

(2016) 05 P&H CK 0312

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1214 of 2014 (O&M)

Latoor Singh and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Haryana Ceiling on Land Holdings Act, 1972 — Section 18(6)

Citation : (2016) 3 PLR 291 : (2016) 4 RCRCivil 16

Hon'ble Judges : Rajesh Bindal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Mr. Ashish Aggarwal, Senior Advocate with Mr. Govind Chauhan, Advocate, for the Appellant; Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—The petitioners and their predecessor-in-interest having failed before the learned Single Judge have filed the present intra-court appeal.

2. The challenge before the learned Single Judge was to the order dated 20.3.1992, passed by the Financial Commissioner, exercising suomotu power while setting aside the order dated 15.4.1981 passed by the Prescribed Authority under the Punjab Security of Land Tenure Act, 1953.

3. Learned counsel for the appellants submitted that the predecessor-in-interest of the appellants-Kabiz Singh (deceased) was a big land owner of village Agondh, District Karnal. Vide order dated 24.1.1971, his 110 kanals and 13 marlas of land was declared surplus under the Act. Kabiz Singh died on 30.3.1975. His inheritance was sanctioned. Even though the land had been declared surplus but possession thereof was never taken from Kabiz Singh (deceased) or his successors-in-interest. After mutation of inheritance was sanctioned, his sons filed application on 11.8.1980 for re-computation of three separate units. The same was allowed vide order dated 15.4.1981 by the Prescribed Authority. At the

time of hearing, the State was duly represented by Naib Tehsildar Agrarian. It was specifically noticed by the Prescribed Authority under the Act that the land though declared surplus in the hands of Kabiz Singh (deceased), but had not been utilised. Though the order passed by the Prescribed Authority was appealable under Section 18 of the Haryana Ceiling of the Land Holdings Act, 1972 (for short, "the Act") to the Collector and further even revision before the Commissioner was also maintainable, but no remedy was availed of by the State against the same. The State filed revision before the Financial Commissioner after a gap of 11 years. The same was considered under Section 18 (6) of the Act by invoking suo-motu power and the order passed by the Prescribed Authority was set aside. The order was upheld by the learned Single Judge.

4. While placing reliance upon judgments of Hon"ble the Supreme Court in Santoshkumar Shivgonda Patil and others v. Balasaheb Tukaram Shevale and others, (2009) 9 SCC 352; Loku Ram v. State of Haryana, 2000 (1) RCR (Civil) 141; and of this Court in Sardara Singh and others v. The Financial Commissioner and others, 2008 (2) RCR (Civil) 744; CWP No. 7074 of 1991-Smt. Dayawanti and others v. The State of Haryana and others, decided on 11.7.2011; State of Haryana and others v. Chandgi Ram, 2014 (1) PLJ 406; Chandgi Ram v. State of Haryana and others, 2014 (1) PLJ 115; CWP No. 1861 of 1991-Babu Singh v. State of Haryana, decided on 31.8.2013 and CWP No. 832 of 1993-Puran Singh v. State of Haryana, decided on 24.7.2014, learned counsel for the appellants submitted that once the State had remedy of appeal and revision against the order passed by the Prescribed Authority and the same was not availed of at the appropriate time within the period of limitation, exercise of suo-motu power, that too on the application by the State by the Financial Commissioner after 11 years of passing of the order, cannot be legally sustained. Once the order had attained finality and even the suo-motu revisional power was not exercised within the reasonable time, the prejudice theory cannot be applied. It is not in dispute that the land, which was initially declared surplus was never utilised and is still in possession of the appellants.

5. On the other hand, learned counsel for the State submitted that the moment the land was declared surplus, it stood vested in the State. No time limit as such has been prescribed under the Act for exercising suomotu power. Any illegal order passed by the Prescribed Authority could be set aside while exercising suo-motu revisional power at any time. In the present case, the matter was brought to the notice of the Financial Commissioner, who exercised that power and set aside the order. As the order passed by the Prescribed Authority was patently illegal, no prejudice as such has been caused to the appellants. The land which was declared surplus was meant to be used for allotment to the landless.

6. Heard learned counsel for the parties and perused the paper book.

7. The relevant provisions of Section 18 of the Act, which deal with appeal and revision, are extracted below:

"18. Appeal, review and revision. - (1) Any person aggrieved by any decision or order of the prescribed authority, not being the Collector, may, within fifteen days from the date of the decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as prescribed authority or not) not being a decision or order made in an appeal under sub-section (1) may, within fifteen days from the date of decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed.

Provided that the Commissioner may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient caused from filing the appeal in time.

(3) xx xx xx

(4) Any person aggrieved by an order of the Collector under sub-section (1), may within thirty days from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

(5) xx xx xx

(6) Notwithstanding anything contained in the foregoing subsections, the Financial Commissioner may suo-motu 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.

(7) xx xx xx

(8) Notwithstanding anything contained in section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area.

(9) xx xx xx"

8. The undisputed facts on record are that 110 kanals and 13 marlas of land owned by Kabiz Singh was declared surplus vide order dated 24.1.1971. The land was never utilised and possession thereof remained with the landowner. Kabiz Singh died on 30.3.1975. Mutation of inheritance was sanctioned. Thereafter, his

sons filed application on 11.8.1980 for re-computation of their shares as three independent units. The Prescribed Authority, vide order dated 15.4.1981, on the basis of report of Naib Tehsildar Agrarian came to the conclusion that the land owned by Kabiz Singh (deceased) though was declared surplus but had not been utilised even after his death and on succession, his sons had become small landowners, hence, the same was entitled for exemption. Naib Tehsildar Agrarian was duly represented before the Prescribed Authority and even a copy of the order was also sent to him for making entry in the register. Even though the order was appealable under Section 18 of the Act, but the State never preferred any appeal. Even the order passed by the Appellate Authority/Collector was revisable before the Commissioner. Notwithstanding the remedy of appeal or revision as provided in Section 18 of the Act, the Financial Commissioner had suo-motu power to call for records 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. No doubt, no time limit has been fixed for exercise of suo-motu power under the Act. In the case in hand, the State preferred revision before the Financial Commissioner after a lapse of 11 years after passing of order by the Prescribed Authority, which was considered under Section 18 (6) of the Act invoking suo-motu power.

9. The legal issue involved in the present petition is as to whether suo-motu power could be exercised by the Financial Commissioner under Section 18 (6) of the Act after 11 years of passing of the order even if there is no time limit as such fixed in the Act for exercise of that power. The issue was considered by Hon"ble the Supreme Court in Santoshkumar Shivgonda Patil and others" case (supra). It was a case under Maharashtra Land Revenue Code, 1966 (for short, "the Code"). The suo-motu power was sought to be exercised in the year 1993 against the order passed by the subordinate authority in the year 1976. The suo-motu power therein could be exercised under Section 257 of the Code. While referring to the earlier judgments of Hon"ble the Supreme Court in State of Gujarat v. Patil Raghav Natha, (1969) 2 SCC 187; Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim, ((1997) 6 SCC 71 and State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., (2007) 11 SCC 363, it was opined that even if a statute does not prescribe any time limit for exercise of revisional power, it does not mean that the same can be exercised at any time. It has to be exercised within reasonable time. Things settled cannot be unsettled after lapse of long time. In that case, reasonable time was opined to be three years. Exercise of power after 17 years was held to be abuse of process of law. Relevant paragraph 16 thereof is extracted below:

"16. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time

within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30.3.1976 is flawed and legally not correct. Pertinently, Tukaram Sakharam Shevale, during his lifetime never challenged the legality and correctness of the order of the Tahsildar, Shirol although it was passed on 30.3.1976 and he was alive up to 1990. It is not even in the case of Respondents 1 to 5 that Tukaram was not aware of the order dated 30.3.1976. There is no finding by the Sub-Divisional Officer either that the order dated 30.3.1976 was obtained fraudulently."

10. The aforesaid judgment of Hon"ble the Supreme Court was followed by a Division Bench of this court in State of Haryana and others v. Chandgi Ram (supra), where the order passed invoking revisional jurisdiction after 11 years was held to be bad.

11. The issue was subsequently considered by this court in Chandgi Ram v. State of Haryana and others, where the suo-motu power was sought to be exercised after 11 years of passing of the order. It was opined that exercise of suo-motu power cannot be left at the whims and sweet-will of the revisional authority whenever and wherever it wants to do so. To similar effect is the judgment of this court in Puran Singh's case (supra).

12. For the reasons mentioned above, in the present case suo-motu power having been exercised by the Financial Commissioner after 11 years of passing of order by the Prescribed Authority, the same cannot be said to be reasonable and legally sustainable. The learned Single Judge had gone wrong on the theory of prejudice, which simply cannot be applied and an order, which cannot otherwise be legally sustained, be upheld merely on that ground. The things which stood settled way back in the year 1981 could not be unsettled. No third party interest has stepped in, as admittedly the land though declared surplus initially was not allotted to any one and the appellants even remained in possession throughout.

13. Accordingly, the appeal is allowed. The impugned judgment of the learned Single Judge and the order dated 20.3.1992 passed by the Financial Commissioner are set aside.