IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP no. 4321 of 1996(O&M)
Date of Decision :13.01.2016

Smt. Parkash Kaur and others

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

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

Present : Mr. Rajinder Goyal, Advocate for the petitioners

Mr. Sandeep S Mann, DAG, Haryana

MAHESH GROVER, J.

The petitioners impugn Annexure P-2 which is an order passed by the Financial Commissioner exercising its power under Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as 'the Act').

The admitted facts are that prescribed authorities had vide its order dated 28.4.1978 allowed an additional $1/5^{th}$ unit to the deceased land owner Balwant Singh who was a big landowner.

The facts would also indicate that this $1/5^{th}$ additional unit was given to the second wife of the big landowner Balwant Singh.

The order of the prescribed authority was never challenged by the State by way of filing an appeal or revision but in 1989 by invoking the powers under Section 18(6) of the Act they urged the Financial Commissioner to pass an order to negate the order of the prescribed authority conferring the benefit of $1/5^{th}$ unit to the deceased land owner Balwant Singh who is now being represented by his successors in interest. The said petition was allowed which is now the cause of grievance to the petitioners who contends that once no appeal or revision was filed by the State, the respondents were precluded from raising the challenge to the order of the prescribed authority at such a belated stage and particularly when powers under Section 18(6) of the Act which confers a suo motu powers on the revisional authority were not exercised by it on its own but were exercised only on a revision petition being preferred by the State which itself was not maintainable.

The respondents justify the order by referring to facts that the big land owner was not entitled to this $1/5^{th}$ additional unit for his second wife.

On due consideration of the issues, I find that the impugned order passed on a revision petition being preferred under Section 18(6) was itself not maintainable. An order passed by the prescribed authority can be subjected to appeal and further revision. Section 18(1) to (6) of the Act is extracted herebelow:-

"**Section 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 sub-section (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) xxxx

(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) (------)

(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 would reveal that any person aggrieved by the order of the Collector under Section 18 (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 which order will be final.

Section 18(2) prescribes that any person aggrieved by the decision of the order of the Collector (whether acting as prescribed authority or not)made in an appeal under Section 18(1) should within 15 days from the date of decision of such an order prefer an appeal to the Commissioner in such form prescribed provided the Commissioner may entertain the appeal after expiry of 15 days if he is satisfied of the reasons preventing an appeal in time.

Section 18(6) would confer suo motu powers on the Financial Commissioner enabling him to summon 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.

Concededly no appeal was preferred by the State within a period of 15 days of the order passed by the prescribed authority. For the first time the issue was raised in 1989 and that too by filing a revision petition under Section 18(6) of the Act.

The aforesaid provisions of law when reconciled to the facts of the case would suggest that there was no authority vested in the respondents to invoke provisions under Section 18(6) having lost an opportunity to file an appeal in terms of Section 18(2) and thereafter further proceedings under Section 18(4). If the order was passed by the prescribed authority, not being the Collector the appeal would have been maintainable before the Collector but after an order is passed by the Collector acting as prescribed authority appeal would be maintainable before the Commissioner.

Reliance has been placed on several decisions some of which may be noticed herebelow:-

1. Loku Ram vs. State of Haryana 2000(1) RCR(Civil) 141
2. Diwan Hira Lal Kapoor vs. State of Haryana 2002(4) RCR (Civil) 28
3. Chandgi Ram vs. State of Haryana and others 2013 (4) RCR (Civil) 1050
4. Pritam Dass (dead) through his L.Rs and anr vs. State of Haryana and others 2014(1) PLR 175
5. Jaswant Singh vs. Punjab Government 1994 AIR (Punjab) 116
6. Mangat Ram vs. Financial Commissioner, Revenue, Haryana, Chandigarh 1994(3) PLR 521

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.
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> 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 Haryan**a reported as 2002(4) RCR (Civil) 28.

No justification has been offered by the respondents for not filing an appeal within time or even after reasonable delay by offering justification for it. The power of condonation of delay vested by a statute could possibly have been exercised if it had been invoked by the respondents but upon making no attempt in this regard it cannot wake up after more than a decade to file a petition under Section 18(6) which itself was not maintainable considering the fact that it confers suo motu powers on the revisional authority only.

Upon perusal of the above facts and the provisions of law, I am of the view that the impugned order suffers from grave illegality and deserves to be set aside.

This Court had passed an order dated 6.1.2016 which may be extracted herebelow:-

> "Learned counsel for the petitioners cites ***Loku Ram Vs. State of Haryana 200(1) RCR(Civil) 141, Diwan Hira Lal Kapoor Vs. State of Haryana 2002(4) RCR(C) 28, Chandgi Ram Vs. State of Haryana 2013(4) RCR(C) 1050, Pritam Dass through his LRs Vs. State of Haryana 2014(1) PLR 175, Jaswant Singh Vs. Punjab Govt. 1993 PLJ 684 and Mangat Ram Vs. Financial Commissioner (Revenue) 1994(3) PLR 521*** to contend that revision was filed belatedly and could not have been entertained. It is not in dispute that order of 1978 passed by the Prescribed Authority was challenged in terms of Section 18(4) of the Haryana Ceiling on Land Holdings Act, 1972 (for short `the Act') on 7.9.1989 for the first time i.e. after a lapse of 11 years. The Prescribed Authority's order results in undue unwarranted benefit to the land owner. Delay would imply that the matter was probable deliberately kept in abeyance for more than a decade. This would indicate serious lapse on the part of the respondents. Let matter regarding the officers, who dealt with the case be shown to this Court so as to affix the responsibility and ensure accountability of such erring officials.
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> List on 13.1.2016."

Therefore even if writ petition is disposed of , let exercise of affixing responsibility and the report in this regard be placed on record so that action against the erring officials whose inaction resulted in an undue benefit to the predecessor in interest of the petitioners does not go scott free.

Instant petition is allowed. Impugned order stands quashed.

January 13, 2016 (MAHESH GROVER)
rekha JUDGE