

(2013) 07 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4512 of 2007

Rajendra Prasad Tiwari

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) ILR (MP) 2131 : (2014) 2 MPHT 15 : (2014) 1 MPLJ 253

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Sanjay Dwivedi, G.A. for State, for the Respondent

Judgement

A.K. Shrivastava, J.—By this petition under Article 226/227 of the Constitution of India, the petitioner is challenging the validity of the impugned order dated 26.08.2003 (Annexure P-1) passed by the learned Additional Commissioner, Sagar, Division Sagar in suo-motu Revision No. 46-A/19 of 1994-95. The following facts are unfolded:-

(i) A patta in respect to the disputed land ad-measuring 4 hectares was given by Naib Tehsildar to the petitioner on 06.11.1989;

(ii) Thereafter Naib Tehsildar on 27.05.1991 submitted report that under R.B.C. Chapter 4-3 Clause 3(5) ex-army persons are entitled only to two hectares land and, therefore, the land in excess which is given to the petitioner may be cancelled;

(iii) The patta of excess area of two hectares given to the petitioner was cancelled and the same was allotted to one Prem Narayan Dubey;

(iv) A report on 25.05.1991 was forwarded by the Tehsildar to S.D.O. Damoh;

(v) On 10.04.1991 it came into the knowledge of the Collector Damoh that the area where the land in question has been allotted has already been declared as urban area and, therefore, the land which has been allotted be cancelled;

(vi) The then Collector on 05.05.1992 requested the Additional Commissioner, Sagar that the orders passed by its predecessors dated 30.09.1989 and 02.12.1991 may be taken in suo-motu revision and may be set aside and also send the original record to the Commissioner;

(vii) On 28.10.1994 a show cause notice was sent to the petitioner; and

(viii) The Additional Commissioner after hearing the petitioner allowed the suo-motu revision and set aside the entire order of allotment of the land in question which was granted to the petitioner on 30.09.1989.

Hence, in this manner this petition has been filed challenging the impugned order dated 26.08.2013 passed by Additional Commissioner.

The contention of the learned counsel for the petitioner is that from bare perusal of the impugned order Annexure P-1 dated 26.08.2003, it is as clear like a noon day that on 05.05.1992 the Collector sent the matter to the Additional Commissioner with the entire record and thus according to the learned counsel it came into the knowledge of the Additional commissioner in the year 1992 i.e. on 05.05.1992 that allotment of the land has been wrongly made in favour of the petitioner, but, the suo-motu power of revision was exercised by the Additional Commissioner on 28.10.1994 when the notice was directed to be sent to the petitioner. Hence by placing heavy reliance upon the Full Bench decision of this Court in the case of Ranveer Singh and Others Vs. State of M.P., , it has been submitted that after such a long delay of more than two years, the suo-motu power of revision could not have been exercised by the Additional Commissioner and at the most it should have been exercised within 180 days as held by the Full Bench. Thus, it has been prayed that by allowing this petition, the impugned order be set aside.

2. On the other hand, Shri Sanjay Dwivedi, learned Govt. Advocate argued in support of the impugned judgment and submitted that the Full Bench decision of this Court in Ranveer Singh (supra) is not applicable in the present case because that decision pertains to the scope of Section 50 of the M.P. Land Revenue Code, 1959 (for short the Code). However, the present case pertains to Chapter 4-3 para 3(5) of the R.B.C., hence, the said Full Bench decision is not applicable.

3. It has been then propounded by him that even if the Full Bench decision can be said to be applicable in this case the outer limit for exercising suo-motu revisional power would commence from 05.05.1992, therefore, it cannot be said that the jurisdiction of suo-motu revisional power conferred in R.B.C. Chapter 4 Part 3 Clause 30(Kha) which has been exercised by the Additional Commissioner can be said in any manner to be illegal exercise of jurisdiction. Thus, on this ground, it is prayed that this petition be dismissed.

4. The third objection which learned Govt. Advocate has raised is in respect of delay and laches in filing this petition. It has been put forth by him that the order impugned Annexure P-1 was passed on 26.08.2003 but this petition was filed on

02.11.2007 and thus this petition be dismissed on the ground of delay and laches. On these submissions, he prayed for dismissal of this petition.

5. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

6. So far as the last objection in regard to the delay and laches is concerned on bare perusal of the memorandum of writ petition in para 4, this Court finds that it is specifically averred by the writ petitioner that he received information about passing of the said impugned order Annexure P-1 dated 26.08.2003 only in the second week of March, 2006, therefore, he immediately applied for the certified copy of the order which he received on 20.04.2006. At this juncture, I have gone through the certified copy of the impugned order and I find that it was delivered on 20.04.2006 although the application was submitted on 13.03.2006. Further it has been averred in the memorandum of petition that thereafter the petitioner has tried to get his grievance redressed at the level of the State Government and in that regard facts in detail have been mentioned from para 6.4 to 6.6, of the memorandum of the petition. Shri Dwivedi, learned Govt. Advocate submits that the objection of delay and laches has been raised in para 2 of the return. However, a rejoinder has also been filed by the petitioner to meet out the objection of delay and laches. In the rejoinder it has been elaborately pleaded by the petitioner that the impugned order dated 26.08.2003 was never communicated to him by the respondents and he was always informed that the proceedings are still pending before the Additional Commissioner. In the rejoinder specifically it has been pleaded that only in the month of March, 2006 the petitioner came to know that certain proceedings for eviction against him are under the proposal and eventually he rushed to the Court of Additional Commissioner where he came to know about the passing of the impugned order dated 26.08.2003 and thereafter immediately he filed necessary application for obtaining certified copy of the impugned order which was delivered to him on 20.04.2006. Thus, according to me it cannot be said that there is any laches on the part of the petitioner in approaching this Court. The averments made in the rejoinder are supported in the affidavit of the petitioner. Therefore, looking to the explanation given by him I do not find any scintilla of doubt in order to hold that only in the March, 2006 the petitioner came to know about passing of the impugned order against him, hence the objection raised by the learned Govt. Advocate in respect to the delay and laches in filing the petition has no merit.

7. Coming to the merit of the case, I would like to consider the argument of the learned Govt. Advocate that a Full Bench decision is not applicable in the present case. The present case pertains to R.B.C. while the Full Bench decision Ranveer Singh (supra) this Court considered the ambit and scope of Section 50 of the Code and, therefore, the scope of both the statute is altogether different. But, I do not find any substance in the said argument.

8. The Full Bench of this Court was interpreting that what should be the maximum period of limitation if a power of suo-motu revision is to be exercised

u/s 50 of the Code but in the said decision, various decisions of the Supreme Court and of this Court were taken into consideration dealing with the power of revision exercised under different statutes by the different authorities and ultimately in para 32 the Full Bench of this Court has held that the purpose of quoting the various provisions of the entire Code is that different types of period of limitation has been prescribed for different chapters, looking to the aim and object of that particular Chapter for which it has been enacted and similarly in other statutes. Thereafter, in para 33 the Full Bench has held that looking to the scope of Section 50 of the Code which comes under Chapter V of the Code the period of limitation if a party files a revision would be 90 days, hence, it was held that for exercising suo-motu revisional power conferred u/s 50 of the Code, the maximum period of limitation should be 180 days because the authority who is taking suo-motu power must be given some latitude to set the provision in motion. Undoubtedly the revision under R.B.C. if it is filed by a party, the limitation would be 60 days although it is 90 days in the Code and, therefore, I am of the view that the said power can be exercised by the authority who is exercising power of suo-motu revision, upto the maximum period of 180 days under RBC also from the date of knowledge.

9. Undoubtedly, the matter was came into the knowledge of the Additional Commissioner to exercise suo-motu revisional power on 05.05.1992 which is the date of report/recommendation submitted by the Collector and on going through the Para 2 of the impugned order this Court finds that power of suo-motu revision was exercised on 28.10.1994 when notice was directed to be issued to the petitioner. Thus, I am of the view that after more than 2 years and 5 months the suo-motu power of revision as exercised by the Additional Commissioner, is not at all permissible under the law.

10. The Supreme Court in the case of The State of Gujarat Vs. Patil Raghav Natha and Others, while dealing with the provisions of Bombay Land Revenue Code, Sections 65 and 211 has categorically held that suo-motu exercise of revision power should be within a few months only. According to me, at least there should be some end point to the litigation and, therefore, I am of the view that suo-motu power of revision which has been exercised by Additional Commissioner, Sagar after more than 2 years and 5 months could not have been exercised. Ab-judicatio this petition succeeds and is hereby allowed. The impugned order is set aside and the order dated 02.12.1991 of the Collector is restored. No costs.