

(2015) 09 SHI CK 0093
In the High Court Of Himachal Pradesh
Case No : LPA No. 53 of 2008

Saraswati Devi and Others

APPELLANT

Vs

State of HP and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 20, 20(3)
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 20, 22, 54

Citation : (2015) 09 SHI CK 0093

Hon'ble Judges : Mansoor Ahmad Mir, C.J; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : K.D. Sood, Senior Advocate and Sanjeev Sood, for the Appellant;
Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional
Advocate Generals and J.K. Verma, Deputy Advocate General, Advocates for the
Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J—This letters patent appeal is directed against the judgment passed by the learned writ Court, whereby the petition filed by the appellants challenging the orders passed by Director (Consolidation of Holdings) came to be dismissed.

Facts, in brief, may be noticed.

2. The appellants are residents of village Phalwara, Tehsil Dehra, District Kangra, HP which came under Consolidation in the year 1988. Consolidation scheme was prepared in consultation and advice of land owners and the committee constituted under Section 22 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (for short the "Act").

3. The private respondent kept mum and raised no dispute till 22.7.2006, when for the first time, he made a complaint to the Panchayat regarding obstruction of his path. At one stage, this dispute was resolved. However, later it appears that

the path was again blocked by the appellants, constraining the private respondent to again approach to the Gram Panchayat, who in turn referred the matter to Sub Divisional Officer (C), Dehra for further action. Thereafter, nothing fruitful appears to have been done, constraining the private respondent to file a revision petition under Section 54 of the Act.

4. The Director, Consolidation called for the report from the Consolidation Officer and immediately on receipt thereof and basing his decision on such report, modified the consolidation scheme. This constrained the appellants to approach this Court by way of writ petition, wherein apart from other grounds, appellants had specifically raised the question of violation of principles of natural justice and the proceedings before the Director being time barred.

5. The official respondents filed reply and supported the order passed by them and in addition thereto, it was claimed that as per Section 54 of the Act, a revision petition could be filed at any time as there is no prescribed period of limitation. It was further averred that after receiving of the report from the Consolidation Officer, both the parties were heard and it was after perusing the record, that the order was passed which was strictly in accordance with the provisions of the consolidation scheme.

6. The private respondent contested the petition by filing reply, wherein it was stated that the appellants had illegally blocked his path constraining him to file the revision petition. It was further averred that the order passed by the official respondents was in conformity with the well settled norms of principles of law and natural justice and, therefore, deserved to be upheld.

7. The learned writ Court did not advert to the question of limitation and upheld the impugned order by observing that since the appellants had not raised any objection to the report of the Consolidation Officer, therefore, having accepted the report they were estopped from questioning the same.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. Section 54 of the Act reads thus:

"Power of the State Government to call for proceedings.--The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such orders in reference thereto as it thinks fit:

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

It is evident from the perusal of the aforesaid provision that no particular period of limitation infact has been prescribed for filing of revision and the expression "may at any time" has been used. Therefore, the first and foremost question which will require our consideration is as to whether in absence of any period of limitation having been prescribed for the exercise of powers of revision, can the period be extended to infinity and the order remain open for challenge for ever?. Can it be assumed that the legislature has conferred an everlasting and interminable power in point of time for exercising the powers of revision by not specifically providing for any period of limitation?

10. These issues are no longer res integra and have been elaborately dealt with by the Hon"ble Supreme Court in its recent decision in case titled Jt. Collector Ranga Reddy Vs. D. Narsing Rao AIR 2015 SC 1021 : (2015) 1 SCALE 274 : (2015) 3 SCC 695 : (2015) 1 SCJ 311 , where Hon"ble Justice T.S. Thakur, J, in his Lordships separate though concurring judgment has held that where no limitation period is prescribed under the statute, the power should be exercised within a reasonable period. It was further observed that reasonableness of the period is to be determined having regard to lapse of time between the knowledge of the order and exercise of power. It was held as under:

"25. The legal position is fairly well-settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power revisional or otherwise such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference in so far as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period.

26. In one of the earlier decisions of this Court in S.B. Gurbaksh Singh Vs. Union of India (UOI) and Others, AIR 1976 SC 1115 : (1976) 2 SCC 181 : (1976) 3 SCR 247 : (1976) 37 STC 425 , this Court held that exercise of suo motu power of revision must also be within a reasonable time and that any unreasonable delay in the exercise may affect the validity. But what would constitute reasonable time would depend upon the facts of each case.

27. To the same effect is the decision of this Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, AIR 2003 SC 3592 : (2004) 6 JT 70 : (2003) 6 SCALE 615 : (2003) 7 SCC 667 : (2003) 2 SCR 698 Supp where this Court held that even in cases of fraud the revisional power must be exercised within a reasonable period and that several factors need to be kept in mind while deciding whether relief sooner be denied only on the ground of delay. The court said (SCC p.677, para 9)

"9....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 the Land Ceiling Act)."

28. To the same effect is the view taken by this Court in *Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others*, AIR 2010 SC 2962 : (2011) 111 CLT 213 : (2010) 8 JT 298 : (2010) 7 SCALE 571 : (2010) 8 SCC 467 : (2010) 9 SCR 476 : (2010) 8 UJ 3854 : (2010) AIRSCW 4784 where this Court reiterated the legal position and held that the power to revise orders and proceedings cannot be exercised arbitrarily and interminably. This Court observed: (SCC p.476, para 28)

"28. The legislature in its wisdom did not fix a time-limit for exercising the revisional power nor inserted the words "at any time" in Section 34 of the 1976 Act. It does not mean that the legislature intended to leave the orders passed under the Act open to variation for an indefinite period inasmuch as it would have the effect of rendering title of the holders/allottee(s) permanently precarious and in a state of perpetual uncertainty. In case, it is assumed that the legislature has conferred an everlasting and interminable power in point of time, the title over the declared surplus land, in the hands of the State/allottee, would forever remain virtually insecure. The Court has to construe the statutory provision in a way which makes the provisions workable, advancing the purpose and object of enactment of the statute".

29. In *State of H.P. and Others Vs. Rajkumar Brijender Singh and Others*, (2004) 10 SCC 585 : (2004) 1 SCR 618 Supp this Court held that in the absence of any special circumstances a delay of 15 years in suo motu exercise of revisional power was impermissible as the delay was unduly long and unexplained. This Court observed (SCC pp.588-89, para-6)

"6. 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 power 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 [pic]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, maybe, 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".

30. We may also refer to the decision of this Court in M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, AIR 1993 SC 802 : AIR 1992 SC 802 : (1992) 3 JT 573 : (1992) 1 SCALE 637 : (1992) 2 SCC 598 : (1992) 2 SCR 155 : (1992) 2 UJ 26 where the Court explained the legal position as under: (SCC pp.602-03, para 13)

"13. The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own [pic]facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not as to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Tilok chand case relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed".

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it

will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority."

11. In addition to the aforesaid judgment, we at this stage, may also take note of a Division Bench judgment rendered by a Coordinate bench of this court in *Ramesh Chand & anr. v. Director of Consolidation & ors* 2008 (2) SLC 176 where, like in the present case, this court was dealing with a case where the revision under Section 54 of the Act had been preferred after more than 17 years and after relying upon some of the judgments of the Hon'ble Apex Court, cited above, it was observed that the delay of 17 years to adjudicate upon the revision was not reasonable and it was held;

"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 under Section 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 & 3) before Ld. 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 under Section 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 & Others as indicated above.

4. The issue was as to whether the Director, Consolidation of Holdings, Himachal Pradesh has exercised his powers under Section 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*, AIR 2007 SC 2458 : (2007) 7 JT 352 : (2007) 8 SCALE 110 : (2007) 8 SCC 705 : (2007) 6 SCR 799 : (2007) AIRSCW 4387 . The term "reasonable time" used under Section 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*, (2004) 10 SCC 585 : (2004) 1 SCR 618 Supp , whereby, the Hon'ble Supreme Court while expressing its view under Section 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 under Section 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 under Section 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 of 2006. The appeal is accordingly dismissed, so also the pending application."

12. Adverting to the facts of the instant case, it would be noticed that there is no dispute that the consolidation proceedings were completed in the year 1988, when the consolidation scheme came to be framed and finalized and remained unchallenged. It is only after 18 years in the year 2006 that the private respondent filed the revision petition before the competent authority.

13. The only explanation offered by learned senior counsel for the private respondent for filing the revision petition so belatedly is that it was only in the year 2006 that the appellants blocked his path constraining him to file the revision petition.

14. We are not at all impressed by this argument for the simple reason that in case the private respondent was seeking removal of the obstruction, as alleged, then definitely his remedy lay elsewhere and not before the revisional court, who admittedly was neither competent nor was vested with jurisdiction to remove such obstruction. That apart, in case the respondent No. 4 was only seeking removal of the obstruction, then how the consolidation scheme which is "magna-carta" between the parties came to be modified by the Director that too after 18 years, is not forthcoming.

15. Respondent No. 4, under the garb of seeking removal of the obstruction could not have sought modification and alteration of the consolidation scheme, that too, after a lapse of 18 long years, which period by no means, could be considered to be "reasonable" more particularly when all these facts were well within the knowledge of the private respondent. That being the position, the order passed by the Director stands vitiated having been passed after a long lapse of 18 years of the order which has to be interfered with.

16. Further it is not in dispute that the Director, Consolidation immediately after on receipt of the report from the Consolidation Officer had without affording any opportunity to either of the parties to file objections to the same, decided the case on the same very day solely on the basis of this report. Evidently, there has been denial of reasonable opportunity and thus the findings to the contrary rendered by the writ Court are not sustainable.

17. In view of the aforesaid discussion, the appeal succeeds and consequently the order passed by the learned writ Court affirming the order of the Director, Consolidation is set aside, leaving the parties to bear their costs.