



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-16439-1994

Date of Decision: 27.02.2026

SIS RAM & ORS.

...Petitioners

Vs.

STATE OF HARYANA AND ORS.

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Brahmjot Singh Nahar, Advocate and
Mr. Jitender Dhanda, Advocate for the petitioners

Mr. Akshit Pathania, Assistant Advocate General, Haryana

Mr. R.S. Mamli, Advocate
for respondents No.3 to 23

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 08.08.1994 passed by Financial Commissioner, Haryana whereby revision petition filed by the respondent-State was allowed.

2. The prescribed authority in terms of provision of Punjab Security of Land Tenures Act, 1953 (for short '1953 Act') declared Sis Ram (Petitioner No.1) big landowner and his 855 Kanals land as surplus vide order dated 16.09.1968. Shadi Ram, father of Sis Ram transferred 515 Bighas 9 Biswas land in favour of his daughter-in-law, namely Smt. Dhai (Petitioner No.2). The Collector (Agrarian) vide order dated 12.02.1960 declared her as small landowner as her land after conversion was less than 30 standard acres. No appeal, review or revision was filed against said order. Petitioner No.2 - Smt. Dhai transferred 305 Kanals 6 Marlas land by way of gift to her daughter-in-law Smt. Sunehri Devi.

Daughters of Smt. Dhai who are petitioners No.4 to 8 as well as legal heirs of Smt. Dhai filed Civil Suit seeking declaration that they are owners in possession in equal share of land measuring 210 Kanals 18 Marlas. The suit was decreed on 23.05.1972. Petitioner No.1- Sis Ram filed declaration under Section 9 of Haryana Ceiling on Land Holdings Act, 1972 (for short '1972 Act') read with Rule 8 of 1973 Rules. The prescribed authority accepted his declaration and held transfer to his daughters as bona fide. It was further held that there is no surplus land in his hand. Under Secretary filed revision petition dated 09.12.1988 under Section 18(6) of 1972 Act before Financial Commissioner with a prayer to work out surplus area in the hands of petitioners and set aside order dated 07.03.1979. The revision petition was allowed vide order dated 08.08.1994.

3. Learned counsel for the petitioners submits that impugned order was passed without jurisdiction and it amounts to colourable exercise of power. The Revenue Authorities preferred revision before Financial Commissioner though under Section 18(6) of 1972 Act, however, it was principally under Section 18(5). Section 18(5) ceased to exist after 1976, thus, Section 18(5) could not be invoked. In any case, petition under Section 18(6) was filed after 9 years from the date of impugned order, thus, it was badly hit by doctrine of delay and laches. The order in the case of petitioner No.2-Smt. Dhai was passed in 1960 under 1953 Act. Said order was not under review/revision still while considering revision against order dated 07.03.1979 passed by Prescribed Authority, the Financial Commissioner indirectly set aside order dated 12.02.1960 passed by Collector whereby land of Smt. Dhai was declared within permissible limit. The respondent nowhere in the petition or

impugned order have given explanation for delay. The authorities could avail remedy of review or appeal, however, no such remedy was availed and after the expiry of 09 years remedy of revision was availed. The land in question was transferred in favour of daughter-in-law and daughters of Sis Ram. There was Civil Court decree in favour of petitioner's daughters and daughter-in-law. The revisionary authority without issuing notice to affected parties declared decree of Civil Court invalid and passed impugned orders. No order could be passed against daughters or daughter-in-law without granting opportunity of hearing to them. The respondent has further revised order passed under old Act while exercising power under new Act.

4. *Per contra*, learned counsel for respondents submit that land of Sis Ram was declared surplus in September' 1968. He filed declaration in terms of provisions of 1972 Act. He sought permission to select permissible area. He never challenged order of prescribed authority whereby his land was declared surplus. He duly accepted order passed in September' 1968. Despite said fact, he moved an application before Prescribed Authority which vide order dated 07.03.1979 excluded land transferred by him in favour of his family members. The land was transferred after appointed day. The land could not be excluded in terms of Section 8 of 1972 Act. As per provisions of 1972 Act, family includes wife and minor children. Smt. Dhai was wife of Sis Ram, thus, they constituted one unit. Their land was required to be jointly considered for the purpose of determination of surplus land under 1972 Act. The order dated 07.03.1979 passed by prescribed authority was patently illegal in the eye of law. It was more or less fraudulent order, thus, Financial

Commissioner while exercising its power under Section 18(6) revised said order. The order passed in 1960 in favour of Smt. Dhai lost its significance after coming into force 1972 Act because as per new Act wife became part of family and they jointly constituted one unit. The transfer, if any, made after 1958 was liable to be ignored. The petitioner was heard by Financial Commissioner, thus, there was no need to grant opportunity of hearing to daughters or daughter-in-law. The reasonable period of limitation was not applicable for revision under Section 18(6) because it was a case of fraud on the part of petitioners.

5. Heard the arguments and perused the record.

6. The conceded position emerging from record is that Smt. Dhai received 515 bighas and 9 biswas land from her father-in-law i.e. Shadi Lal. The land was transferred in August' 1952 i.e. prior to sacrosanct date 30.07.1958. The land was not virtually owned by Smt. Dhai. It was land of her father-in-law, however, she got by way of gift. The respondent-Collector vide order dated 12.02.1960 concluded that land owned by Smt. Dhai is within permissible area. The said order was never challenged or disturbed by authorities. The Collector (Agrarian) in September' 1968 declared 855 kanals 7 marlas land surplus in the hand of Sis Ram. Said order was never challenged or disturbed by higher authorities. The State Government brought into force 1972 Act w.e.f. 24.01.1971. The land which was declared surplus under 1953 Act was never utilized. It remained in the possession of Sis Ram. He filed declaration in terms of Section 9 of 1972 Act read with Rules made thereunder. He also sought permission to identify permissible area. The respondent-Prescribed Authority vide order dated 07.03.1979 held that

280 kanals 13 marlas Category 'C' land is in excess of permissible area in the hands of Sis Ram, however, said area was excluded from the purview of surplus area on the ground that Sis Ram had already transferred 307 kanals 11 marlas land in favour of his married daughters and Civil Court has confirmed vide decree dated 23.05.1972. As land stands transferred in favour of married daughters, there remains no surplus area. Neither petitioners nor respondents preferred appeal against order dated 07.03.1979. The authorities under Section 18(2) of 1972 Act had right to file appeal before Commissioner against order dated 07.03.1979. As per Section 18(6), the Financial Commissioner has power to revise order passed by any authority subordinate to him. The respondent preferred a petition dated 09.12.1988 before Financial Commissioner seeking revision of order dated 07.03.1979 passed by Prescribed Authority. The Financial Commissioner by impugned order dated 08.08.1994 revised order dated 07.03.1979 passed by Prescribed Authority. The Financial Commissioner not only revised order dated 07.03.1979 but also impliedly revised order dated 12.02.1960 passed by Collector.

7. From the arguments of both sides and perusal of record following questions arise for the consideration of this Court:

- i. Whether impugned order was passed beyond the scope of Section 18(6) of 1972 Act?
- ii. Whether land of Sis Ram could be declared surplus by impugned order?
- iii. Whether impugned order was passed beyond reasonable period of limitation?
- iv. Whether land of Smt. Dhai could be declared surplus by impugned order?

8. **Q. No. 1:** Whether impugned order was passed beyond the scope of Section 18(6) of 1972 Act?

8.1 Learned counsel for the petitioner vehemently contended that impugned order was passed beyond the scope of Section 18(6). It is a classical example of colourable exercise of power. He relied upon sub-section (3) and (5) of Section 18 which stand omitted by 1976 Amendment. He claims that in the absence of filing appeal or exercising power of review, there was no occasion to exercise power of revision under Section 18(6). The authorities under Section 18(2) were free to file appeal against the order of Collector. The order of Collector could also be reviewed. The authorities did not avail those remedies, however, preferred revision which was wrongfully allowed in terms of Section 18(6) of 1972 Act.

8.2 The respondent has exercised power in terms of Section 18(6) of 1972 Act. Said Section was amended in 1976. By 1976 Amendment, sub-sections (3) and (5) were omitted. Section 18 as existing prior to 1976 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 thirty 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 thirty 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 thirty 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 thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The provision in regard to review under this Act shall be the same as provided in section 82 of the Punjab Tenancy Act, 1887 (Punjab Act 16 of 1887).

(4) Any person aggrieved by an order of the Collector under sub-section (1), may, within sixty 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) Any person aggrieved by an order of the Commissioner made under sub-section (2), may, within sixty days from the date of the order, file a revision petition before the Financial Commissioner so as to challenge the illegality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.

(6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record 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. ”

The order which was revised by Financial Commissioner was passed on 07.03.1979. By that time sub-sections (3) and (5) ceased to exist, thus, there was no occasion to exercise power of review under sub-section (3). As per sub-section (2), an appeal lies against order of Collector. An appeal may be filed by any person feeling aggrieved from the order of Collector. Sub-section (6) starts with non obstante clause. It has overriding effect over other sub-sections of Section 18. It provides

that Financial Commissioner may revise order passed by his any subordinate irrespective of the fact that said order has not been challenged before any authority. Power of revision under sub-section (6) is of wide amplitude and is not dependent upon other sub-sections of Section 18, thus, Financial Commissioner was within its jurisdiction to revise order dated 07.03.1979 passed by Prescribed Authority-cum-Sub Divisional Magistrate. Contention of the petitioner that impugned order was passed beyond the scope of sub-section (6) of Section 18 and was colourable exercise of power is misconceived and deserves to be rejected. The petition filed by one or another authority before Financial Commissioner and its nomenclature was irrelevant because power under Section 18(6) is *suo-motu*. Any application or petition filed by one or another person is source of light, thus, one or another expression used in petition filed by an authority before Financial Commissioner was irrelevant. The moment it was brought in the knowledge of Financial Commissioner that his subordinate has passed illegal or improper order, it was his duty to obliterate said illegality or impropriety. His power of revision is not confined to correct jurisdictional error whereas he is vested with the power to correct every illegal or improper order.

9. **Q. No. 2:** Whether land of Sis Ram could be declared surplus by impugned order?

9.1 The parties have not placed on record order dated 16.09.1968 whereby Sis Ram's land was declared surplus, however, both sides are conceding that prescribed authority vide order dated 16.09.1968 declared Sis Ram's 855 kanals and 7 marlas land surplus under 1953 Act.

None of parties has disputed the fact that land declared surplus vide order

dated 16.09.1968 was never utilized. It is apt to notice here that procedure for utilizing surplus land has been prescribed in 1953 Act and Rules made thereunder as well as 1972 Act and Rules made thereunder.

9.2 The petitioners are claiming that by impugned order their land could not be declared surplus because order dated 07.03.1979 attained finality and could not be set aside by Financial Commissioner. Contention of the petitioner needs to be examined in the light of 1953 Act and 1972 Act.

9.3 It is undisputed that Prescribed Authority vide order dated 16.09.1968 declared Sis Ram's (Petitioner No. 1) 855 Kanals and 7 Marlas land surplus. Said order was never challenged by petitioner. It attained finality. His surplus land was not utilized by State prior to coming into force 1972 Act. Section 12(3) of 1972 Act which was inserted by Act No. 14 of 1977 provides that area declared surplus under Punjab Law shall be deemed to be vested in the State Government with effect from the appointed day. As per Section 3(c) of 1972 Act '*appointed day*' means 24th day of January' 1971. Section 3(c) and 12(3) read as:

“3. Definitions. – In this Act, unless the context otherwise requires, -

3(a) to 3(b) xxx xxx xxx xxx

3(c) "appointed day" day means the twenty-fourth day of January, 1971;”

XXXX XXXX XXXX

“12. Vesting of surplus area. –

12(1) to 12(2) xxx xxx xxx xxx

12(3) The area declared surplus or tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government,

shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or Pepsu Law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration.”

From the conjoint reading of above quoted Sections, it is evident that land declared surplus under 1953 Act (Punjab Law) vested in the State Government on 24.01.1972. There is no challenge to validity of Section 12(3) of 1972 Act. The petitioner's land was declared surplus vide order dated 16.09.1968 under 1953 Act, thus, it vested in the State Government w.e.f. 24.01.1971. At the cost of repetition, it is hereby again noticed that order declaring land surplus was never challenged, thus, petitioner was bound by said order. The said fact stands fortified by his application dated 13.08.1976 whereby he sought permission to select permissible area.

9.4 The petitioner filed affidavit dated 01.03.1979 and application dated 07.03.1979 under Section 9 of 1972 Act read with Rule 8 of 1973 Rules. He disclosed that he has transferred 173 kanals and 6 marlas land to his daughters through civil court decree dated 23.05.1972. Section 9 provides for declaration of land and permissible area. Section 9 (3) provides that in making the selection such person shall not include any land which is declared surplus. Section 9 reads as:

“9. SELECTION OF PERMISSIBLE AREA AND PERSONS REQUIRED TO FURNISH DECLARATION. --(1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall, within a period of three months from such date as the State Government may, by notification specify in this behalf or subsequent

acquisition of land, furnish to the Prescribed Authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcel of land not exceeding in the aggregate the permissible area which he desires to retain:

Provided that in case of a member of the Armed Forces of the Union, the last date for furnishing the declaration shall be the 31st October, 1976.

EXPLANATION I. *-Where the person is a member of the family, he shall include in his declaration the particulars of land held by him and also of land, if any, held by other members of the family, and the separate unit.*

EXPLANATION II. *-In calculating the extent of land owned or held by a person the share of such person in the land owned or held by an undivided family, firm or association of individuals, whether incorporated or not, and the land contributed as share capital or otherwise by him to a co-operative, society or a company of which he may be a member or shareholder, shall be taken into account. (Vide Act No. 17 of 1976)*

(2) Every person making a selection of the permissible area under subsection (1). may also select land for the separate unit. (Vide Act No. 47 of 1976)

EXPLANATION. *– An adult son, who owns or holds land and is living separately from his parents, shall file the declaration under sub-section (1) and make the selection of permissible area under sub-section (2) separately.*

(3) In making the selection such person shall include in the first place the land which had been transferred by him after the appointed day in contravention of the provisions of Section, 8 and in the second place the land mortgaged by him without possession but shall not include any land-

(i) which is declared surplus;

(ii) which was under the permissible area of tenant; under the Punjab Law or the Pepsu Law.

(4) The declaration under sub-section (1) shall be furnished by,

(a) in the case of an adult unmarried person, such person;

(b) in the case of minor; lunatic, idiot or a person subject to like disability, the guardian, manager or other person incharge of such person or of the property of such person;

(c) in the case of a family, the husband or in his absence, the wife, or in absence of both, the guardian of the minor children;

(d) in the case of any other person, any person competent to act for such person in his behalf.

A conspectus of above provision reveals that a landowner having land exceeding the permissible area on the appointed day is required to file declaration before Prescribed Authority. He is also required to declare land of his family members. He is required to choose permissible area. He is required to include land which he has transferred after appointed day. Land selected as permissible area does not include surplus land.

9.5 In the present case, petitioner's land was declared surplus prior to appointed day and as per Section 12(3) it vested in the State Government on the appointed day. He on the appointed day was not having surplus land as per provision of 1972 Act because his land was already declared surplus and it vested in the State Government on the appointed day i.e. 24.01.1971. He neither was required to file declaration nor Section 9 was applicable to him. Therefore, declaration dated 13.08.1976 was neither maintainable nor Prescribed Authority was competent to pass order on 07.03.1979 especially when sub-section (3) was inserted in Section 12 in 1977. The order dated 09.03.1979 was flawed and unsustainable in the eye of law. It was outcome of either

negligence on the part of Prescribed Authority or concealment of facts on the part of petitioner or connivance between petitioner and Prescribed Authority. It settled law that an order which is outcome of fraud or outcome of connivance may be set aside at any point of time. It has no leg to stand. The Revisionary Authority has rightly exercised its power under Section 18(6) and set aside order dated 07.03.1979.

10. **Q. No. 3.** Whether impugned order was passed beyond reasonable period of limitation?

10.1 The petitioners are claiming that impugned order could be passed by revisionary authority within reasonable period of limitation from the date of passing order by Prescribed Authority. The petitioners are relying upon judgments of this Court in *Latoor Singh and Ors. Vs. State of Haryana and Anr., 2016(4) RCR(Civil) 16, Kitab Singh (dead) through LRs. & Ors. Vs. Karam Chand (dead) through LRs. & Ors., 2016(4) RCR(Civil) 557, Dev Raj and Anr. Vs. State of Haryana and Ors., 2015(2) RCR(Civil) 128 and Puran Singh vs State of Haryana, 2014(4) RCR(Civil) 461* wherein it has been held that ‘at any time’ does not mean exercise of *suo motu* power can be left at the whims and sweet-will of the revisionary authority. The power should be exercised within reasonable period.

10.2 The petitioners are right in contending that power of revision, in the absence of prescribed period, should be exercised within reasonable period. The petitioners have failed to appreciate that what is reasonable period depends upon facts and circumstances of each case. There cannot be straitjacket formula. Courts cannot prescribe a particular/fixed period because it would amount to inserting something in

the statutory provision which is beyond the jurisdiction of Courts. The reasonable period depends upon facts and circumstances of each case. Court cannot be oblivious of the fact that in case of fraud, mis-feasance or connivance, no period of limitation is applicable. Fraud vitiates everything. A party cannot take advantage of its mis-deeds. Reasonable period of limitation is product of equity. Period of limitation under different enactments has been prescribed to put the litigation to rest. In the absence of certainty of rights and liabilities, one cannot stay in peace and make progress. Fraud or illegal order cannot be pitted against equity or law. Equity or compassion cannot be allowed to bend the arms of law in a case where party has acquired a status by mis-representation, concealment of facts or connivance. Equitable relief cannot be granted to a party which had obtained order by method unknown to law.

10.3 In view of above findings, it cannot be concluded that order dated 07.03.1979 passed by Prescribed Authority was outcome of correct presentation of facts or appreciation of correct factual & legal position. The judgments cited by petitioners are inapplicable. The Financial Commissioner has rightly invoked its jurisdiction under Section 18(6) of 1972 Act though it ought to have been exercised at the earliest.

11. **Q. No. (4):** Whether land of Smt. Dhai could be declared surplus by impugned order?

11.1 Smt. Dhai received 515 bigha and 9 biswa land from her father-in-law i.e. Shadi Lal. The land was transferred in her name in August' 1952. As per different provisions of 1953 Act as well as 1972 Act, land could be transferred prior to July' 1958. Validity of transfer of land prior to July' 1958 could not be questioned. The respondent by

order dated 12.02.1960 declared land of Smt. Dhai within permissible area which was never challenged by authorities. It attained finality. Smt. Dhai did not file declaration under Section 9 of 1972 Act. The prescribed authority never examined or determined status of her land after 1972 Act. The prescribed authority vide order dated 16.09.1969 declared Sis Ram's land surplus. Smt. Dhai was possessing land at the time of passing order dated 16.09.1969 when land of Sis Ram was declared surplus. The prescribed authority passed order dated 07.03.1979 assessing status of land of Sis Ram i.e. husband of Smt. Dhai. Land of Smt. Dhai was not considered while passing said order. As recorded hereinabove, order dated 07.03.1979 passed by Collector qua land of Sis Ram was patently beyond jurisdiction and bad in the eye of law, thus, there was no question to consider Smt. Dhai's land while passing said order. It means for all intents and purposes no proceeding qua land of Smt. Dhai was initiated or concluded under 1972 Act by prescribed authority or Collector. The respondent by impugned order has changed status of her land. The Financial Commissioner could examine legality or propriety of any order passed by his subordinate or with respect to proceedings pending before his subordinate. At the time of passing impugned order, no proceeding *qua* Smt. Dhai was pending before any subordinate of the Financial Commissioner. Order dated 12.02.1960 passed by Collector had already attained finality. The authorities neither challenged validity of said order before Financial Commissioner nor Financial Commissioner revised said order, thus, order dated 12.02.1960 exists even as on day. In such circumstances, land owned by Smt. Dhai whether in her name or in the name of her daughters or daughter-in-law could not be subjected to revision under Section 18(6) of 1972 Act.

12. In the wake of above discussion and findings, the questions raised hereinabove are answered as below:

- i) The impugned order has rightly been passed under Section 18(6) of 1972 Act.
- ii) In view of order dated 16.09.1968 passed by Prescribed Authority whereby land of Petitioner-Sis Ram was declared surplus, the order dated 07.03.1979 passed by Collector was without jurisdiction and unsustainable in law, thus, liable to be set aside. The Financial Commissioner rightly corrected illegality.
- iii) The principle of reason period of limitation was inapplicable in the instant case.
- iv) Order dated 12.02.1960 passed by Collector qua land of Smt. Dhai was never challenged and attained finality. Said order was not even challenged before Financial Commissioner, thus, her land was wrongly declared surplus by impugned order.

13. In the backdrop of above conclusion, the petition is partly allowed. The impugned order to the extent of land of Smt. Dhai (Petitioner No. 2) is hereby set aside and remaining is upheld.

14. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

February 27, 2026
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No