IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21665 of 2011
Date of decision : 10.03.2017

Raj Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Ms. Anita Sharma, Advocate for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

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AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the impugned order dated 09.08.2011 (Annexure P-2), wherein State had challenged the order dated 21.11.1994 (Annexure P-1), whereby land at the hands of the petitioners already declared surplus in the year 1959 has been held to be of permissible area, in essence, exempted from surplus pool.

Ms. Anita Sharma, learned counsel appearing on behalf of petitioners submits that revision petition after delay of 10/11 years is not maintainable. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court by *Loku Ram Vs. State of Haryana, 2000(1) RCR (Civil) 141* and *Latoor Singh and others, Vs. State of Haryana and another, 2016(4) RCR (Civil) 16*.

Per Contra, Mr. Sandeep Singh Mann, Sr. DAG, Haryana, submits that by virtue of Sub-Section 3 of Section 12 of the Haryana Ceiling and Land Holding Act, 1972, land divested from the ownership of the petitioners i.e. land deemed to have vest in the State and the same has been utilized. No doubt, he did not against the factum of possession.

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

Law of taking suo motu cognizance is no longer res integra. No explanation has come forth in challenging the order after 11 years without any application for condonation of delay. Even the impugned order apparently appears to have taken the suo motu cognizance which could not be taken after 10 years. Aforementioned view of mine is reiterated from ratio decidendi culled out in Loku Ram and Latoor's case. Relevant para 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) 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 30.3.19765 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 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).

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."

Resultantly, impugned order is not confirming to the requisite provisions and is hereby set aside.

Resultantly, present writ petition is allowed.

10.03.2017 **(AMIT RAWAL)**
pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No