

Sr.No.364

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-2369-1994(O&M)

Decided on: 13.01.2016

Nasib Singh and othersPetitioners

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. C.B.Goel, Advocate

with Mr. Jimmy Singla, Advocate for the petitioners.

Mr.Rajneesh Chadwal, DAG, Haryana.

**

Mahesh Grover, J

The petitioners impugn the order dated 27.10.1993 (Annexure P-3) passed by the Financial Commissioner under Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter known as the 1972 Act) exercising its suo motu power to declare an order dated 19.10.1978 by the prescribed authority as illegal.

Sh. Lakhpat Rai, the predecessor-in-interest of the present petitioners was a big land owner on 15.04.1953 under the Punjab Security of Land Tenures Act, 1953 (hereinafter known as 1953 Act). He transferred the substantial portion of the land by a “*Tamlik*” effected through the mutation no.744 dated 5th and 18th of May 1954. Four hundred and seventy two bighas of land was transferred in this manner in favour of his seven sons. While dealing with the issue of surplus area, the Collector acting as the prescribed authority included the land so

revision was filed against this order. Out of this 310 kanals and 9 marlas, 149 kanals and 14 marlas was utilized and allotted to eligible persons and possession delivered on 27.02.1970 and 06.04.1973.

Learned counsel for the petitioners contends that the remaining land after deducting 149 kanals and 14 marlas continues to be in their possession and was never utilized.

An application was made by the present petitioners on 23.06.1978 to the Collector Agrarian, Karnal under Sections 8 and 12(3) of the 1972 Act and Section 10(A) and 10(B) of the 1953 Act for exemption of surplus area measuring 158 kanals 18 marlas from the surplus land. This prayer was accepted and the prescribed authority excluded the entire surplus area of 310 kanals 9 marlas from the surplus land on the ground that the land had been transferred by the original big land owner before 30.07.1958 and could not thus vest in the government.

Learned counsel for the petitioners contends that even though the prescribed authority passed an order to the aforesaid effect by exempting the entire land i.e 310 kanals and 9 marlas he would confine his claim only to unutilized land by excluding 149 kanals and 14 marlas particularly when the respondents are in objection that the allottees of utilized land have not been impleaded as parties.

The issue that arises on a contention raised by the petitioners is regarding the belated exercise of suo motu powers under Section 18(6) of the 1972 Act particularly when no appeal was preferred within the stipulated period in terms of Section 18(1) or 18(2) mandating a period of 15 days to file an appeal with a power of condonation to the competent authority in the event of any delay. Concededly no appeal was filed against the order of the prescribed authority. Sections 18(1,2,4 and 6) of 1972 Act are extracted here below:

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 I 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 sub-section (1), may, within [fifteen days] from the date of 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) xxx

(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) xxx

(6) Notwithstanding anything contained in the foregoing sub- sections, the Financial Commissioner may suo moto 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 would clearly indicate that the power under Section 18(6) of the 1972 Act could not have been exercised by the Financial Commissioner after such an inordinate delay in view of the observations made by the Hon'ble Supreme Court in **Loku Ram v. State of Haryana and others** 1999(1) Punjab Law Journal 1 and subsequent judgments of this Court in **Mela Devi and another v. Financial Commissioner, Haryana and others** 2014(4) RCR (Civil) 310, **Chandgi Ram v. State of Haryana and others** 2013(4) RCR (Civil) 1051, **Ajmer Singh v. The State of Haryana and others** 1987 RRR 557, **State of Haryana and others v.Chandgia** 1981 PLJ 494 and **Vijay Singh v. State of Haryana etc.** 2012(2) PLJ 41.

Hon'ble Supreme Court in case titled as **Loku Ram vs. State of Haryana** 2000(1) RCR(Civil) 141 observed as below:-

“6. Section 18(2) of the Act prescribed 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 prescribed 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 on the facts of the case. Nor has the High court gone into the question and decided 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 18.6.1982 is restored. No costs.”

This view finds resonance in the subsequent judgment of this Court in case titled as **Diwan Hira Lal Kapoor vs. State of Haryana** reported as 2002(4) RCR (Civil) 28.

The respondents, on the other hand, have relied upon the judgments in **Ram Partap v. State of Haryana** 2002(4) RCR (Civil) 361 **and Ram Niwas and others v. State of Haryana** 2003(2) RCR (Civil) 403 to contend that if a fraud has been committed, the suo motu powers can be exercised at any time.

Even if this contention is accepted, the issue would be whether any fraud was actually committed or not. The land stood transferred in favour of the sons by a '*Tamliknama*' in 1954 thereby precluding its vesting in the State. All transfers prior to 1958 were protected. There was no challenge to this '*Tamliknama*' to say that it was a fraudulent exercise. Consequently, the ratio of the decisions relied upon by the respondents would not be attracted to the case.

order is set aside.

13.01.2016
mamta

(MAHESH GROVER)
JUDGE