IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.11113 of 2015
Date of decision : 14.03.2017

Ganesh Chander and others

...Petitioners

Versus

State of Punjab and another

...Respondents

2. CWP No.11786 of 2015
Date of decision : 14.03.2017

Mani Ram and another

...Petitioners

Versus

State of Punjab and another

...Respondents

3. CWP No.11836 of 2015
Date of decision : 14.03.2017

Bagirath and others

...Petitioners

Versus

State of Punjab and others

...Respondents

4. CWP No.15784 of 2015
Date of decision : 14.03.2017

Pala Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. S.P.S. Tinna, Advocate for the petitioners
(In CWP Nos.11113, 11786 and 15784 of 2015)

Mr. Surinder Kumar Bajaj, Advocate and
Mr. Vikram Bajaj, Advocate for the petitioner
(In CWP No.11836 of 2015)

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. Sandeep Punchhi, Advocate for respondent-Raj Kanta.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned four writ petitions.

Controversy involved in the present case is whether the Financial Commissioner while dismissing the case of tenant Sunder Ram who had claimed the right on the premise that his father was tenant and general instructions while exercising the powers of suo motu can be taken or not.

Learned counsels appearing on behalf of petitioner(s) submits that case of the petitioner for purchase of the land on the basis of the land having been declared surplus was finalized way back in the year 1989 i.e. on 10.11.1989 (Annexure P-1) (Colly). The aforementioned order was assailed by the landlord before the Collector, Commissioner and Financial Commissioner but did not yield any result, in essence, purchase application was finalized. Once Sunder Ram had taken up the matter in 1989 claiming the rights of tenancy before the Financial Commissioner, in view of fact that the opening line of the impugned order reveals that he had purchased the land by virtue of sale deed, therefore, his status would not be of tenant. Moreover, the general direction as contained in the impugned order for review of the case of the petitioner cannot be taken in view of ratio decidendi culled out by Hon'ble Supreme Court in *Loku Ram Vs. State of Haryana, 2000(1) RCR (Civil) 141*, and Division Bench of this Court in *Latoor Singh and others Vs. State of Haryana and another, 2016(4) RCR (Civil) 16.*

Mr. Sandeep Punchhi, learned counsel appearing on behalf of respondent No.2 submits that in 1985, area was declared surplus after leaving 30 standard acres as permissible area of the landowners and land measuring 288 standard acre 11/4 units was left as tenants permissible area. The Financial Commissioner has reopened the matter keeping in view his powers containing in Section 18 of Punjab Land Reforms Act which are para materia to the provision of Section 84 of the Punjab Tenancy Act. The order dated 28.04.1999 of Financial Commissioner was not challenged by anybody and now after 16 years when the said order is implemented, the petitioners have challenged the same by way of filing the present petition which is barred by delay and latches.

Learned counsel for the State submits that order under challenge is perfectly, legal and justified. The basis for reviewing as indicated in the order cannot be entertain in writ jurisdiction, thus, prays for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

The ratio decidendi culled out in Loku Ram Vs. State of Haryana, 2000(1) RCR (Civil) 141 reiterated by Division Bench of this Court in Latoor Singh's (Supra) in para Nos.9 to 12, has laid down in following manner:-

> *"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) 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 circumstnces 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."*

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.*
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> *11. The issue was subsequently considered by this court in Chandgi Ram v. State of Haryana and others, where the 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 is the judgment of this court in Puran Singh's case (supra).*
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> *12. For the reasons mentioned above, in the present case suo-motu 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."*

Perusal of findings leaves no manner of doubt, that the Financial Commissioner cannot take suo motu powers belatedly and issue general direction and that too at the back of the petitioner, once the purchase application of the petitioner had attained finality vide Annexure P-1 (Colly), thus, order under challenge qua review/reconsidering the matter is hereby set aside/expunged.

There is no force in the submission of Mr. Punchhi, with regard to the aforementioned fact as right which has already been crystallized could not have been agitated at the instance of the respondents particularly suo motu powers of Financial Commissioner.

With the aforementioned observations, present writ petitions stand allowed.

14.03.2017 **(AMIT RAWAL)**
pawan **JUDGE**

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

Whether reportable:- **Yes/No**