NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 2374 of 2008

Chandrika Prasad S/o Bihari Sahu Gatapar, Teh. Kurud, Distt. Dhamtari

---- Petitioner

Versus

1. Jamunabai w/o Sudarshan Gond, Tarra, RIC Bhothali, Teh. & Distt.Dhamtari

2. Sukhwaro Bai w/o Birju Gond, Gatapar, PC No.33, RIC Bhothali, Teh. Kurud, Distt.Dhamtari (CG)

3. State of Chhattisgarh, By Collector, Dhamtari

---- Respondents

For Petitioner	:	Mr.Raja Sharma, Advocate
For Res.No.1 & 2	:	None present
For Respondent No.3	:	Mr.Dhiraj Wankhede, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

08/02/2017

1. This writ petition is directed against the order dated 17.1.2008 (Annexure P/1) passed by the Board of Revenue in Revenue Case No.1022/A-23/2002-03 by which the Board of Revenue has set aside the order of the Collector, Raipur dated 30.7.1996 affirming the order of the Sub Divisional Officer, Dhamtari dated 6.1.1995 passed in favour of the petitioner (purchaser).

2. The essential facts which are necessary for disposal of this writ petition are as under:-

3.1 That, the suit land was originally held by Smt.Amrautin Bai. She was granted permission by the Collector to sale the land in favour of the petitioner by order dated 7.1.1972 and sale deed was executed in favour of the petitioner on 15.01.1972. Validity of transaction was also inquired into by 20 point scrutiny committee constituted by the State Government on 21.4.1982 and it was held that transfer is valid and bonafide. On the application filed by an aboriginal tribe i.e. daughters of Amrautin Bai, the Sub Divisional Officer by order dated 15.2.1989 directed to revert the land in favour of the original owner, which was affirmed in appeal by the Additional Collector by order dated 27.11.1991. In the revision filed by the petitioner, the Additional Commissioner by order dated 31.3.1994 remanded the matter to the Sub Divisional Officer for hearing afresh. Thereafter, the Sub-Divisional Officer, by order dated 6.1.1995, held the transaction to be bonafide, which was affirmed by the Collector, Raipur by order dated 30.7.96 in appeal, against which, appeal was preferred by respondent No.1 herein before the Board of Revenue and the Board of Revenue by its order dated 17.1.2008 converted the appeal into revision and allowed the revision directing the Additional Collector to exercise the powers to review the order granting permission to sale the land dated 7.1.1972. The petitioner, who is purchaser of the subject land, has filed this writ petition under Article 227 of the Constitution of India.

3. Mr.Raja Sharma, learned counsel appearing for the petitioner, would submit that respondents-Jamunabai and Sukhwaro Bai never challenged the legality, validity and correctness of order granting sale dated 7.1.1972 in favour of the petitioner. The Board of Revenue in exercise of *suo moto* revisional jurisdiction could not have granted permission to review after lapse of 36 years, which is wholly unsustainable and bad in law.

4. Despite service of notice, no one has appeared on behalf of respondents No.1 and 2.

5. The proceedings reached to the Board of Revenue at the instance of Jamuna Bai challenging the order of the Collector dated 30.7.1996 by which transaction is held to be bonafide under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as “Code'). Order dated 7.1.1972 by which the Collector granted permission to Amrautin to sale the subject land in favour of the petitioner has attained finality. It was never challenged by any of the party to lis.

6. The question for consideration would be whether the Board of Revenue is justified in directing the Collector to exercise *suo moto* revisional jurisdiction under Section 51 of the Code against the order granting permission to sale the subject land to the purchaser dated 7.1.1972 under Section 165 (6) of the Code.

7. It is well settled law that the *suo-motu* revisional jurisdiction must be exercised within the reasonable time, if no period of limitation is prescribed for exercise of revisional power in the statute governing such jurisdiction. What should be the reasonable period should be judged with reference to nature of the statute itself and rights and liabilities thereunder. The Supreme Court in the matter of **State of Punjab v. Bhatinda District Co-operative Milk Producers Union Limited**[1], held that reasonable period of limitation may be borne out from the statutory scheme of the Act.

8. Section 50 of the Code provides as under:-

> "**50. Revision**. - (1) The Board or the Commissioner or the [Settlement Commissioner or the Collector or the Settlement Officer] may at any time on its/his motion or on the application made by any party for the purpose of satisfying itself/himself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for, and examine the record of any case pending before, or disposed of by such officer, and may pass such order in reference thereto as it/he thinks fit:

1 A.I.R. 2007 SC (Supp) 473

Provided that-

[(i) no application for revision shall be entertained-

(a) against an order appealable under this Code;

(b) against an order of the Settlement Commissioner under Section 210;

(c) against an order passed in revision by the Commissioner of the Settlement Commissioner in respect of cases under S. 170-B, nor shall any such order be revised by the Board on its own motion];

(ii) no such application shall be entertained unless presented within sixty days to the Commissioner or [Settlement Commissioner or the Collector or the Settlement Officer] as the case may be, or within ninety days to the Board of Revenue from the date of the order and in computing the period aforesaid, time requisite for obtaining a copy of the said order shall be excluded;

(iii) no order shall be varied or reversed in revision unless notice has been served on the parties interested and opportunity given to them of being heard.

(2) Notwithstanding anything contained in sub-section (1) –

(i) where proceedings in respect of any case have been commenced by the Board under sub-section (1) no action shall be taken by the Commissioner or the [Settlement Commissioner or the Collector or the Settlement Officer] in respect thereof;

[(ii) where proceedings in respect of any case have been commenced by the Commissioner or the Settlement Commissioner under sub-section (1), no action shall be taken by the Collector or the Settlement Officer in respect thereof;]

[(iii) where proceedings in respect of any such case have been commenced by the Commissioner, Settlement Commissioner, Collector or Settlement Officer under sub-section (1), the Board may either refrain from taking any action under this Section in respect of such case until the final disposal of such proceedings by the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer, as the case may be, or may withdraw such proceedings and pass such order as it may deem fit;]

[(iv) where proceedings in respect of any such case have been commenced by the Collector or the Settlement Officer under sub-section (1), the Commissioner or the Settlement Commissioner may either refrain from taking any action under this section in respect of such case until the final disposal of such proceedings by the Collector or the Settlement Officer, as the case may be, or may withdraw such proceedings and pass such order as sit may deem fit;]

Explanation.- For the purpose of this section all Revenue Officers shall be deemed to be subordinate to the Board."

9. No period of limitation has been prescribed for taking *suo-motu* action under Section 50 of the Code. The Chhattisgarh Land Revenue Code, 1959 is a replica and contains paramateria provisions as that of M.P. Land Revenue Code, 1959. The Full Bench of Madhya Pradesh High Court in the matter of **Ranveer Singh Vs. State of Madhya Pradesh**[2], while considering the question of reasonable period for exercise of *suo-motu* revisional jurisdiction under Section 50 of the Code, answered the question holding that the *suo-motu* revisional jurisdiction must be exercised within 180 days from the date of knowledge of illegality by observing as under:-

"**38.**..............The suo motu powers can be exercised by the revisional authority envisaged under Section 50 of the Code within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings committed by any revenue officer subordinate to it even if the immovable property is Government land or having some public interest. What should be the irreparable loss, it should be considered on the facts and

2 A.I.R. 2011 M.P. 27

> circumstances of each case as no definite yardstick in that regard can be drawn.
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> We have already mentioned hereinabove certain instances which can be said to be the "irreparable loss."

10. Quite recently, in the matter of **Collector Vs. D. Narsingh Rao**[3] Their Lordships of the Supreme Court have clearly held that where no time limit is prescribed in the statute for the exercise of *suo-motu* power, it cannot be exercised after long lapse of time as it would be arbitrary and opposed to the concept of rule of law by observing as under:-

> "**16**. .... By the impugned notice dated 31.12.2004 the suo motu revision power under Section 166-B referred to above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.
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> **17**. In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law."

In the later part of the judgement Their Lordships held that even in cases where the order sought to be revised are fraudulent, the exercise of power must be within the reasonable period of discovery of fraud and held as under in paragraph

3 (2015) 3 SCC 695

31:-

> “**31**. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanaltion for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.”

11. In the light of the aforesaid judgments i.e. **Bhatinda District Co-op. Milk P. Union Ltd** (supra), **D. Narsingh Rao** (supra) and applying the principles of law, if the facts of the present care are examined, it is quite apparent that the Collector has granted permission to an aboriginal tribe to sale her land to the petitioner by order dated 7.1.1972 and the Board of Revenue in the revision while examining the legality and validity of return of land between the petitioner and respondents No.1 and 2 directed the Collector to exercise *suo-motu* revisional jurisdiction and as such, the Board of Revenue was not required to examine the legality and validity of order dated 7.1.1972 as there was no lis before it and even otherwise the *suo-motu* revisional jurisdiction cannot be exercised after a period of 36 years as the said period cannot be said to be reasonable time for exercise of *suo-motu* revisional jurisdiction in the light of decision rendered by the High Court of Madhya Pradesh in the case of **Ranveer Singh** (supra) and in light of the principles laid down by the Supreme Court in **D. Narsingh Rao** (supra), the direction/order of the Board of Revenue to the Collector to exercise to *suo-motu* revisional jurisdiction is clearly arbitrary and opposed to the concept of rule of law. The order impugned is without jurisdiction and without authority of law.

12. For the foregoing reasons, the writ petition is allowed and in consequence, the impugned order dated 17.1.2008 (Annexure P/1) passed by Board of Revenue is hereby quashed and that of the orders of the Sub Divisional Officer, Dhamtari dated 6.1.1995 and Collector, Raipur dated 30.7.96 are hereby restored leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-