(2015) 10 P&H CK 0208

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 21876 of 2014

Dayawanti Devi and Others	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 12(3), 18(1), 18(6), 3, 3(1)
Limitation Act, 1963 — Section 5

Citation : (2015) 10 P&H CK 0208

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Ashok Verma, Advocate, for the Appellant; Rajesh K. Sheoran, Addl. AG, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—Om Parkash S/o Mal Singh resident of Village Siwani Bolan, Tehsil and District Hisar filed a declaration Form under Section 9 (1) of the Haryana Ceiling on Land Holdings Act, 1972 (for short, ''the Act'') for determination of his status and as per the report of the Naib Tehsildar Surplus Area, total land in ownership of Om Parkash and his family was assessed as 556.67 Kanals of ''C category. Om Parkash claimed a primary unit for himself, his wife Smt. Khazani, son Balwan and daughters Dayawanti, born on 10.06.1967 and Sushila, born on 10.04.1970 and also an additional unit for his daughter Susi @ Sunita Devi who was born on 22.02.1972.

2. The Sub-Divisional Officer(Civil)-cum-Prescribed Authority (hereinafter referred to as ''the Prescribed Authority''), decided the surplus area case of Om Parkash(since deceased), under the Act vide impugned order dated 06.03.1980, allowing him 432 Kanals of ''C category area as permissible area of one primary unit for him and his family and declared 124.67 Kanals of ''C'' category area as surplus area. However, the benefit of one additional unit was declined on the ground that the youngest daughter, namely, Sunita was born on 22.02.1972. The

said order dated 06.03.1980 was challenged by Om Parkash by way of an appeal under Section 18(1) of the Act before the Additional Collector, Hisar. The said appeal was dismissed on 23.03.1981 only on the ground of delay. The order passed by the Addl. Collector, Hisar dated 23.03.1981 was ultimately challenged by the children of Om Parkash by way of revision before the Financial Commissioner under Section 18(6) of the Act which was also dismissed by the Division Bench of the Financial Commissioner, Haryana on 14.08.2013 only on the ground of delay as it was found that the revision petition was filed after 32 years.

3. The petitioner has averred in para 9 (F) of the written statement that State is in possession of the land declared surplus which has been cursorily denied by the respondents without giving any detail as to whether the said land, having been declared surplus, has already been utilized.

4. Counsel for the petitioners has submitted that the order passed by the Financial Commissioner, dismissing the revision, only on the ground of delay, is patently erroneous and illegal and has relied upon the following judgments:

"1) Kehar Singh and another Vs. State of Haryana and others,

2) Ram Partap Vs. The State of Haryana and Others-->

3) Harpal v. Financial Commissioner(Revenue), Haryana and another 2015(3) R.C.R (Civil) 599"

5. It is also argued by him that the Financial Commissioner should have condoned the delay because the petitioner is entitled to an additional unit. In view of the decision of this Court in the case of Jaswant Singh and others Vs. Punjab Government, Chandigarh and another, followed in the case of Mangat Ram and Another Vs. Financial Commissioner (Revenue) and Others, where it has been held that if a member of family is born after appointed date 24th January, 1971 but before commencement of Act i.e. 23rd December, 1972 then the family would be entitled to an additional unit.

6. It is alleged that since Susi @ Sunita Devi was born on 22.02.1972, in between the appointed date 24.01.1971 and the date of commencement of the Act i.e. 23.12.1972, therefore, the family of the petitioners was entitled to have an additional unit. It is also argued by counsel for the petitioners that the merit of the case should also be considered while entertaining the revision under Section 18(6) of the Act as no time has been provided by the legislature and the word has been used as "any time". It is further submitted that the provisions of the Act are confiscatory in nature as the land of the petitioner is confiscated in the name of surplus. Therefore, the land owner should be given maximum mileage to protect the land from being declared surplus.

7. Counsel for the respondent has submitted that the petitioner is not entitled for an additional unit as the land, having been declared surplus under the Act, vested in the State under Section 12(3) . He has also argued that the orders

passed by the Financial Commissioner does not call for any interference.

8. I have heard both the learned counsel for the parties and examined the available records.

9. Undisputedly, Susi @ Sunita Devi was born on 22.02.1972. It is also not disputed that the Act came into force w.e.f. 23.12.1972 as held by the Supreme Court in the case of Ram Swarup and Others Vs. S.N. Maira and Others, . Thus the questions involved in this case are:--

"1) as to whether in the given facts and circumstances, the delay of 32 years in filing revision under Section 18(6) of the Act should have been condoned by the Financial Commissioners?

2) as to whether the person born in the family of the land owner after the appointed date i.e. 24.01.1971 but before the commencement of the Act i.e. 23.12.1972 is entitled to an additional unit?"

10. So far as the first question is concerned, Section 18(6) of the Act provides as under:--

"Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo moto 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."

11. In the case of Kehar Singh and another(Supra), this Court while referring to the decisions in Nar Singh Mansoor Singh and Others Vs. State and Another, and in Haqiqat Singh Vs. The Additional Director, Consolidation of Holdings, Punjab, Chandigarh and Others, has held that "In fact, the legislature has authorised the Financial Commissioner to exercise the power at "any time". When the legislature, in its wisdom, has not placed any limitation on the power of the Financial Commissioner, the Court cannot add to the words of the statute and lay down a period of limitation."

12. In the case of Ram Partap (supra) this Court while referring to the decision of the Hon''ble Supreme Court in the case of Loku Ram Vs. State of Haryana and Others--> and decision of this Court in Diwan Hira Lal Kapoor and others v. The State of Haryana and others, 2002(4) R.C.R.(Civil) 25 has observed that in "Loku Ram''s case (supra)and Diwan Hira Lal''s case(supra) that as per Section 18(6) of the Act of 1972, the Financial Commissioner may exercise his suo moto power at any time but the word ''any time'' cannot be indefinite and such time has to be exercised within a reasonable time. The length of reasonable time must be determined by keeping in view the facts of each case and not of the order which is being revised. We have examined the facts of present case. In our opinion, respondent No. 1 was fully justified in setting aside the order of the Prescribed Authority, while exercising his suo moto powers even after expiry of 20 years of the passing of the said order. In the present case, a complete fraud was played

by the petitioner on the department by filing wrong declaration claiming benefit of a separate unit on account of adoption, when neither there was any adoption nor the alleged adopted son was major on the appointed day i.e. 24.1.1971."

13. Thus in the aforesaid case, the Division Bench came to the conclusion that the word "at any time" cannot be indefinite and the revisional power has to be exercised within a reasonable time but it all depends on the facts of each case. The Court interfered in the said case after expiry of 20 years because it found that a fraud has been played by the big land owners by filing wrong declaration form.

14. In the case of Harpal Singh (supra), this Court also dealt with the issue of limitation and has referred to the decision in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, and opined that "the above quoted portion of the judgment interprets the expression ''at any time'' to mean that the power to be exercised must be within a reasonable time, which would depend on the facts of the case and the nature of the order, which is sought to be revised".

15. This Court has referred to the facts of the case, according to which the adoption deed came into existence more than six years after the appointed date and after over two years of the declaration made by the big land owner under the Act. Further, it was pleaded that from the year 1993 onwards, the petitioner has been shown to have proclaimed himself to be son of his real father and not Siba Singh. On these facts and circumstances, the Court has held that if there is a fraud then the limitation would not come in between the power to be exercised by the Financial Commissioners and ultimately in para 17 of the said judgment it was held that "From the above, it is clear that the issue was first detected by the Collector, Bhiwani, who, on thorough investigation of the case, made a reference to the Financial Commissioner, Haryana requesting him to exercise his jurisdiction under Section 18(6) of the Act."

16. Reverting back to the facts of the present case, it would be suffice to say that it is not a case of fraud having been played by the land owner on account of which the State Government filed a revision after considerable delay under Section 18(6) of the Act before the Financial Commissioner. The case in hand is meritorious. Therefore, the question arises that if the case of the petitioner is meritorious then whether the delay should be condoned? In case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, ; while dealing with the application filed under Section 5 of the Limitation Act 1963, the Hon''ble Supreme Court has held that if the case is meritorious then the delay should be condoned. Here is a case wherein the provisions of the Act have been invoked against the family of the petitioner for the purpose of declaring his land as surplus. The Act has been held to be confiscatory in nature as the precious land of the petitioner is being confiscated by the State under the provisions of the Act. Therefore, in my opinion the merit of the case is also one of the reason on the basis of which the delay should have been condoned.

17. The question is whether there is merit in this case for the purpose of allowing one additional unit to the members of the family of Om Parkash. In this regard question No. 2 has already been framed and the answer to that question is there in the case of Mangat Ram''s(supra) in which the following observations have been made:--

"Mr. Mehtani, learned counsel for the petitioner has raised number of points but I do not wish to go into all, as the petition deserves to succeed on the point that while considering the ceiling limit as per the provisions of the Act, unit permissible to a son who was born in between January 24, 1971 and March 24, 1973 has to be taken into consideration. This Court in Jaswant Singh and others Vs. Punjab Government, Chandigarh and another, while dealing with the precise question, as mentioned above, held as follows:--

"The provisions of the Punjab Land Reforms Act received the assent of the President of India on 24th March, 1973. The Act was published in the Punjab Government Gazette dated 2nd April, 1973. Section 3 of the Act provides that this Act shall come into force at once. So, in terms of the Act, The Act came into force on receiving the assent of the President on 24th March, 1973. There is no provision in the Act giving this Act retrospective effect. There is a limited provision in Section 4(7) that the land is to be evaluated as on the appointed day, i.e; 24th January, 1971. The expression ''appointed day'' is defined in Section 3(1) as 24th January, 1971. The Section 4(5) of the Act also provides that any sale or gift otherwise than a bona fide sale or transfer, after the appointed day but before the commencement of the Act, shall be taken into account as if such land has not be transferred. In other words, sales, which are not bona fide are ignored. Second Proviso to Section 4(2) of the Act provides that where the number of members of the family exceeds five the permissible area shall be increased by 1 1/5th of the permissible area of each member in excess of five. The provisions of the Act has come into force on 24th March, 1973. There is no provision in the Act which provides that if the member of a family is born after 24th January , 1971, he shall not be entitled to the additional area as provided by second proviso to Section 4 . On a plain reading of the Act, we have to see the number of the members of the family for the purpose of determining the permissible area on the commencement of the Act i.e. 24th March, 1973. The provisions of the Act are confiscatory in character. They have to be strictly interpreted so that the landowner is not deprived of the legitimate rights under the Act. A family ceiling has been fixed under the Act. The number of family members have to be seen according to scheme of the Act on the date of commencement of the Act. There is nothing in the Act which directs that the number of the members should be seen as on the appointed day i.e. 24th January, 1971. Such an interpretation would defeat the purpose and intendment of proviso to Section 4(2) of the Act. It is well settled principle of law that no provision of the Act should be given retrospective effect unless the language of the Act expressly or by necessary implication provides. If the Legislature want to give retrospective effect, it must declare its intention clearly. The Act cannot be given retrospective effect merely by implication. Normally, our statutes are prospective and are supposed to respect vested rights."

Inasmuch as while computing the area of the petitioner for the purposes of declaration of surplus area no additional unit was given on account of the son born to him on July 8, 1972, the orders impugned have to be set aside and are accordingly set aside. The matter is remitted to the prescribed Authority for ascertaining the area by giving additional unit i.e. 1/5th to the extent the same may be permissible under the provisions of the Act to petitioner on account of son who was born to him in between January 24, 1971 and 24th March, 1973. It is made clear that it shall be open for the petitioner to press into service other points that have been raised in the present petition before the Prescribed Authority, who shall decide the same in accordance with law."

18. No judgment to the contrary has been cited by counsel for the respondent. Thus, it is held that since Susi @ Sunita Devi was born on 22.02.1972, therefore, Om Parkash was entitled to additional one unit on the analogy which has been decided by this Court in Mangat Ram''s case (supra) wherein it has been held that "Member of family born after appointed day 24th January, 1971 but before commencement of Act 23rd December, 1972 would be entitled to an additional area."

19. In view of the aforesaid discussion, the present petition is allowed. The impugned orders are hereby quashed and the case is remanded back to the Prescribed Authority for ascertaining the area which has to be given as an additional unit to the petitioners as their permissible area.

