IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 18265 of 2001

Pronounced On : 25.02.2015

Harpal .... Petitioner

Vs.

Financial Commissioner
(Revenue), Haryana and another .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Mani Ram Verma, Advocate
with Mr. Nipun Verma, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Addl. A. G., Haryana.

* * *

<u>DEEPAK SIBAL, J.</u> :

Through the present writ petition, the petitioner challenges order dated 18.12.2000 passed by the Financial Commissioner, Haryana (Annexure P-4), through which directions have been issued to the Prescribed Authority, Bhiwani to decide afresh the surplus area case of the petitioner by passing a speaking and reasoned order, especially after considering the applicability and validity of the adoption deed produced by the big land owner on the basis of which he had claimed an additional separate unit for his adopted son – the petitioner.

Shorn of the unnecessary details, a few facts, which are relevant for deciding the present lis may be noticed. Siba Singh, who was a big land owner, made a declaration in Form-I on 11.08.1976 under the Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as – the Act). Through this declaration, he claimed a primary unit for himself and one separate unit for his adopted son Harpal Singh – the petitioner. In support of his declaration so made, he later filed his affidavit dated 07.12.1978 and a registered adoption deed dated 18.08.1978. The Prescribed Authority considered the declaration made by Siba Singh and through order dated 07.12.1978, accepted the grant of two units to him and as a result thereof, no land of his was declared to be surplus. The State of Haryana, through a revision petition filed in the year 1995, challenged the above order by invoking the revisionary powers of the Financial Commissioner under Section 18(6) of the Act. The ground of fraud having been played by the land owner was inter alia pleaded. The Financial Commissioner accepted the petition filed by the State of Haryana and vide order dated 19.01.1998, remanded the matter back to the Prescribed Authority for deciding afresh the surplus land area case of the big land owner. The order dated 19.01.1998 passed by the Financial Commissioner was challenged before this Court by the big land owner through **C. W. P. No. 9447 of 1999** titled **Shib Lal Singh vs. Financial Commissioner Haryana**. After hearing both parties, a Division Bench of this Court, relying on the judgment of the Apex Court in **Loku Ram v. State of Haryana** reported as **1999 (10) PLJ 1**, quashed the order dated 19.01.1998 passed by the Financial Commissioner and remanded the matter back to him to decide the matter afresh, by passing the following order :-

> "*Mr. Mani Ram the learned counsel for the petitioner has urged that it was argued on behalf of the petitioner before the Financial Commissioner that the review of the Surplus area case after 17 years was not justified.*
>
> *We are therefore, of the opinion that in view of the facts stated, it would be appropriate that the matter be remitted to the Financial Commissioner to give a finding one way or the other on the question that has been raised by the petitioner in the present writ petition more particularly in view of the decision of the Supreme Court in Loku Ram Vs. State of*

Haryana, 1999(1) PLR 1. which too pertains to the Haryana Ceiling on Land Holidays Act, 1972. As the case in the present writ petition.

We, therefore, quash the order, Annexure P-2 and remit the case to the Financial Commissioner for afresh Decision on the question of delay.

The parties are directed to appear before Financial Commissioner on December 15, 1999."

In pursuance to the above quoted order passed by this Court, through order dated 18.12.2000 (Annexure P-4), the Financial Commissioner, Haryana decided the matter afresh, by holding as under :-

"In view of the foregoing arguments, this Court is of the view that decision of the Ld. F.C. Shri M.K. Miglani dated 19.1.1998 is perfectly maintainable and the Prescribed Authority, Bhiwani is directed for fresh decision of the case by a speaking and well reasoned order on the issue of the applicability and validity of

Adoption Deed registered on 7.12.1978 and made applicable retrospectively i.e. from 24.1.1971. If the actual date of Adoption is determined to before 24.1.1971 then the impugned decision of the Prescribed Authority, Bhiwani shall stay undisturbed. In case, the Prescribed Authority, Bhiwani, comes to the conclusion that the Adoption Deed was either operative on 7.12.1978 i.e. date of registration or it was a device by the land owner, Siba Singh to get away with the State share of surplus then land owner Siba Singh shall be entitled only to one primary unit measuring 431 K-19 Marlas and rest of the land would form a part of the State Surplus from 24.1.1971. In the meantime, land owner would observe the Status-quo qua this disputed land, the Prescribed Authority is advised to take final decision in the matter within a period of two months. Parties are directed to appear before the Prescribed Authority on 15.1.2001."

A perusal of the above order passed by the Financial Commissioner clearly indicates that the earlier order passed by the Financial Commissioner dated 19.01.1998 was reiterated and the Prescribed Authority, Bhiwani was directed to decide the surplus area case of the big land owner afresh by passing a speaking and reasoned order, particularly on the issue of applicability and validity of adoption deed dated 18.08.1978. It is the above order dated 18.12.2000 (Annexure P-4), which is challenged by the petitioner through the present writ petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Learned counsel for the petitioner lays an attack to the impugned order on the ground that the State of Haryana had challenged the order dated 07.12.1978 by filing a revision on 01.02.1995. According to the learned counsel for the petitioner, the delay was inordinate and no explanation for the same had been given by the State. It was further submitted that this Court, in its order dated 29.09.1999, while remanding the matter to the Financial Commissioner, had specifically issued directions to look into the issue of delay on the part of the State, as held by the Apex Court in **Loku Ram's** case ***(supra)***. It was submitted that in the impugned order, the issue of delay on the part of the State, has not been considered by the Financial Commissioner. On these grounds, the impugned order was sought to be set aside.

Per contra, the learned counsel appearing on behalf of the State of Haryana defended the order of the Financial Commissioner. It was submitted that the order of the Financial Commissioner is a well reasoned and speaking order and through the impugned order, the matter has been only remanded back to the Prescribed Authority, for decision after considering the facts of the case.

Before I proceed to deal with the issues raised, I deem it proper to refer to the order dated 07.12.1978 (Annexure P-1), through which the surplus area case of the big land owner namely Siba Singh was decided. The same is reproduced below :-

> *"According to verification under Rule 6(3) The Land Owner has 689-8 'C' Category land.*
>
> *Dated : 27/4 Sd/-*
> *Patwari*
>
> *According to proceedings under Rule 6(3) the applicant has 689-8 'C' Category Land. Applicant has produced copy of adoption deed dated 18.81978 regarding separate unit, which is of later date, put up for proper action.*
>
> *Sd/-*

Proceedings under Rule 6(3) has been done. Land owner be summoned for 6.12.1978.

Sd/-
Prescribed Authority,
Bhiwani.
27.11.1978

File

Sd/-
Prescribed Authority SDO(C) Bhiwani
Dated 7.12.1978"

A perusal of the above reproduced order shows that the final decision by the Prescribed Authority is non-speaking and the same is bereft of any reason. The application filed by the big land owner has been finally decided in his favour by passing the following order :-

"File."

If the above can be termed to be an order, it shocks my conscience, especially when the adoption deed dated 18.08.1978 had come to the notice of the Prescribed Authority and the same was of a date, which is later to the appointed date under the Act i.e. 24.01.1971. The adoption deed was also non existent at the time when the big land owner i.e. Siba Singh had made the declaration under Section 5 of the Act. Once an adoption deed of a later date than the appointed date was within the knowledge of the Prescribed Authority, it was the duty of the Prescribed

Authority to have considered the same before accepting it with much more seriousness than it did. Passing of speaking orders is a basic requirement on the part of any administrative, quasi-judicial or judicial authority which apparently is missing in the present case.

Further, a perusal of the order impugned by the petitioner shows that the Financial Commissioner had remanded the matter back to the Prescribed Authority for fresh decision on the basis of following submissions made on behalf of the State :-

> **"***The Ld. ADA on behalf of the State argued as under:-*
>
> ***i)*** *The present case is one that of fraud in so far as land owner Siba Singh s/o Mohar Singh of village Chhapar Rangraon made false statement before the Prescribed Authority. The land owner declared his adopted son as eight years old in 1956;*
>
> ***ii)*** *The school leaving certificate of the alleged adopted son, Harpal Singh, was produced before the Prescribed Authority and it made clear that Siba Singh was not father of Harpal Singh*

and Harpal Singh was recorded as son of Birja Singh in that certificate;

iii) *The school certificate of Harpal Singh mentions his date of birth as 7.12.1948 and he was admitted in the village school on 7.4.1959;*

iv) *Had adoption taken place at the age of eight years as claimed by Siba Singh, then Harpal Singh would have recorded as son of Siba Singh on 7.4.1959, when he joined the school;*

In view of the above narration, Siba Singh had no heir on 24.1.1971 and therefore, he abused the process of Court by giving false statement regarding adoption. When the court finds that there is the fraud then no limitation applies and the decision of Ld. Prescribed Authority, Bhiwani, constituted a fraud on the state in terms of the decision of Hon'ble Supreme Court. AIR 1996, SC 2597 para 20,21,22. The Ld. Collector, Bhiwani, made reference to Ld.

FCR for taking suo-moto action under Section 18(6) of the New Surplus Law on 28.6.1991 and the reference before Ld. FCR, took sufficient time. The Ld. ADA quoted the famous case of Loku Ram , PLJ 1999, Vol.II Page 1, according to which the Apex Court has held that reasonable limit of time is to be determined by facts and nature of every case.

It was further argued that fraud may be detected at any time and in the present case 257-L-8 Marlas of 'C' Category land could not form part of the surplus pool because of false statement of the land owner. He quoted AIR 1996, S.C. 1623, which allows condonation of delay on account of Govt. procedures and further directs the courts below to decide the matters on merits. This decision also says that the state should not be allowed to loose its cases on account of delay so that public interest does not suffer.

> *The Ld. ADA also quoted the latest decision of Hon'ble Punjab and Haryana High Court in CWP No.10656 of 1999, announced on 19.5.2000. The substance of this case is that delibrate making of wrong declaration by a land owner before surplus Authority, does not constitute limit on revision or appeal. This decision is marks at Exhibit A-1."* ***[Emphasis supplied by me.]***

In addition to the above, the State had submitted that there was evidence by way of voters' list that from the year 1993 onwards, the petitioner has been proclaiming himself to be son of his real father and not his adoptive father.

Once the matter had been remanded back to the Prescribed Authority for a fresh decision, it would not be fair on my part to comment on the above facts submitted on behalf of the State. Suffice to say that the above facts are sufficient for the matter to be scrutinized with much more seriousness than it was considered earlier.

So far as the power of the Financial Commissioner under Section 18(6) of the Act is concerned, before I deal with this issue, it would be appropriate to first refer to the provision itself. The same is reproduced below :-

> ***"Section 18 (6) –*** *Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record 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."*

A perusal of the above quoted provision shows that there is no limitation provided under the Statute for the exercise of the power of revision by the Financial Commissioner as the expression used in the Section is `at any time'. However, in **Loku Ram's** case ***(supra)***, the Apex Court, while relying on an earlier judgment in the case of **State of Gujarat v. P. Raghav** reported as **AIR 1969 Supreme Court 1297**, has interpreted the expression `at any time' as under :-

> **"5.** *No doubt, the section uses the expression 'at any time' but it cannot be indefinite. The power has to be exercised within a reasonable time while construing*

the expression 'at any time', this Court in ***State of Gujarat v. P. Raghav, AIR 1969 Supreme Court 1297,*** *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 in 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.*"

6. *Section 18(2) of the Act prescribes a period of 15 days for filing an appeal and Section 18(4) prescribes a period of 30 days for filing a revision before the Commissioner. When the two sub-sections prescribe a very short period of 15 and 30 days respectively, it will be unreasonable to*

> *hold that the Financial Commissioner has unlimited power to entertain a revision after a lapse of several years.*
>
> *7. The test prescribed by this Court in Raghav's case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable <u>on the facts of the case</u>. Nor has the High Court gone into the question and decide whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court. The order of the Financial Commissioner is also set aside. The order of the Collector dated 18.6.82 is restored. No costs."* ***[Emphasis supplied by me.]***

The above quoted portion of the judgment interprets the expression `at any time' to mean that the power to be exercised must be within a reasonable time, which would depend on the facts of the case and the nature of the order, which is sought to be revised.

In the case in hand, the adoption deed came into existence more than six years after the appointed date and after over two years of the declaration made by the big land owner under the Act. Further, it is the pleaded case of the State that from the year 1993 onwards, the petitioner has been shown to have proclaimed himself to be son of his real father and not Siba Singh. Still further, the facts, as pleaded by the State, also question the contents of the adoption deed as according to the State, the date of birth of the petitioner and the date mentioned in the adoption deed are contradictory. According to me, the above facts are sufficient to have a fresh look into the matter.

As per the judgment of the Apex Court reproduced above, the other factor, which needs to be considered while exercising the revisionary power, `at any time' is to see the nature of the order, which is sought to be revised. While finally deciding the application filed by the big land owner, the final decision was as under :-

"File."

In view of the above non-speaking order and an order which is bereft of any reason, the Financial Commissioner has rightly exercised his jurisdiction directing the Prescribed Authority to look into the matter afresh by passing a speaking and reasoned order.

The delay on the part of the State has been explained in paragraph 2 of the written arguments submitted by the State before the Financial Commissioner, Haryana. The same are reproduced below :-

> ***"2.*** *That it is also submitted that there is no unreasonable delay in filing the revision petition because the fraud played on the P.A. Bhiwani was detected by the Collector, Bhiwani and that after thorough investigation of the case, the Collector, Bhiwani made reference to the FCR, Haryana for taking up the case in suo moto u/s 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 on 28.6.1991. Thereafter, the revision petition was filed on 1.2.95 after examining the case, obtaining the relevant information and documents and necessary orders for filing revision from the Worthy FCR, Haryana. The reference remained under examination and the correspondence continued to be made between FCR's office and the Collector, Bhiwani from the date of receipt of reference from Collector, Bhiwani till the*

necessary sanction for filing revision was obtained from the Worthy FCR, Haryana. Thus, it is, submitted that the no unreasonable time has been taken in filing revision as sufficient time was consumed in obtaining information and relevant documents from Collector, Bhiwani and in taking a decision for filing revision petition against the impugned order and thereafter in obtaining necessary sanction form Worthy FCR, Haryana. Preparing drafts etc. and finally in filing revision petition."

From the above, it is clear that the issue was first detected by the Collector, Bhiwani, who, on thorough investigation of the case, made a reference to the Financial Commissioner, Haryana requesting him to exercise his jurisdiction under Section 18 (6) of the Act. Several letters were then exchanged between the office of Collector, Bhiwani and the office of Financial Commissioner, Haryana and only thereafter, a formal revision petition was filed.

Irrespective of the above, as observed earlier, after considering the facts of the case and the nature of the order dated 07.12.1978 passed by the Prescribed Authority, the revision of which was sought, I hold that the

Financial Commissioner has rightly exercised his power under Section 18 (6) of the Act.

I also find no prejudice caused to the petitioner. On a specific query posed by the Court to the counsel for the petitioner, no prejudice could be shown except that the petitioner would now have to again face the proceedings before the Prescribed Authority, Bhiwani. According to me, this too does not act to the prejudice of the petitioner because in case, the petitioner's case is found genuine, the Prescribed Authority will again reiterate its earlier order in favour of the petitioner.

In view of the above, finding no merit in the present writ petition, I order dismissal of the same, however, with a direction to the competent Authority to decide the matter, as directed by the Financial Commissioner in his order dated 18.12.2000, expeditiously, but not later than a period of two months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 25.02.2015
monika