
(2014) 07 P&H CK 0192
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 832 of 1993 (O&M)

Puran Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 4 RCR(Civil) 461

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Advocate : Ashish Aggarwal, Senior Advocate and Kulwant Singh, Advocate for the Appellant; Saurabh Mohunta, DAG, Advocate for the Respondent

Final Decision : Allowed

Judgement

Paramjit Singh Patwalia, J.

CM No. 6475 of 2014

1. Allowed, as prayed for, subject to all just exceptions. Replication filed to the written statement of the respondent is taken on record.

CWP No. 832 of 1993

2. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 24.08.1990 (Annexure P-3) passed by the Financial Commissioner, Haryana, whereby the order passed dated 03.01.1983 (Annexure P-2) passed by the Prescribed Authority, SDO (Civil), Narwana has been set aside and order dated 08.02.1961 passed by the Collector, Agrarian, Sangrur, has been restored.

3. Brief facts of the case are that prior to 1961 petitioner was owner of 370 bighas 15 biswas of land situated in the revenue estate of village Batta, Tehsil Narwana, District Jind. Out of this land an area of 90 bighas 15 biswas comprised in khasra Nos. 3844-2985, 3982-3903 min. 3983 was declared surplus vide order

dated 8.2.1961 passed by Collector Agrarian, Sangrur, under the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called "Pepsu Act"). After consolidation, petitioner was given new killa numbers of rect. Nos. 209, 210, 211, 212, 267 and 282 in lieu of area comprised of khasra nos. 3844-2985 and 3982-3903 min. The declared surplus area was never utilized nor it was allotted to anybody. It remained under the cultivating possession of the petitioner throughout till 24.01.1971 when his son namely Vijaypal became entitled to one more unit of land on attaining majority. The date of birth of Vijaypal Singh is shown as 04.08.1957 in the certificate issued by the Government High School Batta, as such on the appointed day as defined in Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called "the Land Ceiling Act"), Vijaypal Singh became entitled to one unit area of land as permissible area. The area declared surplus in the hands of petitioner did not vest in the State Government due to its non-utilization. The Land Ceiling Act came into force w.e.f. 22.12.1972. Since the area remained in the hands of the petitioner, on 12.3.1982 petitioner made an application to the Prescribed Authority, Narwana that his son-Vijaypal Singh had attained majority and separated from the petitioner. Further, that on the "appointed day" i.e. 24.01.1971, the petitioner owned the land within the permissible limits under the Land Ceiling Act and prayed for cancellation of order dated 08.02.1961 passed by the Collector Agrarian declaring 90 bighas 15 biswas of land as surplus under the Pepsu Act and for exclusion of the said area from surplus pool. The application moved by the petitioner was accompanied by copies of khasra girdawaris showing that land in question remained in petitioner's possession and it had never been utilized by the State Government. The Prescribed Authority after obtaining the report of Naib Tehsildar, Agrarian allowed the application of the petitioner vide order dated 03.01.1983 thereby excluding 90 bighas 15 biswas of land of the petitioner from the surplus pool. After seven years of passing of the order dated 03.01.1983, Financial Commissioner, Haryana, in exercise of power u/s 18(6) of the Land Ceiling Act, has set aside the order dated 03.01.1983 passed by the Prescribed Authority and restored the position as obtained in pursuance to the order passed by the Collector, Agrarian on 08.02.1961, vide impugned order dated 24.08.1990 (Annexure P-3). Now, impugned order(Annexure P-3) has been challenged on the ground that it is illegal, unconstitutional, arbitrary and as such is not sustainable in the eyes of law. It is further submitted that power u/s 18(6) of the Land Ceiling Act, can be exercised within a reasonable period and it cannot be exercised at any time. If the Financial Commissioner is allowed to exercise such power at his whims and fancies, then any order passed by subordinate authorities will never attain finality. Proceeding under suo motu power after seven years, by any stretch of imagination, cannot be considered within a reasonable time. Since the possession of the land remained with the petitioner and his son, provisions of Section 32 FF of Pepsu Act are not applicable. Further, once the new Act has come into being, surplus area is required to be determined afresh. Another important feature is that consolidation has taken place, which has resulted into converting the land from bigha/biswas to kanal/marlas, which is

also required to be considered for determination of surplus area.

4. On notice, respondent-State filed reply contending that petitioner has no locus standi to file the present petition. The land already stands vested in the Government of Haryana u/s 12(3) of the Land Ceiling Act. The area of the petitioner was declared surplus on 8.2.1961 under the Pepsu Act. Against that, no revision or appeal was filed by the land owner and the same had attained finality on 24.01.1971 i.e. the "appointed day" as per the Land Ceiling Act. It is further averred in the written statement that Prescribed Authority has passed the order on merit. The surplus area was utilized and was allotted to the eligible persons on 15.5.1980 and possession was also delivered to beneficiaries. The alleged application dated 12.3.1982 is of no consequence as it is after taking over the possession and allotment of the area. It was further submitted that Financial Commissioner can exercise his powers u/s 18(6) of the Land Ceiling Act and had rightly restored the order passed under the Pepsu Act on 8.2.1961.

5. I have heard learned counsel for the parties and perused the record.

6. Admitted facts are to the effect that an area of 90 bighas 15 biswas was declared surplus in the hands of the petitioner by the Collector Agrarain, Sangrur, under the Pepsu Act vide order dated 08.02.1961. The possession of the same was never taken from the petitioner. Prior to the utilization of surplus area and before taking over the possession from the petitioner, State of Haryana had promulgated the Land Ceiling Act which came into existence w.e.f. 22.12.1972. As per the provisions of the Land Ceiling Act, 24.01.1971 was fixed as "appointed day" to determine the surplus area. Prior to coming of Land Ceiling Act and after the declaration of surplus area, consolidation took place in the village. It is also an admitted fact that writ petition was admitted on 19.01.1993 and status quo with regard to possession was ordered to be maintained.

7. In the written statement, State has averred that area was utilized and allotted to the eligible persons on 15.5.1980 and its possession was also delivered to the beneficiaries. But it has not been mentioned in the written statement as to when the possession was taken by the State nor any document has been placed on record regarding taking over the possession of the land, which was alleged to be declared surplus. The fact has been controverted by the petitioner by making reference to khasra girdawris ranging from 1958 to 1992 that land in question remained in possession of petitioner along with Babu, which have been placed on record as Annexure P-4. Thus, the taking over of possession, as referred above, stands controverted by documentary evidence in the shape of khasra girdawaris.

8. Learned counsel for the petitioner has vehemently contended that even if for the sake of arguments, it is presumed that land was utilized on 15.5.1980, allotted to the allottees and possession was delivered, it means that since the Land Ceiling Act had come into existence, it was incumbent upon the authorities below to redetermine the surplus area with the petitioner, as he was entitled to reserve separate units for his son under the Act. Since the land had not been

utilized prior to coming into being of the Land Ceiling Act, redetermination of surplus area was the bounden duty of the revenue authorities. Learned counsel has further contended that not only this, during the interregnum period consolidation had also taken place and measurement of the area has been changed from bigha/biswas to kanal/marlas, which has diminished the land of the petitioner. The date of birth of son of the petitioner is shown as 04.08.1957.

9. Learned counsel for the petitioner has further contended that Prescribed Authority has considered the application moved by the petitioner and found that there is no surplus area in the hands of the petitioner. As such order dated 8.2.1961 has no effect on the rights of the petitioner. The impugned order has been passed after seven years by the Financial Commissioner exercising the suo motu power, which is not permissible in the eyes of law. Learned counsel for the petitioner has relied upon the decision dated 31.08.2013 rendered by this Bench in CWP No. 1861 of 1991, titled "Babu Singh vs. State of Haryana". Learned counsel for the petitioner has also relied upon the judgments of the Hon'ble Supreme Court in Loku Ram Vs. State of Haryana and Others The State of Gujarat Vs. Patil Raghav Natha and Others, , Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, and Shri Santoshkumar Shivgonda Patil and Others Vs. Shri Balasaheb Tukaram Shevale and Others, to contend that suo motu power can be exercised only within a reasonable period although no limitation is prescribed under the Act. Learned counsel for the petitioner has further relied upon the judgments of this Court in Dayawanti Vs. State of Haryana and CWP No. 895 of 1991 titled "Chandgi Ram vs. State of Haryana and others" decided on 8.7.2013 wherein identical issue was involved and similar view has been taken that suo motu power can be exercised only within reasonable time even if no limitation is provided.

10. Per contra, learned State counsel has vehemently opposed the contentions raised by the learned counsel for the petitioner and contended that determination of the surplus area with the petitioner has become final under the Pepsu Act. The petitioner is not entitled to the benefits of the Land Ceiling Act. Learned State counsel has further contended that the powers of the Financial Commissioner are very wide under the provisions of the Land Ceiling Act. u/s 18(6) of the Land Ceiling Act, Financial Commissioner can exercise the power suo motu at any time and call for the records of any proceedings or order of any authority subordinate to him. As such the impugned order is legal and valid. The writ petition deserves to be dismissed.

11. I have considered the rival contentions raised by learned counsel for the parties.

12. It is an admitted fact that area was declared surplus on 8.2.1961 and it was not utilized. As per the bald version of the respondent-State it was utilized in the year 1979, which means that by that time the Land Ceiling Act had come into being.

13. The Hon''ble Supreme Court in Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, has held that once the land declared as surplus, under the Pepsu Tenancy Act did not vest in the State Government as possession thereof had not been taken before coming into operation the provisions of the Land Ceiling Act, there has to be a fresh determination of surplus area, with respect to the land of a landowner under the provisions of the Land Ceiling Act.

14. Similar is the situation in the present case and consolidation has also taken place because of which total area of land has also changed as per the quality of land.

15. This Court in Maghar Singh Vs. State of Punjab and Another, has held as under:-

Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of consolidation proceedings the total area to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner.

16. A Full Bench of this Court in Harchand Singh Vs. The Collector, Agrarian, Bhotinda and Another, has held as under:-

5. Now it deserves highlighting that within this Court there is a long time of unbroken precedent that in case of the diminution of an area of a landowner due to consolidation before the surplus area proceedings are completed and finalized, he would be entitled to claim that his new area be taken into for determining his permissible area and not that held by him prior to the consolidation This was apparently so held by Harbans Singh, J. (as he then was) in Bachan Singh and another v. Financial Commissioner, Punjab, CWP No. 1366 of 1962, decided on the 14th of February, 1963. This view found favour with H.R. Khanna, J. (as his Lordship then was) in Maghar Singh Vs. State of Punjab and Another, and it was observed as follows:-

Perusal of the different provisions of the Act goes to show that the occasion for the declaration of the surplus area would arise only if a landowner holds land in excess of the permissible limit. Further, it is plain that it is only the area which is in excess of the permissible limit that can be declared to be surplus. In case the proceedings under the Act are still pending and in the meanwhile as a result of

consolidation proceedings the total area to which a landowner becomes entitled, is less than the area previously held by him, it is, in my opinion, that new area which should be taken into consideration and not the area which was held by him before the consolidation. There is nothing in the Act which prohibits the Collector from taking into account the reduction brought about in the area held by a landowner by consolidation. The Act in question is a piece of legislation which results in expropriation and as such its provision should be construed strictly, and unless a case falls within the express provisions of the Act the benefit must go in favour of the landowner.

The judgment aforesaid was subjected to appeal and the Letters Patent Bench in State of Punjab and another v. Maghar Singh, 1969 PLJ 323, reaffirmed the ratio thereof with even greater vigour.

6. Equally it deserves notice that an identical view has been taken by A.N. Grover, J., in Amar Singh Vs. State of Punjab and Another, and Narula, J. (as he then was) in Bhag Singh v. The State of Punjab and another, 1966 PLJ 238. In Jang Singh v. The State of Punjab, 1970 PLJ 93, to which I was a party, the writ petition was directly admitted to a hearing by the Division Bench which categorically expressed its agreement with the enunciation of the law by the Court earlier and allowed the petition in accordance therewith.

7. I must confess that we have not had the benefit of any serious debate on the point. Leaned counsel for the petitioner inevitably relied on the catena of judgments noticed above and canvassed for their affirmance. What deserves notice, however, is that Mr. Syal appearing for the respondent-State frankly conceded his inability to challenge the correctness of the view enunciated therein and fairly stated that there was no single judgment to the contrary. Indeed he ultimately himself took the stand that no flaw in the impeccable reasoning of the Single Bench and Division Bench judgments was discernible which could possibly merit any reconsideration. Nor can one fail to recall that the land reforms and agrarian legislation after Independence was initiated by the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in the two States of Punjab and Haryana. The settled view of this Court with regard to surplus area under both these provisions in the context of consolidation proceedings has held the field without a discordant note. In the aforesaid context, we are unable to discern any reason whatsoever to deviate from the string of authorities on the point. Apart from a passing observation, the learned Judges of the Division Bench making the reference have not adequately indicated their reasons for the vacillating doubt raised therein. It appears that the matter was not adequately canvassed before their lordships nor have they adverted in detail to the authorities noticed by them or sought to repel the reasoning thereof. With respect we are unable to hold that the settled view of this Court on the point calls for any reconsideration or deviation therefrom. We would, therefore, reaffirm the reasoning and the ratio of the judgments notice above.

17. From the perusal of record, it is crystal clear that even today the surplus land

has not been utilized as no names of the allottees have been mentioned in the written statement nor the respondent-State has been able to show as to when the possession was taken. When the possession is taken, entry is made in the roznamcha waqati by the patwari. There is no document to support this fact nor there is any document of allotment in favour of the allottees, even their names have not been disclosed. Khasra girdawris from 1958 onwards, at least upto 1992, clearly indicate the possession of the petitioner. The contention of the learned counsel for the respondent regarding delivery of possession is not sustainable and cannot be accepted. In view of the revenue record i.e. khasra girdawris as well as the order passed by this Court whereby dispossession was stayed as well as the fact that respondent-State has not placed on record any document from which it could be proved that it had taken over possession of the land, it is clear that the petitioner was in continuous possession of the land. In view of coming into being the Land Ceiling Act as well as the consolidation, area of the petitioner declared surplus under the Pepsu Act was required to be redetermined under the Land Ceiling Act.

18. So far as the contention of the learned counsel for the respondent with regard to Section 18(6) of the Land Ceiling Act is concerned, it would be appropriate to reproduce relevant parts of Section 18 of the Land Ceiling Act, which reads as under:

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 the 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 cause from filing the appeal in time.

(3) x x x x x

(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) x x x x x

(6) Notwithstanding anything contained in the foregoing subsections, the Financial Commissioner may suo motu at any time call for the 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.

(7) x x x x x

(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.

19. No doubt, Section 18(6) of the Land Ceiling Act uses the expression "at any time" but it cannot be indefinite time. The power has to be exercised within reasonable time. The Hon"ble Supreme Court in The State of Gujarat Vs. Patil Raghav Natha and Others, has extensively considered the expression "at any time" and after construing expression "at any time" 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 within 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.

20. Further perusal of Section 18(2) of the Land Ceiling Act clearly shows that it prescribes the period of 15 days for filing an appeal and Section 18(4) prescribes period of 30 days for filing revision before the Commissioner. The above-said sub-sections prescribe a very short period of 15 days and 30 days, respectively. It would be unreasonable to hold that the Financial Commissioner has unlimited power to entertain revision after lapse of several years.

21. In Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, the Hon"ble Supreme Court has considered the identical provision and held as under:-

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 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 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 subsection (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which 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 by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers 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 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 dictionary meaning of words "at any time", the suo motu power under subsection (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.

22. The Hon"ble Madhya Pradesh High Court in *Ranveer Singh and Others Vs. State of M.P.*, while relying upon the judgment of Hon"ble Supreme Court in *Santoshkumar Shivgonda Patil* (supra), has held as under:-

16. The Supreme Court in *Santosh Kumar Shivgonda Patil*, AIR 2009 SC (Supp) 2471 (supra) while considering revisional power of Sub Divisional Officer u/s 257 of the Maharashtra Land Revenue Code ultimately held that the order which was not obtained by any fraudulence cannot be set aside after 17 years by exercising suo motu powers and, hence, is liable to be set aside and accordingly set aside the said order of the revisional authority. The Supreme Court further held that ordinarily the reasonable period within which such power is to be exercised should be not more than three years but of course only in the exceptional

circumstances.

17. The Supreme Court in another decision Mohamad Kavi (supra) while considering Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 also held that the suo motu powers should be exercised within a reasonable period and looking to the transfer which took place during intervening period in the year 1972 the suo motu powers exercised in September 1973 was found to be unreasonable because by that time investments were made by the purchasers and the key decision of The State of Gujarat Vs. Patil Raghav Natha and Others, was placed reliance as well as another decision Ram Chand and others 1993 AIR SCW 3479 (supra) was also relied upon and the suo motu power which was exercised u/s 84-C of the said Act by Mamlatdar was quashed and set aside.

23. The matter in hand is squarely covered by the decision rendered by this Bench in CWP No. 1861 of 1991, titled "Babu Singh vs. State of Haryana " decided on 31.08.2013 wherein it has been held as under:

On this basis a view is possible that for limitation purposes the reasonable period of limitation provided in Section 18 of the Land Ceiling Act may have to be kept in view. Of course the Full Bench has also held that non fixing of upper limit for exercising suo motu powers, will not confer unfettered rights to the revisional authority to exercise this power at any moment of time according to its whims.

From the catena of decisions referred to herein above, it can be noticed that law is fairly well settled that the suo motu powers cannot be exercised by the revisional authority after the expiry of several years. It has been held in almost every decision that such powers should be exercised within a reasonable period and in most of decisions, it is held that it should be exercised within a few months. The view, thus, is clear that suo motu powers cannot be left at the whims and sweet will of the revisional authority to be exercised whenever and wherever it wants to do so.

There is no plea raised before me on behalf of the respondent-State to explain the delay on the part of revisional authority to invoke its suo motu powers. From the perusal of provisions of the Act as well as the law settled by the Hon"ble Supreme Court, referred above impugned order (Annexure P-3) cannot be sustained also for the reason that the impugned order does not disclose any reason to hold that period of seven years is reasonable on the facts of the case nor it discloses that the power has been exercised on the facts and circumstances of the case within a reasonable period.

24. In view of above, writ petition is allowed. Impugned order passed by Financial Commissioner (Annexure P-3) is set aside and order of Prescribed Authority (Annexure P-2) is restored. Parties are directed to appear before the Collector Agrarian on 18.08.2014, who will determine the surplus area case of the petitioner afresh keeping in view the provisions of the Act and endeavour shall be made to dispose of the matter as early as possible.

25. No order as to costs.