
(2015) 06 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 8873 of 2014

Bachitar Singh and Others

APPELLANT

Vs

Divisional Commissioner Mandi and Others

RESPONDENT

Date of Decision : 20-06-2015

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 20, 20(3)
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 30, 54

Citation : (2015) 06 SHI CK 0064

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Surinder Saklani, for the Appellant; Parmod Thakur, Addl. AG,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The consolidation proceedings were carried out in Village Mohin in the year 1992-93. The father of the petitioner No. 1 was allotted Kh. No. 1867/1440 (old) 1127 (new), Kh. No. 1870/1400 (old) 1170 (new), measuring 0-32-00 hectares and Kh. No. 1498 (old) 1215 (new) measuring 0-00-45 hectares. The total land allotted to the father of the petitioner No. 1 after the consolidation was 0-34-96 hectares. Kh. No. 1498 (old) and 1215(new) measuring 0-00-45 hectares is adjoining to the house of the petitioners and they are using the same as their courtyard. A scheme was framed for carrying out the consolidation proceedings in the area. The parties were put in their respective possessions of their land in the year 1992-93 itself.

2. The respondents No. 2 to 5 did not raise any objection to the allotment of Kh. No. 1498 (old) and 1215 (new) to the father of petitioner No. 1 under Section 30 of the H.P. Holdings (consolidation and Prevention of Fragmentation) Act, 1971. The respondents No. 2 to 5 instituted a revision before the learned Divisional Commissioner on 3.8.2010. He decided the same against the petitioners on

21.1.2011 without a speaking order. The petitioners assailed the decision dated 21.1.2011 before this Court. This Court permitted the petitioners to approach the Divisional Commissioner, Mandi seeking correction of the order by moving appropriate application. The appropriate application was filed on 22.6.2013. However, the fact of the matter is that the appeal was dismissed on 27.8.2014 and the order dated 21.1.2011 was upheld.

3. The consolidation proceedings, as noticed hereinabove, were concluded in the year 1992-93. The revision has been filed after almost 17 years. It was not maintainable. The learned Divisional Commissioner and Financial Commissioner, while passing the orders dated 21.1.2011 and 27.8.2014 could not be oblivious to the gross delay in filing the petitions. The learned Divisional Commissioner, while passing the order dated 21.1.2011, without making reference to record, has come to the conclusion that the private respondents were in possession of the suit land and the same has been wrongly allotted to the petitioners. It is not believable that the private respondents were not aware of the allotment of Kh. No. 1498 (old) and 1215 (new) in favour of the petitioners in the year 1992 and they came to know only in the year 2010.

4. Their lordships of the Hon"ble Supreme Court in the case of Gram Panchayat, Kakran Vs. Addl. Director of Consolidation and Another, (1997) 8 JT 430 : (1997) 6 SCALE 382 : (1997) 8 SCC 484 : (1997) 4 SCR 442 Supp , have held that even if limitation prescribed under Rule 18 of the E.P. Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is not directly attracted, the application must be filed within a reasonable time.

5. Their lordships of the Hon"ble Supreme Court in the case of State of H.P. and Others Vs. Rajkumar Brijender Singh and Others, (2004) 10 SCC 585 : (2004) 1 SCR 618 Supp , have held that though the Financial Commissioner can exercise suo motu power and pass appropriate orders under Section 20 of the Himachal Pradesh Ceiling on Landholdings Act, 1972, but this expression does not mean that there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. Their lordships have held as under:

"6. We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section 3 provides that such a power may be exercised at any time but this expression does not mean there would be no time limit or it is in infinity. AU that is meant is, that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the

reasonable time within which the power suo moto action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo moto power, well it could be open for the State to submit that the facts and the circumstances were such that it would be within reasonable time but as we have already noted the order of the Collector which has been interfered with, was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suo moto power after 15 years of the order interfered with, was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo moto in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State. Thus, the view taken by the High Court, is not sustainable. But the order of the Financial Commissioner suffers from vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power in sub-section (3) of Section 20."

6. Their lordships of the Hon^{ble} Supreme Court in the case of State of A.P. and Another Vs. T. Yadagiri Reddy and Others, (2009) 1 JT 104 , have held that action was to be taken within a reasonable time, though the words "at any time" were used in the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and moreover, when the rights of the parties were crystallized. Their lordships have held as follows:

"68. This Court has considered the nature of that power in the case of Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy and Others (cited supra) and observed in para 9:-

"9..... Use of the words "at any time" in sub-Section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo moto power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo moto power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of the provisions of other Acts (such as Land Ceiling Act)....."

From this, the Learned Senior Counsel argued that since there is no period of limitation prescribed for this power, the Collector would be justified in initiating an action. In our opinion the argument is firstly, premature. No such action have ever been proposed. Secondly, the Court has further observed that such action

has to be within reasonable time though the words "at any time" are used in the provision. In the same para, the Court further observed:

"9..... Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo moto power under sub-Section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo moto power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But, that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

The observations are extremely fitting in the present case. Here also, after the Certificates have been issued, 25 long years have elapsed. The rights of the parties have already been crystallized. Not only this, but, it is the report of Shri Rao that the said lands have now been converted and sold for to as many as approximately 1100 persons, by way of residential plots. We do not think that there is any justification at this stage to use a suo moto power and to cancel the Certificates, so as to put the clock back. That would be, in our opinion, a completely unnecessary exercise, not warranted by any of the Sections. In that view, even this argument has to be rejected."

7. This Court in the case of Bhup Singh vrs. The Director of Consolidation and ors., reported in Latest HLJ 2008 (HP) 516, has held that even if no period of limitation has been prescribed under section 54 of the Act and the expression "at any time" has been used but the power is to be exercised within a reasonable period. The Court has held as under:

"4. Even if no period of limitation has been prescribed under section 54 of the Act and the expression :at any time" has been used but the power is to be exercised within a reasonable period. In the present case, the consolidation proceedings were concluded in the year 1986-87 but the revision petition has been preferred by respondent No. 2 before the Additional Director Consolidation of holdings of 12th August, 1997. Consequently, it is held that the revision petition preferred after a period of 10 years before the Additional Director Consolidation of Holdings was not maintainable. Moreover, Additional Director Consolidation of Holdings had not assigned any reason for exercising the revisional power after a period of 10 years. Respondents No. 2 could file the revision petition within a period 3-5 years. The other wholesome principle for filing the revision within the reasonable time is that the settled things should not be permitted to be unsettled."

8. The Division Bench of this Court in the case of Ramesh Chand and another vrs. Director of Consolidation and ors., reported in 2008(2) Shim. LC 176, has also explained "reasonable time" as under:

"4. The issue was as to whether the Director, Consolidation of Holdings, Himachal Pradesh has exercised his powers under Section 54 of the "Act 1971" within reasonable time or not. Such issue has already been adjudicated upon by the Supreme Court in Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, AIR 2007 SC 2458 : (2007) 7 JT 352 : (2007) 8 SCALE 110 : (2007) 8 SCC 705 : (2007) 6 SCR 799 : (2007) AIRSCW 4387 . The term "reasonable time" used under Section 54 of the "Act 1971" by the Director, Consolidation of Holdings shall be deemed to be settled in terms of the decision of the Supreme Court in State of H.P. and Others Vs. Rajkumar Brijender Singh and Others, (2004) 10 SCC 585 : (2004) 1 SCR 618 Supp , whereby, the Hon"ble Supreme Court while expressing its view under Section 20(3) of H.P. Ceiling on Land Holdings Act, 1972 has observed that reasonable time as indicated in Section 20(3) of the said Act would depend upon the facts and circumstances of each case. For convenience, relevant paragraph 6 of the decision Raj Kumar Brijender Singh (supra) is quoted as below:-

"We are now left with the second question which was raised by the respondents before the High Court, namely, the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a prayer may be exercised at any time but this expression does not mean there would be no time-limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case/as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January 1976 and the appeal preferred by the State was also withdrawn sometime in March, 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, may be, by the State. Thus the view taken by the High Court is not

sustainable. But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20."

9. Accordingly, the Writ Petition is allowed. The order dated 21.1.2011 (annexure P-5) and 27.8.2014 (Annexure P-9) and subsequent proceedings carried out by the authorities are quashed and set aside. Pending application(s), if any shall also stand disposed of.