IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 14.01.2015

1. CWP No. 3380-1995

Krishan Kumar and others

... Petitioner(s)

Versus

The Financial Commissioner (Revenue) Haryana and others

... Respondent(s)

2. CWP No. 999-1995

Smt. Jai Kauri and others

... Petitioner(s)

Versus

The Financial Commissioner (Revenue) Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ?.
2) To be referred to the Reporters or not ?.
3) Whether the judgment should be reported in the Digest ?

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh, Advocate,
for the petitioners in both petitions.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Paramjeet Singh, J.(Oral)

This order shall dispose of CWP No. 3380-1995 and CWP No.999-1995 as common questions of fact and law are involved in both the petitions.

CWP Nos.3380 and 999 of 1995

Before proceeding further, a brief reference to the facts is necessary which are being extracted from CWP-3380-1995.

It is pleaded that Bakhta Ram son of Ganga Ram was a big land-owner under the provisions of the Haryana Ceiling on Land Holdings Act, 1972. The said Bakhta Ram filed a declaration before the Prescribed Authority, Dabwali wherein he had claimed two units of land i.e. one unit for himself and another for his adopted son. Vide order dated 18.04.1980 (Annexure P-2), respondent no.3-Prescribed Authority, Dabwali held that there is no surplus area in the hands of the said landlord. Prior to that, Bakhta Ram had transferred some land to his daughters through collusive decrees. The petitioners have purchased land from the land transferred by Bakhta Ram to his daughters. Thus, the land purchased by the petitioners vide different sale deeds did not form part of surplus area. The mutations had also been sanctioned to that effect. After passing of approximately 10 years, the State Government preferred revision against order dated 18.04.1980 whereupon respondent no.1-Financial Commissioner (Revenue), Haryana reversed the order dated 18.04.1980 of the Prescribed Authority and declared the disputed land as surplus vide impugned order dated 25.01.1994 (Annexure P-8). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

The controversy involved in the present writ petition has already been dealt with by this Bench in ***Chandgi Ram vs. State of***

Haryana and others 2013 (4) R.C.R.(Civil) 1050, wherein, it has been held as under:

> *"4. Learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in* ***Loku Ram vs. State of Haryana, 1999 (1) PLJ 1****,* ***State of Gujarat vs. P. Raghav, AIR 1969 SC 1297, Ibrahimpatnam Taluk Vyavasaya Collie Sangham vs. K. Suresh Reddy and others, AIR 2003 SC 3592*** *and* ***Santoshkumar Shivgonda Patil and others vs. Balasaheb Tukaram Shevale and others, (2009) 9 SCC 352*** *to contend that suo motu power can be exercised only within a reasonable period although no limitation is prescribed under the Act. Learned counsel for the petitioner further relied upon the judgment of this Court in* ***Smt. Dayawanti and others vs. State of Haryana and others, 2012(1) HLR 368*** *wherein identical issue was involved.*
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> *5. Learned counsel for the State vehemently opposed the contentions raised by the learned counsel for the petitioner and contended that the powers of the Financial Commissioner are very wide under the provisions of the Act. Under Section 18(6) of the Act, Financial Commissioner can exercise the power suo motu at any time and call for the records of any proceedings or order of any authority subordinate to him. As such the order was legal and valid. The writ petition deserves to be dismissed.*
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> *6. I have considered the rival contentions and perused the record.*
>
> *7. It would be appropriate to reproduce Section 18 of the Act, which reads as under: -*
>
> > *"**18. Appeal, review and revision**. -- (1) Any person aggrieved by any decision or order of the prescribed authority, not being the Collector,*

may, within fifteen days from the date of the decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as prescribed authority or not) not being a decision or order made in an appeal under subsection (1), may, within fifteen days from the date of the decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed.

Provided that the Commissioner may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) x x x x x

(4) Any person aggrieved by an order of the Collector under sub-section (1), may within thirty days from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

(5) x x x x x

(6) Notwithstanding anything contained in the foregoing subsections,the Financial Commissioner may suo motu at any time call for the records of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

(7) x x x x x

(8) Notwithstanding anything contained in section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to

> *thirty times the land holdings tax, recoverable in respect of this area."*

8. No doubt, Section 18(6) of the Act uses the expression 'at any time' but it cannot be indefinite time. The power has to be exercised within reasonable time. The Hon'ble Supreme Court in ***State of Gujarat*** *(supra)has extensively considered the expression 'at any time' and after construing expression 'at any time' has stated the law thus: -*

> *"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised within reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."*

9. Further perusal of Section 18(2) of the Act clearly shows that it prescribes the period of 15 days for filing an appeal and Section 18(4) prescribes period of 30 days for filing revision before the Commissioner. The above-said sub-sections prescribe a very short period of 15 days and 30 days, respectively. It would be unreasonable to hold that the Financial Commissioner has unlimited power to entertain revision after lapse of several years.

10. In ***Ibrahimpatnam Taluk*** *(supra) the Hon'ble Supreme Court has considered the identical provision and held as under: -*

> *"Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo-motu power could be exercised even after long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-Section (4) of Section 50-B of the Act as to*

whether the suo-motu power could be exercised at any time strictly sticking to the language of that sub-Section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when contention that the suo-motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the nonofficial respondents. Use of the words "at any time" in subsection (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suomotu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suomotu power depended on facts and circumstances of each case. 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 Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo-motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suo-motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that

> *too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo-motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."*

11. The Madhya Pradesh High Court in ***Ranveer Singh (deceased by L.Rs.) and another vs. State of Madhya Pradesh, AIR 2011 Madhya Pradesh 27****, while relying upon the judgment of Hon'ble Supreme Court in* ***Santoshkumar Shivgonda Patil*** *(supra), has held as under: -*

> *"16. The Supreme Court in Santoshkumar Shivgonda Patil, AIR 2009 SC (Supp) 2471 (supra) while considering revisional power of Sub Divisional Officer under Section 257 of the Maharashtra Land Revenue Code ultimately held that the order which was not obtained by any fraudulence cannot be set aside after 17 years by exercising suo motu powers and, hence, is liable to be set aside and accordingly set aside the said order of the revisional authority. The Supreme Court further held that ordinarily the reasonable period within which such power is to be exercised should be not more than three years but of course only in the exceptional circumstances.*
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> *17. The Supreme Court in another decision Mohamad Kavi (supra) while considering Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 also held that the suo motu powers should be exercised within a reasonable period and looking to the transfer which took place during intervening period in the year 1972 the suo motu powers exercised in September 1973 was found to be unreasonable because by that time investments were made by the purchasers and the key decision of Patel Raghav Natha, AIR 1969 SC 1297 (supra) was placed reliance as well as another decision Ram Chand and others 1993 AIR SCW 3479 (supra) was also relied upon and the*

> *suo motu power which was exercised under Section 84-C of the said Act by Mamlatdar was quashed and set aside."*

12. On this basis a view is possible that for limitation purposes the period of limitation provided in Section 18 of the Act may have to be kept in view. Of course the Full Bench has also held that non fixing of upper limit for exercising suo motu powers, will not confer unfettered rights to the revisional authority to exercise this power at any moment of time accordingly to his whims.

13. From the catena of decisions referred to herein above, it can be noticed that law is fairly well settled that the suo motu powers cannot be exercised by the revisional authority after the expiry of several years. It has been held in almost every decision that such powers should be exercised within a reasonable period and in most of decisions, it is held that it should be exercised within a few months. The view, thus, is clear that suo motu powers cannot be left at the whims and sweet will of the revisional authority to be exercised whenever and wherever it wants to do so.

14. There is no plea raised before me on behalf of the respondents to explain the delay on the part of revisional authority to invoke its suo motu powers. From the perusal of provisions of the Act as well as the law settled by the Hon'ble Supreme Court, impugned order (Annexure P-3) cannot be sustained as order does not disclose any reason to hold that period of 11 years is reasonable on the facts of the case nor it discloses that the power has been exercised on the facts and circumstances of the case within a reasonable period.

15. For the reasons afore-mentioned, writ petition is allowed. Impugned order passed by Financial

Commissioner (Annexure P-3) is hereby set aside and order of Prescribed Authority (Annexure P-1) is restored. No order as to costs."

Admittedly, vide order dated 18.04.1980 (Annexure P-2), respondent no.3-Prescribed Authority, Dabwali declared that there is no surplus area in the hands of landlord-Bakhta Ram. The State Government preferred revision in the year 1990 impugning the order dated 18.04.1980. Vide impugned order dated 25.01.1994 (Annexure P-8), respondent no.1 declared the disputed land as surplus area. There is no reason on behalf of the respondents to explain the delay on the part of revisional authority to invoke its *suo motu* powers. The impugned order dated 25.01.1994 (Annexure P-8) cannot be sustained as it does not disclose any reason to hold that period of more than 10 years is reasonable on the facts of the case nor it discloses that the power has been exercised on the facts and circumstances of the case within a reasonable period.

The matter in hand is squarely covered by the judgment rendered in ***Chandgi Ram's case (supra).*** Accordingly, following the reasons mentioned in ***Chandgi Ram's case (supra),*** both the writ petitions are allowed, impugned orders dated 25.01.1994 are set aside and orders dated 18.04.1980 passed by the Prescribed Authority are restored.

No order as to costs.

14.01.2015 **(Paramjeet Singh)**
parveen kumar **Judge**