Land Determination Tribunal, Talasari District Thane in Case No. TNC/Ceiling 6 dated 29-3-1976 declaring that the landlords do not hold any surplus land as on 26-9-1970 under the provisions of the amended Act is restored.

Rule is made absolute in above terms with no order as to costs.

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