201

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13368-1994 (O&M)
Date of decision: 28.11.2024

DALJEET SINGH AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND ORS. ...RESPONDENTS

<u>CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL</u>

Present: Mr. Vishal Aggarwal, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. AG, Haryana.

****

<u>JAGMOHAN BANSAL ,J. (ORAL)</u>

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of order dated 06.06.1994 (Annexure P-6) whereby Financial Commissioner, Haryana has revised order dated 08.03.1978 (Annexure P-4/T) passed by Collector (Agrarian)-cum-Prescribed Authority, Panipat constituted under the Haryana Ceiling on Land Holdings Act, 1972 (for short '1972 Act').

2. The Collector, Panipat with respect to land owned by the father of petitioner No.1 in terms of 1972 Act passed order dated 08.03.1978 (Annexure P-4/T). The order dated 08.03.1978 reads as:

> *" Application of Sh. Dharam Singh S/o Lijja Ram, Village Ugra Kheri, Tehsil Panipat.*
> *According to the Records and the Chhant Patwari (Agrarian), the total area of this landowner comes to 663 Kanals and 4 Marlas. The applicant has transferred 327 Kanals and 4 Marlas of land after 24.1.71 upto 23.12.72 in favour of his two daughters namely Smt. Dolly and Usha vide the Registered*

Sale-Deed No.640 dated 8.5.1972. Vide Mutation No.270 dated 27.1.76, Smt. Usha has sold 69 Kanals and 1 Marla of land in favour of Dharam Pal etc. and vide Mutation No.271, has sold 54 Kanals and 11 Marlas of land to Dharam Pal etc; Vide Mutation No.272, has sold 54 Kanals 11 Marlas of land in favour of Karam Chand etc. and vide Mutation No.273, has sold 109 Kanals and 1 Marla of land to Karam Chand etc. In other words, she had sold away a total of 327 Kanals and 4 Marlas of land against cash sale consideration. The vendees are of different castes and they are not related to the vendor in any manner. The principle of bonafide sale is, therefore, applicable to the sale of this land. The applicant has not shown his son as major in his affidavit and as such he is entitled to one unit. As per the provisions of the Haryana Ceiling on Land Holdings Act (H.I.C. Act), he can retain 431 Kanals and 0 Marla of land as his permissible area of one unit. As the applicant has only 336 Kanals and 0 Marla of 'C' category area, this Act does not apply to him. Report submitted.

Sd/-
Jit Singh, Kanungo
8.3.78."

3. The State of Haryana filed petition under Section 18 (6) of 1972 Act, before Financial Commissioner seeking exercise of *suo motu* power to set aside order dated 08.03.1978 (Annexure P-4/T) passed by Collector, Panipat. The Financial Commissioner vide impugned order dated 06.06.1994 (Annexure P-6) allowed revision petition filed by the State and set aside order passed by the Collector, Panipat. The matter was remanded back to Collector for the limited purpose of allowing the legal heirs to choose the permissible area bearing in mind provisions of Section 9 (3) of 1972 Act. The Collector was further directed to take steps to utilize the surplus area according to law.

4. Mr. Vishal Aggarwal, Advocate for the petitioners submit that

revision petition was filed by the State of Haryana under Section 18 (6) of 1972 Act before the Financial Commissioner. The Collector passed order on 08.03.1978 whereas application before Financial Commissioner was filed in 1991 and it was allowed on 06.06.1994 (Annexure P-6) meaning thereby, the impugned order was passed after 16 years from the date of order passed by the Collector, Panipat.The Financial Commissioner could not pass order after such a long period, thus, said order is bad in the eye of law.

In support of his contention, he relies upon judgment of this Court in ***CWP-7074-1991*** titled as ***'Smt. Dayawanti and others Versus The State of Haryana and others' 2011 SCC OnLine P&H 7669,*** decided on 11.07.2011 and in ***CWP-14539-1990*** titled as ***'Mahabir Parshad Ganeriwala Versus The State of Haryana and others', 2013 SCC OnLine P&H 16431,*** decided on 19.08.2013.

5. Per contra, Mr. Raman Sharma, Addl. AG, Haryana submits that there was collusive decree on the part of the petitioners and their parents. It is a settled proposition of law that fraud vitiates everything. No limitation period to exercise power under Section 18 (6) of 1972 Act has been prescribed, thus, Financial Commissioner was quite competent to exercise its power even after the expiry of 15 years from the date of passing of impugned order.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from the record is that the Collector, Panipat passed order with respect to land of petitioners on 08.03.1978. The State Government filed revision in 1991 and it was allowed by Financial Commissioner on 06.06.1994 (Annexure P-6). No limitation period to revise order passed by Revenue Authorities has been prescribed under Section 18 (6) of 1972 Act.

8. The entire dispute hangs around reading of Section 18 of 1972 Act

which is reproduced as 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 the 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 cause from filing the appeal in time.*
>
> *(3) x x x x x*
>
> *(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) x x x x x*
>
> *(6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the 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.*
>
> *(7) No appeal under sub-section (1) or sub-section (2) or*

revision under sub-section(4) shall be entertained unless the appellant or the petitioner, as the case may be, has deposited a sum equal to thirty times a land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority;

(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) x x x x x

9. From the perusal of above quoted Section, it is evident that the limitation period of 15 days has been prescribed to file appeal and 30 days to file revision before Commissioner. No limitation period has been prescribed for exercising *suo motu* power of revision. Under sub-section (4), the power of revision is vested in Commissioner whereas *suo motu* power of revision is vested in Financial Commissioner under sub-section (6). Under sub-section (4), power is exercised on the application of aggrieved person whereas under sub- section (6) power is exercised *suo motu*. It is a settled proposition of law that *suo motu* power of revision can also be exercised on the application of aggrieved person. Under Section 18(4) of 1972 Act, a revision lies to Commissioner, if an order is passed by the Collector whereas Financial Commissioner can revise order of any authority subordinate to him meaning thereby, he can revise orders even of the Commissioner.

10. In the instant case, the order was passed by Collector, thus, revision was maintainable before Commissioner, however, respondent preferred to file revision before Financial Commissioner and only intent was to avoid the

restriction of limitation period. Revision before Commissioner could not be filed beyond 30 days, thus, respondent opted to file revision before Financial Commissioner. The revision before Commissioner could very well be filed by the respondent and it is doubtful whether revision before Financial Commissioner could be filed by any aggrieved person when there is specific provision for revision by the aggrieved person. Without adverting to said issue, matter is adjudicated on the basis of limitation.

11. There is no limitation period prescribed under sub-section (6), however, it is trite law that power of revision cannot be exercised at any point of time. In the absence of specific period of limitation, the power is required to be exercised within reasonable period. It is duty of the Court to determine reasonable period of limitation which depends upon facts and circumstances of each case.

A three Judge Bench of Supreme Court in ***'M/s S.B. Gurbaksh Singh Vs. Union of India and other' (1976) 2 SCC 181*** while adverting to power of Revisionary Authority to revise the order of Assistant Commissioner, has held that where no time limit has been prescribed to excise *suo motu* power of revision, the Revisionary Authority is bound to initiate the proceeding within a reasonable time. So, any unreasonable delay in exercising may affect its validity. What is reasonable time will depend upon the facts and circumstances of each case. A similar view has been taken by Supreme Court in the case of ***'State of Punjab and others Vs. Bhathinda District Cooperative Milk Producers Union Ltd.' (2007) 11 SCC 363***.

In ***'Sharda Devi Vs. State of Bihar and another', (2003) 3 SCC 128,*** Supreme Court while adverting to Sections 18 and 30 of Land Acquisition Act, 1894 (for short '1894 Act') has held that no period of limitation has been prescribed under Section 30 of 1894 Act and where no period of limitation for exercise of any statutory power is prescribed, the power should be exercised within a reasonable period which depends upon the facts and circumstances of each case. The relevant extracts of judgment are reproduced as below:

> "*By reference to limitation*
>
> *Under Section 18 the written application requiring the matter to be referred by the Collector for the determination of the court shall be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six weeks of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. There is no such limitation prescribed under Section 30 of the Act. The Collector may at any time, not bound by the period of limitation, exercise his power to make the reference. The expression "the person present or represented" before the Collector at the time when he made his award would include within its meaning a person who shall be deemed to be present or represented before the Collector at the time when the award is made. No one can extend the period of limitation by taking advantage of his own wrong. Though no limitation is provided for making a reference under Section 30 of the Act, needless to say, where no period of limitation for exercise of any statutory power is prescribed, the power can nevertheless be exercised only within a reasonable period; what is a reasonable period in a given case shall depend on the facts and circumstances of each case.*"

12. A Co-ordinate Bench of this Court in ***Mahabir Parshad Ganeriwala's case (supra)*** while interpreting the provision in question has clearly held that power has to be exercised within reasonable time. The Court has taken cue from sub-sections (2) and (4) of Section 18 of 1972 Act. The relevant extracts of the judgment are reproduced as below:

> "*On this basis a view is possible that for limitation purposes the period of limitation provided in Section 18 of the Act may have to be kept in view. Of course the Full Bench*

has also held that non fixing of upper limit for exercising suo motu powers, will not confer unfettered rights to the revisional authority to exercise this power at any moment of time accordingly to his whims.

From the catena of decisions referred to herein above, it can be noticed that law is fairly well settled that the suo motu powers cannot be exercised by the revisional authority after the expiry of several years. It has been held in almost every decision that such powers should be exercised within a reasonable period and in most of decisions, it is held that it should be exercised within a few months. The view, thus, is clear that suo motu powers cannot be left at the whims and sweet will of the revisional authority to be exercised whenever and wherever it wants to do so.

There is no plea raised before me on behalf of the respondents to explain the delay on the part of revisional authority to invoke its suo motu powers. From the perusal of provisions of the Act as well as the law settled by the Hon'ble Supreme Court, impugned order (Annexure P/2) cannot be sustained as order does not disclose any reason to hold that period of more than 4 years is reasonable on the facts of the case nor it discloses that the power has been exercised on the facts and circumstances of the case within a reasonable period.

For the reasons afore-mentioned, writ petition is allowed. Impugned order passed by Financial Commissioner (Annexure P/2) is hereby set aside and order of Prescribed Authority (Annexure P/1) is restored. No order as to costs.

13. In the case in hand, order by Collector was passed on 08.03.1978 (Annexure P-4/T) whereas impugned order was passed on 06.06.1994 (Annexure P-6) i.e. after the expiry of 16 years from the date of order under revision. The period of 16 years in no manner can be called as reasonable period, thus, impugned order was passed beyond reasonable period of limitation. Therefore, the impugned order deserves to be set aside and accordingly set aside.

14. The petition is hereby allowed.

15. Pending misc. application(s), if any, shall also stand disposed of.

28.11.2024 **(JAGMOHAN BANSAL)**
renubala **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No