

(2001) 10 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No 346 of 2000 along with CW Ps No's. 893 of 1992, 18 of 1995, 1711 of 1995, 293, 618, 637 of 1998, 141 of 1999, 420, 614, 814 of 2000 and CMPMO No's. 36, 38 and 49 of 2000

Amar Nath and Another etc.etc

APPELLANT

Vs

State of H.P. and Others etc.etc.

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27
Constitution of India, 1950 — Article 227
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 — Section 2, 21, 21(2), 21(3), 21(4)
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Rules, 1973 — Rule 10, 11, 12, 13, 14
Limitation Act, 1963 — Section 5

Citation : (2002) 1 ShimLC 236

Hon'ble Judges : C.K. Thakker, C.J.; Arun Kumar Goel, J

Bench : Division Bench

Advocate : Bhupender Gupta, Neeraj Gupta, in CWP No. 346 of 2000 Ajay Sharma, in CWP No. 893 of 1992 N.K. Thakur, in CWP No. 18 of 1995 Rajesh Mandhotra, in CWP No. 1711 of 1995 Kuldeep Singh and Bimal Gupta, in CWP No. 293 of 1998 G.D. Verma, Romesh Verma, in CWP No. 618 of 1998 Ashwani K. Sharma, in CWP No. 141 of 1999 Ajay Sharma, in CWP No. 420 of 2000 N.K. Thakur, in CWP No. 614 of 2000 Rajesh Mandhotra, in CWPMO No. 36 of 2000 Bhuvnesh Sharma, in CWPMO No. 38 of 2000 Vinod Sharma, in CMPMO No. 49 of 2000, for the Appellant; Sanjay Karol, General, Vivek Thakur, Assistant A.G. for the Respondents 1 and 2 and N.K. Thakur, Advocate for the Respondent 3 in CWP No. 346 of 2000 Sanjay Karol, General, Vivek Thakur, Assistant AG for the Respondent 1, Bhupender Gupta, Neeraj Gupta, Advocate for the Respondents 2 and 3 in CWP No. 893 of 1992 Sanjay Karol, General, Vivek Thakur, Assistant AG for the Respondents 1 and 2; Ajay Sharma, for the Respondent 3 in CWP No. 18 of 1995 Sanjay Karol, General, Vivek Thakur, Assistant AG for the Respondents 1 and 2; Ashwani K. Sharma, Advocate for the Respondents 3 to 9, in CWP No. 1711 of 1995 Sanjay Karol, General, Vivek Thakur, Assistant AG for Respondents 1 and 3 and B.K. Malhotra, Advocate for Respondent 2 in CWP No. 293 of 1998 Sanjay Karol, General, Vivek Thakur, Assistant AG, for the Respondents 1 and 2 and H.K. Bhardwaj, Advocate for the Respondent 3 in CWP No. 618 of 1998 Sanjay Karol, General, Vivek Thakur, Assistant AG, for the Respondents 1 and

Onkar Jairath, Advocate for the Respondent No. 2 in CWP No. 637 of 1998 Sanjay Karol, AG, Vivek Thakur, Assistant AG for the Respondent 1 and 2, Rajiv Sharma, For the Respondent No. 3, In CWP No. 141 of 1999 Sanjay Karol, A.G., Vivek Thakur, Assistant AG for Respondent 1 and N.K. Thakur, Advocate for the Respondent 2 in CWP No. 420 of 2000 Sanjay Karol, A.G., Vivek Thakur, Assistant AG for the Respondent No. 1 in CWP No. 614 of 2000 Sanjay Karol, A.G., Vivek Thakur, Asstt. AG for Respondent 1 and 2 and Ashioani K. Sharma, Advocate for the Respondent 3 to 5, in CWP No. 814 of 2000 Sanjay Karol, A.G., Vivek Thakur, Asstt. AG for Respondent 1 and Praneet Gupta, Advocate for the Respondent 2 and 3, in CWPMO No. 36 of 2000 Sanjay Karol, A.G., Vivek Thakur, Assistant AG for the Respondent 1 and Praneet Gupta, Advocate for the Respondent 2 and 3 in CWPMO No. 38 of 2000 Deepak Gupta, for the Respondent 1 and 2, Sanjay Karol, A.G. and Vivek Thakur, Assistant A.G., Respondent 6 in CMPMO No. 49 of 2000, for the Respondent

Judgement

C.K. Thakker, C.J.—All these matters have been placed before us in view of a point raised in Civil Writ Petition No. 346 of 2000, titled *Amur Nath and Anr. v. State of Himachal Pradesh and Ors.* Being aggrieved and dissatisfied with the order passed by Consolidation Officer, Una, under Sub-section (2) of Section 30 of H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (hereinafter referred to as "the Act"), the Petitioner preferred revision to the State Government u/s 54 of the Act. The order, however, was subject to the appeal before the Settlement Officer (Consolidation of Holdings), Bilaspur, u/s 30(3) of the Act. It was further subject to appeal u/s 30(4) of the Act. The Petitioner did not avail of those remedies and directly approached the State Government. The Director of Consolidation of Holdings, Himachal Pradesh in these circumstances, by an order dated January 17, 2001, dismissed the revision petition as not maintainable u/s 54 of the Act in the light of a judgment delivered by a Single Judge of this Court on July 23, 1999 in Civil Misc. Petition (Main) No. 663 of 1996, titled *Sudama v. Roop Singh and Anr.*

2. In *Sudama*, almost a similar question arose before this Court. During the consolidation proceedings in District Bilaspur, the Petitioner was allotted some land. According to him, however, he was entitled to larger area. He, therefore, preferred objections, which were rejected by consolidation authorities. An appeal was preferred by the Petitioner against the rejection of the objections before the Consolidation Officer, who dismissed it on June 7, 1987. The Petitioner then preferred further appeal under Sub-section (3) of Section 30 of the Act before the Settlement Officer (Consolidation), Bilaspur, who allowed the appeal on August 28, 1991 and remanded the case to the Consolidation Officer. The Consolidation Officer decided the matter afresh on January 9, 1992. Being aggrieved by the said order, the Respondent preferred an appeal to Settlement Officer, which was dismissed on October 12, 1992. After the dismissal of said appeal, he preferred revision petition u/s 54 of the Act, which was heard by the Additional Director and allowed on October 6, 1995. When the matter came up

before this Court under Article 227 of the Constitution, it was contended by the opposite party that under Sub-section (4) of Section 30, a further appeal lay to the Director of Consolidation of Holdings and against the order of Director of Consolidation of Holdings, a revision would lie to the State Government u/s 54 of the Act. Since no appeal before the Director of Consolidation of Holdings was filed against the order passed by the Settlement Officer (Consolidation) and a revision was preferred u/s 54 of the Act to the State Government directly, it was not maintainable. The contention was upheld by the learned Single Judge by observing that "no revision petition was maintainable u/s 54 of the Act". The order passed by the Additional Director, Land Records on October 6, 1995, was, therefore, quashed and set aside.

3. In CWP No. 346 of 2000, correctness of the view taken by the learned Single Judge of this Court in Sudama was questioned. Relying on the relevant provisions of the Act as also some of the decisions of this Court as well as of High Court of Punjab and Haryana, it was contended that the view expressed in Sudama requires reconsideration as it does not lay down correct law. The Division Bench found prima facie substance in the contention of the learned Counsel for the Petitioner and admitted the matter. Some other matters also, thereafter, came up for admission either before a Division Bench or before a single Judge under Article 227 of the Constitution and they were also ordered to be heard together. Meanwhile, CWP No. 893 of 1992, titled *Tulsi Ram v. State of Himachal Pradesh and Ors.* came up for final hearing. We, therefore, thought it fit to hear the learned Counsel appearing on either side on the question regarding maintainability of revision u/s 54 of the Act without exhausting remedies of appeal provided in Section 30 of the Act and the effect thereof.

4. The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (Act No. 20 of 1971), was enacted by the Legislature for the State of Himachal Pradesh. The Preamble of the Act recites that it has been enacted with a view to provide for the consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Himachal Pradesh and for the assignment or reservation of land for common purposes of the village. Section 2 is the legislative dictionary and defines various connotations used in the Act. Chapter II deals with determination of standard areas and treatment of fragments; Chapter III makes provisions for revision and correction of maps and records and consolidation of holdings. Sections 22 - 27 stipulate consolidation scheme, payment of compensation, occupancy tenancies, partition of joint lands and joint occupancy tenancies, amalgamation of public roads, etc. within the scheme and reservation of land for common purpose. Whereas Section 28 provides for publication of draft scheme, Section 29 speaks of confirmation of the scheme. Section 30 deals with repartition. That section is relevant and needs to be reproduced in extenso:

Repartition. (1) The Consolidation Officer shall after consultation with the landowners and tenants of the estate or estates concerned, carry out repartition

in accordance with the scheme of consolidation of holdings confirmed u/s 29 and the boundaries of the holdings as demarcated shall be shown on the Shajra which shall be published in the prescribed manner in the state or estates concerned.

Note: Before repartition work is done, it is necessary to attest the mutation of "Ishtraq" amalgamating all the holdings of the estate.

(2) Any person aggrieved by the repartition may file a written objection within thirty days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders, as he considers necessary, confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under Sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the Appellant pass such orders as he considers proper.

(4) Any person aggrieved by the order of the Settlement Officer (Consolidation) under Sub-section (3) may within sixty days of that order appeal to the Director of Consolidation of Holdings. The order of the Director of Consolidation of Holdings on such appeal and subject only to such order, the order of the Settlement Officer (Consolidation) under Sub-section (3) or, if the order of the Consolidation Officer under Sub-section (2) was not appealed against, such order of the Consolidation Officer, shall be final and shall not be liable to be called in question in any court.

Note: Jurisdiction of Civil Court is barred as regards matters arising under this Act.

5. Section 54 enables the State Government to call for records and proceedings. The said Section is material. It reads as under:

Powers of the State Government to call for proceedings, The State Government may at any time for the purposes of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit:

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

6. Section 55 declares that no appeal and no application for review, reference or revision shall lie from any order passed under the Act except as provided by or under the Act. Section 56 allows correction of clerical or arithmetical mistakes in a scheme made, or an order passed by any officer under the Act arising from any accidental slip or omission. Section 57 bars jurisdiction of Civil Court as regards

the matters arising under the Act. Section 50 enables the Settlement Officer (Consolidation), Consolidation Officer and the Assistant Consolidation Officer to ensure attendance of witnesses by exercising powers, rights and privileges, which are vested in a Civil Court under the Code of Civil Procedure, 1908. Section 52 empowers the State Government by a notification in official Gazette to delegate to any authority powers conferred upon it to be exercised subject to such restrictions and conditions as may be specified in such Notification. Section 59 is a rule making power of the State Government and it states that the State Government may make rules for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of Section 59 provides that without prejudice to the generality of the rule making power, such rules may provide for :- "(o) the time within which applications and appeals may be presented under this Act in cases for which no specific provision in that behalf has been made therein"; and (p) the application of the provisions of the Indian Limitation Act, 1963 (36 of 1963), to applications, appeals and proceedings under this Act". Section 60 provides for repeal and savings of previous Acts and actions taken under those Acts.

7. In exercise of power under Sub-section (3) of Section 59, the State Government has framed Rules, known as the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Rules, 1973 (hereinafter referred to as "the Rules"). Rule 10 lays down procedure for disposal of objections under Sub-section (2) of Section 21 of the Act. Rules 11 to 14 deal with preparation of Scheme of Consolidation, particulars of the scheme, draft scheme of consolidation to be explained to the persons affected and reservation of common plots. Rules 15 to 17 relate to repartition and matters to be kept in view in preparing repartition papers and explanation thereof to the persons affected. Rule 28 prescribes limitation for application u/s 54. It reads thus:

Limitation for application u/s 54. An application u/s 54 shall be made within six months of the date of the order against which it is filed:

Provided that in computing the period of limitation the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under Sub-section (3) or Sub-section (4) of Section 30 required to accompany the application shall be excluded:

Provided further that an application may be admitted after the periods of limitation prescribed therefore if the applicant satisfies the authority competent to take action u/s 54 that he had sufficient cause for not making the application within such period.

Two questions have been raised before us for our consideration:

(1) Whether a person aggrieved by any order passed, direction issued, action taken, scheme prepared or confirmed or repartition made can approach the State Government or an officer to whom the powers have been delegated by the State Government by invoking revisional jurisdiction without exhausting appellate

remedies provided under the Act? and

(2) Whether such a revision petition must be filed within the stipulated period?

8. Bare reading of Section 30 of the Act makes it clear that the Consolidation Officer, after consultation with the landowners and tenants of the estate or estates concerned, will carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 29, which will be published in the prescribed manner. If any person is aggrieved by such repartition, the law allows him to file written objections before the Consolidation Officer within thirty days of the publication of the scheme. It is incumbent on the Consolidation Officer to pass an appropriate order confirming or modifying the repartition after complying with the principles of natural justice and after hearing the objector. Sub-section (3) of Section 30 permits an aggrieved person by the order of Consolidation Officer under Sub-section (2) to institute an appeal before the Settlement Officer (Consolidation). If such an appeal is filed, the Settlement Officer (Consolidation) will hear the Appellant and pass such orders as he considers proper. Thus, law provides an appeal against the order passed by the Settlement Officer (Consolidation) to the Consolidation Officer. Sub-section (4) of Section 30 allows further appeal to the aggrieved person against an order passed by the Settlement Officer (Consolidation) under Sub-section (3) of the said Section. It states that an aggrieved person may within sixty days from the order of Settlement Officer (Consolidation) prefer an appeal to the Director of Consolidation of Holdings. It also attaches finality to the order passed by the Director. Looking to the statutory scheme, it is clear that remedies have been provided by the Legislature to persons aggrieved against actions taken or orders passed under the Act. Section 54, on the other hand, saves revisional powers of the State Government to call for proceedings for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under the Act, to examine the record of any case pending before or disposed of by such officer and to pass appropriate orders as it thinks fit. It, however, declares that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.

9. One of the questions before us is whether a revision petition filed before the State Government without preferring appeal(s) before the appellate authorities under the Act would be competent and maintainable. In this connection, our attention was invited by the learned Counsel for the parties to several decisions of this Court, of the High Court of Punjab and Haryana and also of the Supreme Court.

10. As observed earlier in *Sudama*, a Single Judge of this Court *ig*" held that without exhausting remedies provided Under the Act, a revision petition u/s 54 is not maintainable and is liable to be dismissed only on that ground.

11. In *Bhagat Singh v. Additional Director Consolidation of Holdings* and Ors. 1966 CLJ 462 (P&H), a similar question arose before the High Court of Punjab and Haryana. There the Court was called upon to consider the ambit and scope of Sections 21 and 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the East Punjab Act"). Section 21 provided filing of objections and appeal before the Officers and authorities under the Act and Section 42 conferred revisional powers on the State Government. The Petitioner invoked revisional jurisdiction of the State Government u/s 42 of the Act without resorting to appellate forums. It was, therefore, contended that such revision petition was not maintainable and the State Government had no power, authority or jurisdiction to entertain the revision petition. It was also contended that as neither objections were lodged nor appeals were filed, the actions taken by the authorities had become final. It was urged that if an aggrieved party was allowed to concede right to approach revisional authority directly, he could by-pass provisions of the Act and deprive beneficiaries of the scheme and rights accrued in their favour as also remedy (remedies) of appeal(s), which the opposite party could have availed. Such could not be the intention of the Legislature and the provisions of the Act should not be construed in a manner which would make the provisions relating to appeal(s) nugatory and otiose. Section 42 of the East Punjab Act is in *peri materia* to Section 54 of the present Act.

12. The question before the Court was whether, it was incumbent upon the aggrieved party to get all appellate forums exhausted and then only to prefer revision or it was open to him to invoke revisional jurisdiction of the State Government. Observing that there was no such limitations, the Court stated:

A bare reading of this section will show that the State Government has been empowered to examine any order passed, scheme prepared or confirmed or repartition made by any Officer under this Act.

The State Government may at any time for the purposes of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit:

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

and pass such order as it deems fit. The only limitation on its power is given in the proviso, which says that no order, scheme or repartition shall be varied or reversed without hearing the parties concerned. This power of the Government has not been limited in any other manner. The section nowhere says that the State Government cannot interfere in a case where the remedies provided by

Section 21 of the Act have not been availed of by the person who has made an application under this section. The words "at any time" used therein indicate that he can approach the State Government at any stage of the proceedings and it is not necessary for him to file objections and appeals u/s 21(2)(3) and (4) before doing so. Under these circumstances, it cannot be said that Respondent No. 1 had no jurisdiction to pass the impugned order. It would, of course, be for the State Government to see whether an interference is called for at the instance of party, who has not made use of the remedies given to him u/s 21 of the Act. That is a matter entirely within the discretion of the State Government. To find out whether the State Government has exercised that discretion judicially or reasonably, it is necessary that the person concerned should raise the point before it, which will then give the reasons for interference u/s 42. Those grounds can be examined by this Court and a decision can then be given as to whether the discretion was exercised arbitrarily or in a judicial manner.

13. The Court also considered earlier cases on the point wherein a similar view was taken.

14. In our considered opinion, the interpretation adopted by the Division Bench of High Court of Punjab and Haryana in Bhagat Singh is in consonance with law. The phraseology of Section 54 of the Act nowhere limits the power of the State Government while exercising revisional jurisdiction. We may hasten to add, however, that when a revision is filed by the aggrieved party without exhausting statutory remedy (remedies) of appeal(s) provided under the Act, the State Government would undoubtedly consider the said fact and decide whether such a discretionary power should be exercised in favour of the Petitioner. It can also consider the time limit after which the aggrieved person has filed such revision petition. But we have no hesitation in holding that it cannot be laid down as a proposition of law that unless and until the aggrieved person has exhausted statutory remedy (remedies) of appeal(s), a revision petition before the State Government is not maintainable and must necessarily be dismissed on that ground.

15. It will also be profitable to refer to a decision of Supreme Court in *Johrimal Vs. Director of Consolidation of Holdings, Punjab*, wherein their Lordships of the Supreme Court observed while interpreting the provisions of East Punjab Act that the power conferred on the State Government u/s 42 is a separate power independent of Section 36 which deals with the power of the authority confirming the scheme. It was, however, observed that if a scheme is varied or revoked by the authority confirming it, then the new scheme has to be published so that interested parties may object and their objections be decided by competent authorities set up under the Act, those decisions being finally appealable to the State Government. When the scheme is varied by the State Government itself u/s 42, there is no requirement of the statute that the varied scheme should be published for the State Government is required to give notice and to afford an opportunity to the interested parties to be heard before the variation is made. It

was also indicated that the power under Sections 42 and 36 envisaged two different situations and it was open to the State Government to exercise power u/s 42 in its discretion in any particular case.

16. The matter can be looked at from a different angle also. A right of appeal is a statutory right and is conferred in favour of an aggrieved party. Such right, therefore, can be exercised only by "person aggrieved". Revisional power, on the other hand, is not limited nor can be jettisoned or curtailed in favour only of persons, who feel aggrieved by the orders passed by the authorities and officers under the Act. The section in fact does not confer a right of revision on any person. It is an enabling provision, which empowers the State Government "to call for and examine the record" of any case pending or disposed of by any officer or authority under the Act. No doubt, when such power is conferred on the State Government, it can also be invoked by a "person aggrieved". But it is not that if no complaint is made by any party or person aggrieved, the State Government has no jurisdiction to exercise the power. In appropriate cases, the State Government can even *suomotu* exercise revisional jurisdiction u/s 54 of the Act. If the contention is upheld that the State Government cannot exercise revisional jurisdiction without appeal(s) being disposed of by the officers and authorities under the Act, the provision of exercise of revisional powers *suo motu* by the State Government will become nugatory and the object behind enacting such salutary provision will be totally ineffective and futile. Suppose in a given case, a party or person aggrieved does not come forward against an order passed or action taken by an officer or authority, but the matter comes to the notice of the State Government and it feels that the action taken by an officer or authority is not in accordance with law. In such a situation, it is not only open to the State Government but is expected to exercise revisional jurisdiction by setting right illegality or impropriety committed by an officer or authority under the Act. We are, therefore, of the considered view that it cannot be concluded that unless and until statutory remedy (remedies) of appeal(s) has/have been exhausted, an aggrieved person cannot invoke revisional jurisdiction u/s 54 of the Act. With respect to learned Single Judge of this Court in our considered view, the law laid down in *Sudama* that if appeals are not filed a revision petition is not maintainable does not lay down correct law and is hereby overruled.

17. The next question is as to the period of limitation, if any for filing such revision petition before the State Government u/s 54 of the Act. It is clear that for filing of objections, preferring first appeal as also second appeal period of limitation has been prescribed by the Legislature. Written objections can be lodged within thirty days of publication of the scheme. If such objections are overruled by the Consolidation Officer, a person aggrieved may file an appeal within one month to the Settlement Officer (Consolidation). Similarly, a person aggrieved by the order of Settlement Officer (Consolidation) may prefer an appeal to the Director of Consolidation of Holdings within sixty days from the date of the order. The Legislature has advisedly not prescribed any period of

limitation for exercise of revisional jurisdiction in Section 54 of the Act. Not only that but it has in its wisdom allowed the State Government to exercise such power of calling for records and proceedings "at any time."

18. No doubt, our attention was invited to Rule 28 of the Rules, extracted hereinabove, wherein the State Government has prescribed period of limitation for application u/s 54 of the Act by stating that such application should be made within six months from the date of the order against which such revision is preferred. The question, however, is: Can a period of limitation be prescribed under the Rules, which is in the nature of delegated legislation, when no limitation has been prescribed by the statute, i.e., the Parent Act? Let us consider some decisions on the point.

19. In *Chahat Khan Bahadur Khan and Others Vs. The State of Punjab and Others*, the Full Bench of High Court of Punjab and Haryana, considered the connotation "at any time". It was observed that words "at any time" in their literal and natural meaning, are without limitation either in frequency or in duration and length of time. No period of limitation, therefore, can be prescribed for exercise of such power. At the same time, it cannot be denied that this expression may have limitations as spelled out from the context in which it is used or the scheme of things of an instrument or a statute in connection with which it is employed. It does not confer unlimited or uncontrolled power and will have to be exercised keeping in mind the provisions of the Act and the purpose for which it has been enacted.

20. A similar view was taken by the Full Bench of the same High Court in *Nar Singh Mansoor Singh and Others Vs. State and Another*. There the Court had gone to the extent that the words "at any time", render the power conferred on the State Government everlasting, interminable and indefinite in duration, exercisable without any limitation in point of time.

21. In *Deepa v. Director, Consolidation of Holdings, Haryana and Ors.* 1976 RLR 490 (P&H), the Court held that Section 42 of East Punjab Act imposes no limitation on the exercise of revisional powers. The revising authority is entitled to call for and examine the record to satisfy itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under the Act and may pass such order as it thinks fit.

22. In our judgment, no rule can be framed by the rule making authority (State Government) in exercise of delegated power u/s 59 of the Act, if the competent Legislature does not prescribe such period of limitation in the Parent Act. Such question arose before the Supreme Court in *Purshottam Lal Dhawan Vs. Dewan Chaman Lal and Another*, Section 27 of the Administration of Evacuee Property Act, 1950 permitted the Custodian General at any time either on his own motion (*suo motu*) or on application made to him to call for the record of any proceedings in which a Custodian had passed an order for the purpose of satisfying himself as to the legality or propriety of any order and to pass such

order in relation thereto as he thought fit. Rule 31(5) framed by the Central Government in exercise of rule making power u/s 56 of the Act, however, provided that such revision to Custodian general should "ordinarily be made within sixty days of the date of the order sought to be revised". The question before the Supreme Court was whether such a rule was legal, valid and in accordance with law and the revision petition filed after that period would be treated as time barred.

23. Observing that the Act (Section 27) conferred a plenary power of revision on the Custodian General either suo motu or on application made in that behalf by the aggrieved party "at any time", the same was sought to be curtailed/interfered with or truncated by rule making authority which was not permissible. It was within the discretionary jurisdiction of the Custodian General to entertain revision petition "at any time", but the rule directed him that the reasonable period for entertaining the revision was sixty days.

The Court stated:

The argument that the principle u/s 5 of the Limitation Act applies to a petition for revision u/s 27 of the Act has no force. Section 5 of the Limitation Act applies to an appeal for which a period of limitation is prescribed and it empowers the Court to admit the appeal after the period of limitation, if the applicant satisfied it that he has sufficient reason for not preferring the appeal within the prescribed time. The principle thereunder cannot be made applicable to a revision petition u/s 27 of the Act in respect of which no period of limitation is prescribed. At the same time we must make it clear that the powers of the Custodian-General u/s 27, read with Rule 31(5), are not intended to be exercised arbitrarily. Being a judicial power he shall exercise his discretion reasonably and it is for him to consider whether in a particular case he should entertain a revision beyond the period of sixty days stated in Rule 31(5). In this case we cannot say that the Custodian-General had acted perversely or unreasonably in entertaining the revision. The revision was filed in time. The Dhawan Group was made party at the subsequent stage as the Custodian-General rightly thought that any order he would make in favour of the Appellant might prejudice the Dhawan Group. After giving them a reasonable opportunity of being heard within the meaning of the proviso to Section 27(1) of the Act, he made the order. The Custodian-General, therefore, acted reasonably within his powers. This objection is overruled.

24. So far as this Court is concerned, the point is no longer *res integra*. The vires of Rule 18 of the East Punjab Act came up for consideration before this Court in *Rattan Chand etc. v. Deputy Commissioner, Bilaspur* ILR 1974 H.P. 599. The relevant portion of Rule 18 reads as under:

18. limitation for application u/s 42. An application u/s 42 shall be made, within six months of the date of the order against which it is filed:

25. Comparing the phraseology used in Rule 28 of the H.P. Rules and Rule 18 of

the East Punjab Rules, it is clear that they are in *peri materia*. The Division Bench of this Court observed that the provision exceeded the rule making power of the State Government in that whereas the Parent Act (Section 42 of the East Punjab Act/Section 54 of the H.P. Act) envisaged exercise of revisional. power by the State Government "at any time", the delegated Legislation (Rule 18 of the East Punjab Rules/ Rule 28 of the H.P. Rules) provided for filing such revision within six months from the date of the order against which it was filed. The rule was thus *ultra vires* and unconstitutional being inconsistent with the parent statute.

26. The Court observed:

The point for consideration is: Does Rule 18 exceed the rule-making power of the State Government? I think it does. It is an accepted axiom of law that a rule, being subordinate legislation, must lie within the compass of the Act, and must operate in harmony with it. Section 46(1) empowers the State Government to make rules "for carrying out the purposes of this Act". A rule which is in conflict with the Act does not carry out the purposes of the Act but tends to defeat the Act. Section 42 of the Act envisages the exercise of revisional power by the State Government "at any time". No period of limitation is contemplated. It is open to the State Government to exercise its revisional powers at any time when it comes to its knowledge that a proceeding or order by an officer under the Act is illegal or improper. That knowledge may come to it by way of application by an aggrieved party or even by way of information received from a stranger to the proceeding. If no period of limitation has been envisaged in the case of information from a stranger, it would be grossly illogical to prescribe it in the case of an application by a party to the proceeding.

(Emphasis supplied)

27. At the same time, however, such power must be exercised reasonably and in consonance with the well recognized principles. It is settled law that where no period of limitation is prescribed, the power must be exercised within "reasonable time". The concept of reasonable time is flexible and elastic in nature and must be construed keeping in mind the object of the Act, the purpose for which it is to be exercised, the consequences likely to ensue and other like considerations.

28. The first leading decision on the point is *The State of Gujarat Vs. Patil Raghav Natha and Others*, In that case, the Court was concerned with revisional powers of the Commissioner u/s 211 of the Bombay Land Revenue Code, 1879. The Petitioner applied to the Collector for grant of permission to convert agricultural land to non-agricultural use u/s 65. Initially the application was rejected but after remand the Collector granted permission on July 2, 1960. Pursuant to the order, Sanad was issued on July 27, 1960. The Municipal Committee of Rajkot objected to such grant but the objection was overruled. The Municipality approached the Commissioner by filing a revision application u/s 211 which was allowed and the order of the Collector was set aside on October 2, 1961, i.e. after a period of more than one year. The Petitioner approached the High Court

by filing a petition which was accepted and the order passed by the Commissioner was set aside. The State approached the Supreme Court.

29. The question before the Supreme Court was within how much time revisional power u/s 211 could be exercised by revisional authority. The Supreme Court considered the provisions of Section 65 of the Code. Material part thereof reads as under:

65. An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But if any occupant wishes to use his holding or any part thereof for any other purpose the Collector's permission shall in the first place be applied for by the occupant.

The Collector on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due inquiry, either grant or refuse the permission applied for :

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgement within seven days from the date of receipt of the application be reckoned from the date of the acknowledgement but in any other case it shall be reckoned from the date of receipt of the application.

(Emphasis supplied)

30. Taking into account the object underlying Section 65 and phraseology used therein, the Court observed:

It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code of his decision on the application which in a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission.

(Emphasis supplied)

31. In *Shailesh Jadavji Varia v. Sub Registrar, Narmada Bhavan and Ors.* (1996) 2 GLH 848, considering various provisions of the Bombay Stamp Act, 1958 and referring to leading decisions on the point, speaking for the Larger Bench of the High Court of Gujarat, one of us (C.K. Thakker, J., as he then was) stated:

From the afor esaid decisions, there is no doubt in our minds that the power under Sub-section (1) of Section 32A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in *The State of Gujarat Vs. Patil Raghav Natha and Others*, in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and underall circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequences which may ensue therefrom that revisional powers must be exercised within particular period. Their Lordships also were conscious and mindful of all such situations which is reflected from the observations to the effect that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

32. In *Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another*, the Supreme Court held that even if the limitation is prescribed under Rule 18, it is not directly attracted in revisional jurisdiction of the Court and only thing is that the application must be filed within reasonable time. In that case, delay of 40 years in exercising revisional jurisdiction was held unreasonable.

33. In *Gram Panchayat Village Kot-Mana Vs. Additional Director, Consolidation of Holdings and Others*, considering the provisions of Section 42 of East Punjab Act, the Supreme Court held that the revisional jurisdiction could not be invoked after 34 years of completion of consolidation proceedings.

34. In *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others*, in a concurring judgment, K. Ramaswamy, J. stated:

It is undoubted that when there is no limitation prescribed for exercise of the revisional power u/s 42 against the schemes prepared or confirmed or repartition made, it would be exercised within a reasonable time. What is a reasonable time is always a question of fact depending upon the facts and circumstances in each case. When legislature chose not to fix a particular period of limitation by judicial dicta it is not permissible to limit to a particular period. The long lapse of time may be a fact for the revisional authority to take into account in the light of the facts and circumstances obtainable in an appropriate case. No absolute or precise period of limitation could be predicated or laid.

(Emphasis supplied)

35. For the for egoing reasonsin our considered opinion, it must be held that even if an aggrieved party has not lodged objections and or filed appeal(s) befor e the authorities underthe Act, it is open to him to invoke revisional jurisdiction

of the State Government u/s 54 of the Act and such a revision cannot be dismissed as not maintainable merely on the ground that the person aggrieved had not lodged objections and/or filed appeal(s). Similarly, it is open to the State Government to exercise revisional jurisdiction suo motu with a view to satisfying itself as to the matters covered by Section 54 of the Act. There is no period of limitation and such power can be exercised either suo motu or at the instance of the aggrieved party. Such powers, however, should be exercised within a reasonable time. The concept of reasonable time is flexible, elastic and cannot be placed in straight-jacket for mula and length of reasonable time must be decided in the light of the facts and circumstances of each individual case.

36. The questions are answered accordingly. Now, let the matters be placed for appropriate orders and disposal in accordance with law.