

(2013) 06 SHI CK 0160
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 5080 of 2010

Kaul Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 20
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 34, 54

Citation : (2013) 06 SHI CK 0160

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : G.R. Palsra, for the Appellant; Pramod Thakur, Ms. Meenakshi Sharma, Additional Advocate Generals, Mr. Neeraj K. Sharma, D.A.G. for Respondents No. 1 and 2, Mr. Rajnish K. Lall, Vice Advocate and Mr. Sanjeev Sood, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The consolidation proceedings were initiated in Mohal Panjeti/365 in the year 1992-93, in which Khasra No. 772/313, 315, 438, 443, 777/739/448, 740/748, 741/448, 742/448, 455, 461, 619, 622, 638 and 640, Kheot No. 14, Khatauni No. 14, Kittas-14, measuring 5-18-11 bighas of land was allotted to the petitioner by the consolidation officials on the basis of spot position. The petitioner and respondent No. 3 are real brothers. Khewat No. 16, Khatauni No. 17, Khasra No. 439, 440, 441, 442 and 462, Kitta-5, measuring 0-17-6 bighas were kept joint between the parties as per the copy of Jamabandi for the year 2007-2008. The respondent No. 3 has filed a revision petition before the Commissioner, Mandi Division, Himachal Pradesh, Exercising the powers of the State Government u/s 54 of The H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 on 19.08.2009. According to him, the land bearing Khasra No. 443, measuring 0-04-11 bighas was wrongly allotted to the petitioner by the consolidation officials without verifying the factual position prevailing on

the spot. The same was allowed on 17.02.2010. The land bearing Khata No. 443, measuring 0-04-11 bighas was allotted to respondent No. 3 and in lieu of this land, 1/4 share from Khasra Nos. 439, 440, 441, 442 and 462, Kita 5, total land measuring 0-17-06, i.e. 0-04-07 bighas, was allotted to the petitioner. The petitioner is aggrieved by the order, dated 17.02.2010. Mr. G.R. Palsra, learned counsel for the petitioner has vehemently argued that the revision petition filed by the respondent No. 3 was barred by delay and laches. He also contended that the consolidation proceedings which commenced in 1992-1993, have been concluded in 1997. He has placed strong reliance on the judgment of the learned Civil Judge (Junior Division), Court No. 4, Mandi, District Mandi, H.P. in Civil Suit No. 09/06, dated 23.08.2009, whereby the respondent No. 3 has been restrained by permanent prohibitory injunction not to stack any raw material over the suit land, comprised in Khewat Khatauni No. 11 min/11, Khasra No. 443, measuring 0-4-11 bighas, situated in Mauza Panjehti, Tehsil Sadar, District Mandi, H.P.

2. Mr. Pramod Thakur, learned Additional Advocate General, has vehemently argued that the dispute is inter se the parties.

3. Mr. Rajnish K. Lall, learned vice counsel for respondent No. 3 has supported the order, dated 17.02.2010. According to him, since his client was in possession of Khasra No. 443, he has been allotted the same by the Divisional Commissioner, exercising the powers of the State Government u/s 54 of The H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971.

4. What emerges from the facts enumerated hereinabove, is that the consolidation proceedings have commenced in the year 1992-1993. These were concluded in the year 1997. The petitioner has been allotted khasra numbers as per the details given hereinabove. The petitioner was specifically allotted Khasra No. 443. Since the respondent No. 3 has stacked construction material and laid pipes on Khasra Nos. 448 and 443, a Civil Suit bearing No. 09/06 was filed by the petitioner against the respondent No. 3 and one Shri Bhup Singh.

5. According to the plaint, the petitioner was owner in possession of Khewat Khatauni No. 11 min/11, Khasra Nos. 438, 443, 448, 455, 461, 619, 622, 638, 640, Kita 9, measuring 5-18-11 bighas and the respondent No. 3 and Sh. Bhup Singh instigated the I.P.H. Department to lay the pipe lines over the land. The defendants have also started stacking construction material over the suit land.

6. The respondent No. 3 and Shri Bhup Singh filed written statement to the plaint filed by the plaintiff. According to them, no material was stacked over Khasra No. 443. It was further stated that some raw material was stacked by son of respondent No. 3, namely Sh. Devinder Singh over some part of land only after obtaining his due permission. However, the same has been removed by him after rainy season. Learned Civil Judge (Junior Division), Court No. 4, Mandi, District Mandi, H.P. framed the issues on 19.10.2006. He partly decreed the suit on 23.08.2009. The respondent No. 3 was restrained from stacking any construction material over Khasra No. 443. Paragraphs No. 14, 15 and relief of

the judgment, dated 23.08.2009, read as under:

14. The plaintiff has also sought relief over Khasra number 443 stating that raw material was being stacked by defendant No. 1 and despite repeated requests, the same was not removed by him. The defendant No. 1 has also admitted in his pleadings as well as during examination that the raw material was stacked but it was done so by his son. It was stated by him that it was stacked only after obtaining the consent of plaintiff, however, the same was removed later on after 4-5 months. As such, the defendant No. 1 has not denied the stacking of raw material and it is settled rule of evidence that facts admitted need not be proved and it was incumbent upon the defendant to prove that the raw material had been actually removed by them. His son was also not examined who would havethe averments made by the defendant, as such it is clearly established that raw material was being stacked over Khasra No. 443.

15. Hence, the plaintiff has succeeded in proving that interference was being caused over khasra Number 443, as such he is surely having a right to preserve it and to restrain the defendant No. 1 also however he has failed to prove his case pertaining to Khasra number 448. Regarding the other khasra numbers, no averment in the pleadings nor in the oral statement was made qua interference, as such he is not entitled for relief over the said khasra numbers. This issue is accordingly answered partly in favour of plaintiff.

RELIEF

In the light of above reasons and discussions, the suit of the plaintiff is partly decreed. The defendant No. 1 is restrained through permanent prohibitory injunction to not to stack any raw material over the suit land comprised under Khewat Khatauni No. 11 min/11, Khasra No. 443, measuring 0-4-11 bighas, situated in Mauja Panjehti, Tehsil Sadar, Distt. Mandi, H.P. The parties are left to bear their own costs. Decree sheet be prepared accordingly. File after its due completion be consigned to record room.

7. The defendant has not taken any plea in the Civil Suit instituted by the petitioner that he was owner in possession of Khasra No. 443 and a toilet and verandah have been constructed. This plea for the first time has been taken by the respondent No. 3 while filing the revision petition u/s 54 of the H.P. Holdings (Consolidation & Prevention of Fragmentation) Act, 1971.

8. Mr. Rajnish K. Lall, learned counsel for respondent No. 3 has argued that the spot was visited by the Assistant Consolidation Officer and he has found that in Khasra No. 443, measuring 0-4-11 bighas, toilets, bath room and verandah were existing and the respondent No. 3 was in possession of the same.

9. The petitioner has specifically averred that he was not associated at the time of spot visit by the Assistant Consolidation Officer. The report of the Assistant Consolidation Officer cannot be believed in view of the findings recorded by the learned Civil Judge (Junior Division), Court No. 4, Mandi, District Mandi, H.P. in

Civil Suit No. 09/06, decided on 23.08.2009.

10. Case of the respondent No. 3 before the learned Civil Judge (Junior Division), Court No. 4, Mandi, District Mandi, H.P. was that he has not stacked any material over Khasra No. 443. According to him, his son has stacked some raw material, but the same was removed in rainy season.

11. The consolidation proceedings which commenced in 1992 have concluded in 1997. The revision petition has been preferred by the respondent No. 3 after a period of ten years. The same was required to be filed within a reasonable period. The respondent No. 3 has stated in reply to the petition that they came to know about the wrong allotment of Khasra No. 443 to the petitioner when he filed a Civil Suit bearing No. 09/06. The petitioner and respondent No. 3 are real brothers they knew their possession after the consolidation proceedings were closed. The parties were put in respective possession during the course of consolidation and the same position is reflected in the Jamabandi, Ex. P-1. There is a presumption of truth attached to Jamabandi, though rebuttable. However, the respondent No. 3 has not led any evidence to rebut the revenue entries, i.e. Annexure P-1. Once the Judgment and decree has been passed by the learned Civil Judge (Junior Division), Court No. 4, Mandi, District Mandi, H.P. in Civil Suit No. 09/06 on 23.08.2009, the same is binding between the parties and the authorities cannot over reach the same.

12. According to Section 54 of The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the State Government may at any time 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, 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.

13. Their Lordships of the Hon"ble Supreme Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, have held that expression "at any time" must be read and construed contextually and reasonably and not in an unguided or arbitrary manner. Their Lordships have further held that where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case. Their Lordships have held as under:

9. Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo motu power could be exercised even after a long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-section (4) of Section 50-B of the Act as to whether the suo motu power could be exercised at any time strictly sticking to the language of that sub-section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or

period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. 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 motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu 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 hands subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. 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 motu 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 motu 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.

12. The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in subsection (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division

Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time.

14. Their Lordships of the Hon^{ble} Supreme Court in *State of H.P. and Others Vs. Rajkumar Brijender Singh and Others*, have again explained the expression "at any time". Their Lordships have held that though Sub-section (3) of Section 20 of the H.P. Ceiling on Land Holdings Act, 1972 provides that suo motu power may be exercised at any time, 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. Their Lordships have further held that 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. All that is meant is that such powers should be exercised within a reasonable time. No fix 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 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, well it could 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 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 some time 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 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 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.

15. The Lordships of the Hon^{ble} Supreme Court in A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, have held that no period of limitation is prescribed under the Urban Land (Ceiling and Regulation) Act, 1976 to exercise suo motu revisional power by the State Govt., but the same has to be exercised within a reasonable period. Their Lordships have held as under:

19. We are further of the view that the State Government, in the facts and circumstances of the case, was right in exercising revisional jurisdiction u/s 34 of the Act. Mr. Venugopal is indeed right in submitting that even though no period of limitation is prescribed for exercise of revisional jurisdiction by the State Government suo motu, such power must be exercised within a reasonable time [vide The State of Gujarat Vs. Patil Raghav Natha and Others, But taking into account the facts and circumstances in their entirety and in particular, a letter of Chief Engineer, Visakhapatnam Port Trust of December 19, 1985, it cannot be said that the power had not been exercised within a reasonable period. It is also pertinent to note that the subsequent development shows as to how some of the Officers of the Port Trust were parties to fraud said to have been committed by land-owners. In this connection, the respondents are right in inviting our attention to a letter dated August 21, 1989 by the Port Trust Authorities to the Commissioner of Land Reforms stating therein that the Government intended to exercise suo motu power u/s 34 of the Act but there was no necessity to reopen proceedings and suitable directions were required to be issued to District Collector, Visakhapatnam to pass an award in respect of land sought to be acquired under the Land Acquisition Act. In view of these developments, in our opinion, the High Court was fully justified in recalling the earlier order.

16. Their Lordships of the Hon^{ble} Supreme Court in Pune Municipal Corporation Vs. State of Maharashtra and Others, have held that Revisional authority must consider extent of delay and whether revision was filed within reasonable time, intervening circumstances and subsequent events so as to conclude whether revisional jurisdiction should be exercised or not and only thereafter the question of considering merits of the matter would arise. Their Lordships have further held that though no period of limitation was prescribed, however, the revisional jurisdiction must be invoked within a reasonable time. Their Lordships have held as under:

27. Now it is true that no period for revision is provided in the Act. It was, therefore, submitted on behalf of the land-owners that when the Legislature did not think it fit to prescribe period of limitation, such power can be exercised "at any time" and no Court by a "judicial fiat", usurp legislative power and prescribe period of limitation. It is no doubt true that the statute does not fix period of limitation within which revisional power should be exercised u/s 34 of the Act. The Legislature, in its wisdom, has not fixed period of limitation as it had empowered the State Government to exercise revisional power suo motu. In our judgment, however, only in such cases i.e. where the period of limitation is not prescribed that the concept of "reasonable time" can be invoked and power must

be exercised within such period.

30. The law laid down in *Patel Raghav Natha* has been reiterated by this Court in several cases. We do not intend to burden our judgment with all those cases. We may only state that broad contention of the land owners that when no period of limitation is prescribed, revisional jurisdiction can be exercised at any time cannot but be rejected. If the law prescribes period of limitation, the action must be taken within such period. But where the law does not prescribe limitation, the Court would import the concept of "reasonable time". We may, however, hasten to add that what is the length of the reasonable time would depend upon the facts and circumstances of each case and no rule of universal application can be laid down. [See also *Shailesh Jadavji Varia v. Sub-Registrar, Vadodara & Ors.* (1996) 3 Guj LR 783 (FB)].

31. In the facts and circumstances of the case, in our opinion, the Revisional Authority was duty bound to take into account the length of delay, intervening circumstances and subsequent events from 1977 to 1995 and to consider whether the powers should have been exercised or not. Since no such exercise has been undertaken, the order suffers from legal infirmity and must be quashed.

41. In the present case, no period of limitation is prescribed for preferring Revision u/s 34 of the Act. The principle laid down in *Patel Raghav Natha*, hence, applies. If, therefore, the Revisional Authority was inclined to exercise jurisdiction, it ought to have been satisfied that such power was invoked by the petitioner within reasonable time. Merely on the ground that the order passed in 1977 was unlawful was not sufficient to ignore length of delay and other attenuating circumstances.

17. Their Lordships of the Hon"ble Supreme Court in *State of A.P. and Another Vs. T. Yadagiri Reddy and Others*, have held that even if no period of limitation is prescribed, the action is to be initiated within a reasonable time though the words "at any time" are used in the provision. Their Lordships have held as under:

68. This Court has considered the nature of that power in *Ibrahimpattam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others*,

9.... Use of the words "at any time" in subsection (4) of Section 50-B of the Act (The A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950) only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu 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 the 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 has 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: Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others,

9.... Use of the words "at any time" in subsection (4) of Section 50-B of the Act (The A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950) 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 motu power under subsection (4) of Section 50-B of the Act (The A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950) 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 motu power "at any time" only means that no specific period such as days, months or years are not (sic) 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 crystallised. Not only this, but, it is the report of Shri Rao that the said lands have now been converted and sold 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 motu 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.

Accordingly, the writ petition is allowed. Annexure P-3, dated 17.02.2010, is quashed and set aside. The pending application(s), if any, also stands disposed of. No costs.