(2014) 11 SHI CK 0135

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 713 of 2011

Devinder Singh Jaswal — APPELLANT

Vs

Nagender Singh and Others — RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:
Himachal Pradesh Land Revenue Act, 1954 — Section 17, 65

Citation : (2015) 1 ShimLC 338

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Neeraj Gupta, Advocate, for the Appellant; K.D. Sood, Senior Advocate and Sanjeev Sood, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. This Letters Patent Appeal is directed against the judgment and order, dated 6th July, 2010, made by the learned Single Judge in CWP No. 472 of 2007, titled as Nagender Singh v. The Financial Commissioner (Appeals), H.P. Shimla and others, whereby writ petition filed by the writ petitioner-respondent No. 1 herein came to be allowed and the order passed by the Financial Commissioner (Appeals), Shimla, H.P., dated 23rd January, 2007 (Annexure P-II to the writ petition) came to be quashed (hereinafter referred to as "the impugned judgment"). This case has a chequered history and depicts how the appellant has invoked the jurisdiction of the Revenue Courts, Civil Courts and again the Revenue Courts in order to deprive the writ petitioner-respondent No. 1 herein to enjoy/reap the fruits of the entire litigation, which he has completed with success.

2. It appears that the Collector had made an order on 9th September, 1975 (Annexure P-2 to the writ petition), whereby land was to be allotted to Shri Chain Singh, father of the writ petitioner-respondent No. 1 herein, and the said order was given effect to by the Revenue Authority by effecting mutation Nos. 4437,

4438, 4439, 4440 and 4441, dated 21st September, 1987. The appellant had questioned those mutations by the medium of appeal, which was dismissed by the Appellate Authority on 29th August, 1995 (Annexure P-4 to the writ petition). The said order of the Appellate Authority was not questioned and had attained finality. However, the appellant had filed a Civil Suit before Senior Sub Judge, Una, which was decreed on 26th December, 1984. The appeal was filed by the father of the writ petitioner, i.e. Shri Chain Singh, which was dismissed on 1st September, 1988; was questioned by the writ petitioner and his father, Shri Chain Singh, by the medium of RSA No. 351 of 1988; was allowed vide judgment and order, dated 30th December, 1999 (Annexure P-5 to the writ petition), whereby the judgments made by the Civil Court and the Appellate Court were set aside and it was held that the suit was not maintainable. The appellant had questioned the same by the medium of SLP, which was dismissed by the Apex Court vide judgment and order, dated 9th February, 2001 (Annexure P-6 to the writ petition). Thus, the orders made by the Revenue Authorities in terms of order, dated 9th September, 1975, made by the Collector and the orders passed by the Civil Courts dismissing the suit of the plaintiff-appellant herein had attained finality.

3. Thereafter, the appellant filed a revision petition before the Financial Commissioner (Appeals), Himachal Pradesh, on 16th July, 2005, which was diarized as Revision Petition No. 120/05 and was allowed on 23rd January, 2007 (Annexure P-II), whereby the Authorities were directed to exercise the review powers and virtually has set aside the mutations.

4. Feeling aggrieved, the writ petitioner, i.e. son of Shri Chain Singh, filed writ petition questioning the said order, Annexure P-II, and also arrayed his brother and mother as proforma respondents No. 6 and 7, respectively. The Writ Court allowed the writ petition in terms of the impugned judgment and quashed the said order on the ground that the revisional Court has virtually set aside the orders made by the Revenue Authorities and the Civil Courts by passing this order, which is unknown to law and also held that after lapse of twenty one years, the revisional jurisdiction was invoked, which is patently barred.

5. Being dissatisfied by the impugned judgment, the appellant-respondent No. 1 in the writ petition has questioned the same.

6. It is undisputed that the appellant has lost the entire litigation before the Revenue Courts as well as before the Civil Court. Despite that, invoked the jurisdiction under Section 17 of the Himachal Pradesh Land Revenue Act (hereinafter referred to as "the Act") by the medium of revision petition, which, on the face of it, was time barred and abuse of process of law.

7. It is also a moot question- whether the remedy provided in terms of Section 17 of the Act was available to the appellant?

8. Section 17 of the Act can be pressed into service only when any case is pending before any Revenue Court or disposed of. Admittedly, no case was

pending and the matter was determined by the Revenue Courts, including the Appellate Courts and by all the Civil Courts.

9. The revisional Court has not taken into consideration the aspect that the revision petition was time barred and has not spelled out any reasons for condoning the delay. It has also not recorded the reasons for exercising the revisional power.

10. The Apex Court in a case titled as The State of Gujarat Vs. Patil Raghav Natha and Others, , held that the revisional powers must be exercised in a reasonable time. It is apt to reproduce para 11 of the judgment herein:

"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

11. The order of revisional Court is without jurisdiction, power and competence. The said order is abuse of process of law.

12. The Writ Court has marshalled and thrashed out all the facts and has made the conclusions rightly.

13. The revisional Court cannot exercise power in a revision petition, that too, belatedly, to prevent the successful party from its legitimate rights and reaping the fruits of the litigation. Such power is to be exercised only in the interest of justice, that too, promptly and within reasonable time. The said power cannot be exercised in order to take away the settings of law. Having said so, the Writ Court has passed a well reasoned judgment, needs no interference. Accordingly, the appeal merits to be dismissed and the impugned judgment merits to be upheld. The appeal is dismissed and the impugned judgment is upheld. Pending applications, if any, are also disposed of.