

Court No. - 18

Case :- WRIT - C No. - 4326 of 2024

Petitioner :- Mehrunnishan

Respondent :- State Of U.P. Thru. Secy., Deptt. Of Revenue,
Lucknow And Others

Counsel for Petitioner :- A.Z. Siddiqui

Counsel for Respondent :- C.S.C., Pankaj Gupta, Verender
Kumar Tiwari

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the petitioner, Sri Pankaj Gupta, learned counsel for Respondent No.4, Sri Hemant Kumar Pandey, learned Standing Counsel for the State and Sri Verender Kumar Tiwari, learned counsel for Respondent No.5, who has appeared through caveat.

2. The present writ petition has been preferred for quashing of the impugned Revisional Order dated 12.03.2024 passed by Respondent No.2 Divisional Commissioner, Devipatan Mandal, District - Gonda and impugned order dated 23.10.2017 passed by Respondent No.3 Additional District Collector (Judicial), District - Balrampur (by mistake in the prayer clause it has been mentioned as 'Respondent No.4'), whereby the application preferred by the petitioner under Section 122-C (6) of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as 'the Act, 1950') has been rejected.

3. Learned counsel for the petitioner has submitted that the Respondent No.5 was not eligible to be allotted the land by the Gram Sabha for the purpose of construction of house but being the son of the Pradhan the land was allotted in his favour on 10.06.1994. The petitioner had filed an objection under Section 122-C(6) of the Act, 1950 before the Respondent No.3 which was dismissed by impugned order dated 23.10.2017 without considering any of the points raised by the petitioner against the allotment of land in favour of Respondent No.5.

4. It is further submitted that against the said order the petitioner had preferred a revision which was dismissed / rejected by impugned order dated 12.03.2024, mainly on two grounds, firstly that there was delay of 21 years in filing the objection under Section 122-C (6) of the Act, 1950 and secondly, against the order passed under Section 122-C (6) of the Act, 1950 a revision is not maintainable.

5. At this stage, learned Standing counsel has submitted that there is no illegality in the orders passed by Respondent No.3 and 2 respectively. The application for cancellation of the Patta in favour of Respondent No.5 was preferred by the petitioner after the delay of about more than 21 years and as per law settled by this Court in the case of ***Dhankali v. State of U.P. and others reported in (2020) 2 ALJ, page 63***, wherein this court after placing reliance upon the judgement of the Hon'ble Supreme Court has decided the matter with the finding that the action taken after about 12 years was beyond the prescribed period and cannot be turned as reasonable time and dismissed the writ petition.

6. Learned Standing counsel has submitted that against the order passed under Section 122-C (6) of Act, 1950, no revision is maintainable under Section 333 or 333A of the Act, 1950 and has placed reliance of the judgement of Division Bench of this Court in the case of ***Ram Dhani and Others v. Additional Collector F & R and others reported in 2019 (4) ADJ, 668***.

7. After hearing learned counsel for the parties, going through the record of the case, it is an undisputed fact that the petitioner had filed a case under Section 122-C (6) of the Act, 1950 after the delay of 21 years and that too, without explaining the same and as per the law settled in the case of Dhankali (supra), the relevant paras are quoted hereinbelow:

"10. A plain reading of the provisions of sub-section 6 of [Section 122-C](#) make it clear that the Collector is empowered to exercise suo motu powers or on an application filed by any aggrieved person to proceed to cancel the allotment if he is satisfied that the allotment is irregular. The question whether the Collector is empowered to take a decision without any limitation and in infinity is to be considered by this Court.

11. The Hon'ble Supreme Court in the case of [Joint Collector Ranga Reddy District and another vs. D. Narsing Rao and others](#), 2015 3 SCC 695 while considering a similar power conferred under the provisions of Andhra Pradesh (Telangana Area) Board of Revenue Regulation held that whenever a power is conferred without prescribing any limitation the same should be exercised within a reasonable time. The Supreme Court after considering the case law recorded as under:

"26. In one of the earlier decisions of this Court in [S.B. Gurbaksh Singh v. Union of India](#) 1976 (2) SCC 181, this Court held that exercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

27. To the same effect is the decision of this Court in Ibrahimpatnam Taluk Vyavasaya Coolie Sangham V.K. Suresh Reddy and Ors., (2003) 7 SCC 667 where this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors

need to be kept in mind while deciding whether relief sooner be denied only on the ground of delay. The Court said:

"In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act.)"

28. To the same effect is the view taken by this Court in *Sulochana Chandrakant Galande. v. Pune Municipal Transport and Others* (2010) 8 SCC 467 where this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed:

"The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in [Section 34](#) of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute".

29. In *State of H.P. And Orss. v. Rajkumar Brijender Singh and Ors.* (2004) 10 SCC this Court held that in the absence of any special circumstances a delay of 15 years in suo motu exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed:

"We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of [Section 20](#). As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts

and [pic]circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, maybe, by the State. Thus the view taken by the High Court is not sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of [Section 20](#)".

30. We may also refer to the decision of this Court in M/s [Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur and Ors](#) (1992) 2 SCC 598 where the Court explained the legal position as under:

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own [pic]facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in *Tilokchand* case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed".

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would

itself be tantamount to a fraud upon the statute that vests such power in an authority.

32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

12. Thus, the settled law that emerges from the judgement of the Supreme Court is that a power cannot be exercised after a long delay and the power should be exercised within a reasonable time. In this case, admittedly, the power has been exercised after about 22 years that too at the instance of Zila Udyog Kendra who were aware of the allotment made in favour of the petitioner as early as in the year 1987 when the Civil Suit No. 963 of 1987 was filed. No steps were taken seeking cancellation of the lease and an application was filed in the year 2008 that too without any justification for not having initiated the application without a reasonable time.

13. In view of the settled law of the Supreme Court, as quoted above, I am of the view that the application filed for cancellation of the lease in favour of the petitioner in the year 2008 was hopelessly barred by limitation and, thus, the order dated 18.6.2011 is without any jurisdiction whatsoever and deserves to be quashed. This Court in Writ-C No. 33761 of 2014 (Smt. Shakuntla And 25 Ors. vs. State Of U.P. And 3 Ors.) had considered a similar question with regard to the actions to be taken where no limitation is prescribed and held that the action taken after about 12 years was beyond the prescribed period and cannot be termed as reasonable time."

8. Similarly, the finding of the revisional court that no revision is maintainable against the decision / order passed in the application preferred under Section 122-C (6) of 1950 Act as settled by this Court in the case of **Ram Dhani and other (Supra)**, the relevant Para 61, is quoted hereinbelow:

"61. In view of the aforesaid discussion, we answer the question referred to us holding that an order passed by Collector under Section 122-C(6) of U.P. Act No. 1 of 1951 in respect of kind of lease and category of persons, to which Section 122-C is applicable, is final and not revisable under Sections 333 or 333-A in view of the declaration made under sub-section (7) of Section 122-C. The same would also apply in respect of an order passed by Assistant Collector under sub-section (4), if it is not interfered

by Collector under sub-section (6), and such order would attain finality by virtue of declaration made under Section 122-C(7) of U.P. Act No. 1 of 1951."

9. In view of the facts and discussion made hereinabove, the writ petition is devoid of merits and is accordingly, **dismissed**.

Order Date :- 15.5.2024

S. Kumar