(2008) 05 SHI CK 0028

In the High Court Of Himachal Pradesh

Ramesh Chand and Another — APPELLANT

Vs

Director of Consolidation and Others — RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 20(3)
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 — Section 54

Citation : (2008) 2 ShimLC 176

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—With the consent of the parties, the present appeal is being disposed of at the admission stage. The present appeal has been preferred by the appellants (respondents before the learned Single Judge) against the order dated 10.7.2007 passed in C.W.P. No. 283 of 2006.

2. The private respondents herein had preferred the above mentioned writ petition assailing the order dated 2.2.2006 of the Director, Consolidation of Holdings, Himachal Pradesh u/s 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (in short called, ''Act 1971'') in case No. 122/2004, whereby the revision petition of the appellants (respondents No. 2 and 3) before learned Single Judge, was accepted.

3. It appears that at the instance of the appellant herein, the Director, Consolidation of Holdings, Himachal Pradesh had exercised the powers of revision after a period of more than 17 years u/s 54 of the ''Act, 1971.'' The learned Single Judge has allowed the CWP No. 283/2006 of the writ petitioners/private respondents, namely, Jagar Nath and others as indicated above.

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. 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, it could well 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 that 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 sometime in March, 1976: The learned Counsel for the appellant was not able to point out such other special facts and circumstances by 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 the 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 the 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 under Sub-section (3) of Section 20.

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).

6. We have heard the learned Counsel for the parties and have perused the documents. We are of the considered view that in view of the settled proposition of law for the term the reasonable time prescribed u/s 54 of the ''Act 1971'' and in respect of Section 20(3) of H.P. Ceiling on Land Holdings Act, 1972, the issue of making analysis about the reasonable time prescribed in different statutes and Acts, is no more res integra as to assess it would depend upon the facts and circumstances of each case. In the present case, the learned Single Judge has truly found that the delay of seventeen years to adjudicate upon the revision by the Director, Consolidation of Holdings in exercise of his powers u/s 54 of the ''Act 1971'' was not reasonable, therefore, in our considered view, there is no scope of any interference in the said impugned order dated 10.7.2007 passed in CWP No. 283/2006. The appeal is accordingly dismissed, so also the pending application.

