(2010) 07 SHI CK 0223

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 472 of 2007

Nagender Singh APPELLANT

Vs

The Financial Commissioner (Appeals) and Others RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 18(6), 20, 20(3), 211, 54
Himachal Pradesh Land Revenue Act, 1954 — Section 17, 17(1), 17(3), 46

Citation : (2011) 1 ShimLC 155

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The Petitioner herein, Nagender Singh, successor-in-interest of Shri Chain Singh, challenges the order dated 23.1.2007, (Annexure P-11) passed by the Financial Commissioner, directing the review of mutations No. 4437, 4438, 4439, 4440 and 4441 dated 21.9.1987 by the Collector, Una in Ceiling Case No. 535 of 1974 on the ground that they have been wrongly incorporated in the revenue record. The order has been passed on the revision instituted by Devinder Singh, son of Shri Laxman Singh, on the ground that he is brother of Chain Singh, who jointly owns land, as detailed in the petition. The Financial Commissioner holds that prima-facie it is because of the erroneous attestation of mutations that the order dated 9.9.1975 (Annexure P-2) has not been properly given effect in the revenue records.

2. The case of the Petitioner herein is that in accordance with the provisions of Section 8 of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the ''Act''), Shri Chain Singh was allowed to retain the land as directed in that order. Subsequently, this order was challenged before the Settlement Officer, District Una by S/Sh. Devender Singh, Rajender Singh, Surinder Singh, Virender Singh and Narender Singh, sons of Shri Hardev Singh, claiming therein that the mutations as sanctioned therein, namely, the ones as detailed in this writ petition, had not been properly incorporated in the revenue

record. The appeal was rejected by the Settlement Officer holding that the Revenue Officer had only given effect to the partition as ordered by the Collector on 9.9.1975. This appeal had been preferred by Respondent No. 2 herein. It is undisputed before me that after this appeal, which was dismissed on 29.8.1995 (Annexure P-4), no further appeal or proceedings were taken. Be stated that this appeal was time barred. It seems that the parties thereafter had also litigated before the Civil Court. The suit instituted by Devinder Singh" and others was dismissed holding that it is the Revenue Court which" has revisional jurisdiction to try the case, which order was affirmed by the Supreme Court (Annexure P-6). Thereafter revision petition u/s 17 of the Himachal Pradesh Land Revenue Act was preferred by the applicant therein Devinder Singh challenging the mutations sanctioned in favour of the Petitioner herein, namely, mutations No. 4437, 4438, 4439, 4440 and 4441. Another prayer was made that the allotment of land made in favour of the Respondent in this writ petition (Petitioner before the Financial Commissioner) may be implemented in letter and spirit. It is on this that the Financial Commissioner has passed the order (Annexure P-11), which has been challenged by way of the present writ petition on a number of grounds including the ground of limitation, which was urged before the Financial Commissioner and it has not been considered.

3. The Financial Commissioner has disposed of the petition only with the observation that correction is being made purportedly on some errors, which have been pointed out and which would not affect the right of any party, but would implement the orders passed.

4. Learned Counsel for the Petitioner submits that there was no jurisdiction vested in the Financial Commissioner to entertain the revision petition. He submits that the powers u/s 17 of the Himachal Pradesh Land Revenue Act are fettered by limitation i.e. to say that such powers should be invoked within a reasonable time and not at any time. Section 17 of the Himachal Pradesh Land Revenue Act reads as under:

17. Power to call for, examine and revise proceedings of Revenue Officers.--(1) The Financial Commissioner may at any time call for the record of any case pending before (or disposed of by) any Revenue Officer subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.

(3) If any case in which a Commissioner or Collector has called for. a record, he is of opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may in any case called for by himself under Sub-section (1) or reported to him under Sub-section (3) pass such order as he thinks fit:

Provided that he shall not under this Section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and effecting any question of right between private persons without giving those persons an opportunity of being heard.

Learned Counsel relies upon the decision of the Supreme Court in Loku Ram v. State of Haryana and Ors. (1999) 123 PLR 590 which considered the expression "at any time" as used in Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972. The Section provided that Financial Commissioner may suo motu at any time call for the record or order etc. It reads as under:

Section 18(6). Notwithstanding anything contained in the foregoing Sub-sections, 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.

Relying upon the decision of the same Court in The State of Gujarat Vs. Patil Raghav Natha and Others, the Court held that expression "at any time" could only be interpreted to mean that proceedings could not be started/initiated without limitation and ruled that there is a reasonable time limit within which such power can be exercised. The Court held:

5. No doubt, the Section uses the expression "at any time" but it cannot be indefinite. The power has to be exercised within a reasonable time. While construing the expression "at any time", this Court in The State of Gujarat Vs. Patil Raghav Natha and Others, , has stated the law thus:

11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 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.

7. The test prescribed by this Court in Raghav''s case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable on the facts of the case. Nor has the High Court gone into the question and decided whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court. The order of the Financial Commissioner is also set aside. The order of the Collector dated 18.6.1982 is restored. No costs." (P. 591)

4. The issue was as to whether the Director, Consolidation of Holdings, Himachal Pradesh has exercised his powers u/s 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, The term ''reasonable time'' used u/s 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, whereby, the Hon''ble Supreme Court while expressing its view u/s 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.

5. The view taken by the Supreme Court in Raj Kumar Brijender Singh (supra) has subsequently been reiterated by the Supreme Court in Chairman, Indore Vikas Pradhikaran (supra). (pp. 177-178)

6. In Kashmir Singh (deceased) through his L. Rs. Chain Singh and Ors. v. State of H.P. and Ors. 2002(1) S.L.J. 834, this Court considered the provisions of Himachal Pradesh Ceiling on Land Holdings Act, 1972 and in particular Section 20, for the period prescribed for considering the period of limitation for initiating suo motu proceedings. Again, placing reliance on the decision of Raghav''s case (supra) as also Shailesh Jadavji Varia v. Sub-Registrar, Narmada Bhavan and Ors. 1996(2) GLH 848, this Court held:

27. In the facts and circumstances of the case, in our opinion, the order passed by the District Collector, Una in 1975 could not have been challenged by filing a revision petition in 1989 after about fourteen years. Such a long period, to us, appears to be unreasonable. The revisional authority, in our view, has also not committed any error of law or of jurisdiction in passing the impugned order, particularly, when the orders were passed under the Act by the competent authority, i.e. District Collector, Una. The revisional authority also considered the matter on its own merits and satisfied that the Collector had not committed any error of law or of jurisdiction in passing the order. (pp. 841-842)

7. Adverting to the facts and circumstances of the present case, there is no explanation as to why after Annexure P-2 which order was passed on 9.9.1975 and appeal against was dismissed on 29.8.1995, the revisional jurisdiction of the Financial Commissioner was invoked eleven years after the dismissal of the

appeal and twenty one years after the passing of the first order. Learned Counsel appearing for the Respondent submits that Section 46 of the Land Revenue Act places no fetters in terms of the time limit prescribed for challenge against any entry in the revenue records which is contrary to the interest of a person. This submission cannot be accepted. The law is now well settled that every appellate/ revisional power is to be exercised within a reasonable time in case no limitation has been prescribed.

8. In these circumstances, Annexure P-11 is quashed and set aside. This order will not be construed to alter the orders passed by the Collector in the Land Ceiling Cases of the respective parties to the suit which have attained finality. In other words, the allotments which have been made to each of the parties by the Collector and which have attained finality in accordance with law, shall be retained.