

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 960 of 2016 (O&M) in
CWP No. 10604 of 2014
Date of decision: 2.6.2016

Kitab Singh (dead) through LRs & others

.. Appellants

v.

Karam Chand (dead) through LRs and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ranvir S. Chauhan, Advocate for the appellants.

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Rajesh Bindal J.

The writ petition filed by the respondents and their predecessor-in-interest having been allowed by the learned Single Judge, the appellants have filed the present intra-court appeal.

The challenge before the learned Single Judge was to the order dated 17.5.2011 passed by Financial Commissioner, Haryana, whereby order dated 9.7.1992 passed by Sub Divisional Officer (Civil)-cum-Prescribed Authority, Meham was set aside.

Briefly, the facts of the case are that Karam Chand, predecessor-in-interest of the respondents was a big landowner and case regarding his surplus land was decided by the Collector Agrarian, Gohana vide order dated 21.11.1959, whereby his 16 standard acres of land was declared surplus. On 19.6.1990, Karam Chand filed application pleading

Haryana Ceiling on Land Holdings Act, 1972 (for short, 'the Act') and no land was surplus in the hands of Karam Chand. Karam Chand had suffered a decree in favour of his family members on 5.2.1988. He was having one unit and there were five additional units and after giving benefit of permissible area of six units, no land was surplus in the hands of Karam Chand. Vide order dated 9.7.1992, Sub Divisional Officer (Civil)-cum-Prescribed Authority, Meham held that Karam Chand was a big landowner in 1953, however, at the time of enforcement of the Act, he was having 6 units of land and no land was surplus. However, the State of Haryana preferred revision before the Financial Commissioner, Haryana after a lapse of about 13 years, which was allowed vide order dated 17.5.2011. The said order was challenged by the respondents and their predecessor-in-interest, which was allowed vide impugned order.

Heard learned counsel for the appellants and perused the paper book.

The relevant provisions of Section 18 of the Act, which deal with appeal and revision, are extracted 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 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 caused from filing the appeal in time.

(3) xx xx xx

(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) xx xx xx

(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.

(7) xx xx xx

(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.

(9) xx xx xx”

The undisputed facts on record are that 16 standard acres of land owned by Karam Chand was declared surplus vide order dated 21.11.1959. The land was never utilised and possession thereof remained with the landowner. On 19.6.1990, Karam Chand filed application pleading

that the land in question did not vest in the State Government and no land was surplus in his hands. He also suffered a decree in favour of his family members on 5.2.1988. Vide order dated 9.7.1992, Sub Divisional Officer (Civil)-cum- Prescribed Authority, Meham held that no land was surplus. Even though the order was appealable under Section 18 of the Act, but the State never preferred any appeal. Even the order passed by the Appellate Authority/Collector was revisable before the Commissioner. Notwithstanding the remedy of appeal or revision as provided in Section 18 of the Act, the Financial Commissioner had suo-motu power to call for 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. No doubt, no time limit has been fixed for exercise of suo-motu power under the Act. In the case in hand, the State preferred revision before the Financial Commissioner after a lapse of 13 years after passing of order by the Prescribed Authority, which was considered under Section 18 (6) of the Act invoking suo-motu power.

9. The legal issue involved in the present petition is as to whether suo-motu power could be exercised by the Financial Commissioner under Section 18 (6) of the Act after 13 years of passing of the order even if there is no time limit as such fixed in the Act for exercise of that power. The issue was considered by Hon'ble the Supreme Court in Santoshkumar Shivgonda Patil and others v. Balasaheb Tukaram Shevale and others, (2009) 9 SCC 352. It was a case under Maharashtra Land Revenue Code, 1966 (for short, 'the Code'). The suo-motu power was sought to be exercised in the year 1993 against the order passed by the subordinate authority in the year 1976. The suo-motu power therein could be exercised under Section 257 of the Code. While referring to the earlier judgments of Hon'ble the Supreme Court in State of Gujarat v. Patil Raghav Natha, (1969) 2 SCC 187; Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim, ((1997) 6 SCC 71 and State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363, it was opined that even if a statute does not prescribe any time limit for exercise of revisional power, it does not mean that the same can be exercised at any time. It has to be exercised within reasonable time. Things settled cannot be unsettled after lapse of long time. In that case, reasonable

time was opined to be three years. Exercise of power after 17 years was held to be abuse of process of law. Relevant paragraph 16 thereof is extracted below:

“16. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30.3.1976 is flawed and legally not correct. Pertinently, Tukaram Sakharam Shevale, during his lifetime never challenged the legality and correctness of the order of the Tahsildar, Shirol although it was passed on 30.3.1976 and he was alive up to 1990. It is not even in the case of Respondents 1 to 5 that Tukaram was not aware of the order dated 30.3.1976. There is no finding by the Sub-Divisional Officer either that the order dated 30.3.1976 was obtained fraudulently.”

The aforesaid judgment of Hon'ble the Supreme Court was followed by a Division Bench of this court in State of Haryana and others v. Chandgi Ram, 2014(1) PLJ 406, where the order passed invoking revisional jurisdiction after 11 years was held to be bad.

The issue was subsequently considered by this court in

suo-motu power was sought to be exercised after 11 years of passing of the order. It was opined that exercise of suo-motu power cannot be left at the whims and sweet-will of the revisional authority whenever and wherever it wants to do so. To similar effect are the judgments of this court in CWP No. 832 of 1993—Puran Singh v. State of Haryana, decided on 24.7.2014 and LPA No. 1214 of 2014—Latoor Singh and others v. The State of Haryana and another, decided on 9.5.2016.

For the reasons mentioned above, in the present case suo-motu power having been exercised by the Financial Commissioner after 13 years of passing of order by the Prescribed Authority, the same cannot be said to be reasonable and legally sustainable. While concurring with the views expressed by the learned Single Judge, the appeal is, accordingly, dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

2.6.2016
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(Refer to Reporter)