IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9578 of 1996
Date of decision : 26.04.2017

Kuldip Kaur

...Petitioner

Versus

Sadar Anjuman Ahmedian and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. Sarabjit Singh, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

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AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order dated 14.05.1993, whereby the Commissioner had suo motu taken the powers after gap of 13 years in setting aside the auction conducted in favour of the petitioner.

Mr. Saggar, learned Senior Counsel assisted by Mr. Sarabjit Singh, Advocate for the petitioner submits that petitioner was transferred the property bearing No.528(p) being Punjab Package Deals Property in open auction held on 31.07.1980 for sum of Rs.3400/-. The conveyance deed/sale deed was duly issued by the Tehsildar-cum-Managing Officer under the Package Deals Properties (Disposal) Act, 1976 and sale certificate dated 13.10.1980 was also issued.

Respondent No.1 namely Sadar Anjuman Ahmedian Qadian was fighting with the petitioner in litigation with regard to the plot No.528 which was ultimately decided in favour of the petitioner on 30.09.1992. A copy of the order dated 30.09.1992 passed by Chief Settlement Commissioner is Annexure P-3.

Respondent(s) in order to grab the property had been successful in getting the suo motu notice issued on behalf of Financial Commissioner Revenue in challenging the aforementioned aspect.

He submits that suo motu action after gap of 13 years cannot taken into consideration. In support of his contention, he has relied upon ratio decidendi culled out by Hon'ble Supreme Court in *Loku Ram Vs. State of Haryana, 2000(1) RCR (Civil) 141* and reiterated by this Court in *Latoor Singh and others Vs. State of Haryana and another, 2016(4) RCR (Civil) 16.*.

Respondent No.1 has already adopted written statement filed by the State.

Learned counsel appearing on behalf of respondent Nos.2 and 3 submits that property bearing No.B-VIII-528(P) measuring 41-3 square yards was considered as hidden property and Naib Tehsildar, Sales-Cum-Managing Officer, Ludhiana sold in open auction for a consideration of Rs.3400/-. The factum of confirmation of the sale deed was not denied. However, submitted that respondent No.3, accepted the suo motu reference by setting aside the auction and refund the amount deposited by the petitioner vide order dated 14.05.1993.

The petitioner has filed petition under Section 33 of the

Displaced Person (Compensation and Rehabilitation) Act, 1954, as it was invogue against the said order before the Financial Commissioner who dismissed the same vide order dated 09.04.1996. The Financial Commissioner, under Section 24 of the Act, 1954 can take the suo motu cognizance for cancelling the order, therefore, the order under challenge is perfectly, legal and justified.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Saggar, Sr. Advocate, for, it is settled law that suo motu reference can be taken within reasonable time but not within unreasonable time. It is conceded position on record that auction was held. Such an Act has already been held to be nonest and without jurisdiction in view of ratio decidendi culled out in para Nos.9 to 12 of Loku Ram's case (Supra), which reads thus:-

> *““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 11 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 Santosh Kumar Shivgonda Patil and others' case (supra). 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(6) Recent Apex Judgments (R.A.J.) 158 : (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 30.3.19765 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."

10. 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*** *(supra), where the order passed invoking revisional jurisdiction after 11 years was held to be bad.*

11. The issue was subsequently considered by this court in ***Chandgi Ram v. State of Haryana and others****, where the suomotu 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 is the judgment of this court in Puran Singh's case (supra).*

12. For the reasons mentioned above, in the present case suomotu power having been exercised by the Financial Commissioner after 11 years of passing of order by the Prescribed Authority, the same cannot be said to be reasonable and legally sustainable. The learned Single Judge had gone wrong on the theory of prejudice, which simply cannot be applied and an order, which cannot otherwise be legally sustained, be upheld merely on that ground. The things which stood settled way back in the year 1981 could not be unsettled. No third party interest has stepped in, as admittedly the land though declared surplus initially was not allotted to any one and the appellants even *remained in possession throughout."*

Thus, in my view, exercise of power under Section 24 of 1954 Act as was invogue at relevant point of time, cannot be exercised in the manner and mode indicated above, particularly the fact that with regard to the entitlement of the plot in favour of the petitioner in a litigation between respondent No.1 had attained finality in pursuance to the order dated 30.09.1992 (Annexure P-3).

Resultantly, Orders (Annexures P-1 and P-2) are hereby set aside.

Accordingly, present writ petition stands allowed.

26.04.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**