

(1989) 12 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 136 of 1982

Smt. Ushadevi and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-12-1989

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 10, 11(4), 11(5), 11(6), 42

Madhya Pradesh Land Revenue Code, 1959 — Section 50

Citation : AIR 1990 MP 268 : (1990) MPJR 3 : (1990) 35 MPLJ 353 : (1990) MPLJ 353

Hon'ble Judges : T.N. Singh, J;S.K. Dubey, J;R.C. Lahoti, J

Bench : Full Bench

Advocate : L.P. Bhargava and V.K. Sapre, for the Appellant; M.C. Jain, Dy. A.G., for the Respondent

Judgement

T.N. Singh, J.

On a reference made by two of us, sitting in a Division Bench, the following question has come up for the opinion of this Bench :

"Whether the State Government is entitled to furnish information to the Board of Revenue to act suo motu u/s 42 of M. P. Ceiling on Agricultural Holdings Act, 1960 though the State had not appealed against the impugned order and whether the Board was competent to exercise power suo motu on application filed by the State Government furnishing relevant information for exercise of that power?"

It may be appropriate to state briefly the facts giving rise to this reference. An order was passed on 31-12-1975 by the Commissioner, Gwalior Division, acting as the "Competent Authority" under the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960, for short, the "Act". The order was passed u/s 11(6) of the Act holding that the "holder" (land-holder) had no surplus land as could attract the provisions of Section 12 for those lands to vest in the State in accordance

with the provisions thereof. It was found by him that the "family" held 345.64 acres of land of which 113.87 acres were in possession of occupancy tenants and the entitlement of the family to retain under the Act an area of 246 acres having been established, no surplus could be declared. That order is Annexure A of the petition. Application (Annexure B) appears to have been filed sometime before 13-3-1979 on behalf of the State of Madhya Pradesh. In that application, certain facts were stated in regard to the said order dated 31-12-1975 and the Board of Revenue, for short, the "Board", was requested to exercise suo motu its power of revision to set aside that order. It was stated that the Competent Authority acted in clear violation of Section 4(5) of the Act in allowing set-off in respect of an area of 113.87 acres and that the entitlement otherwise also of the "holder" had been determined illegally, in violation of Section 7(1) of the Act as Bapu-rao could retain only 54 acres and under Hindu Law, on partition of a joint family; daughter being not entitled to any share, Smt. Malvika was wrongfully held entitled to retain 64 acres.

It appears that the instant petitioners were noticed on that application and their counsel entered appearance. He filed "written arguments" which form Annexure C of the petition. Therein, he raised contentions of facts and law dealing exhaustively with the submissions made in the application of the State of Madhya Pradesh. The petitioners, it appears, objected seriously against the prayer being allowed, submitting that the proceedings before the Competent Authority suffered no irregularity and the order passed by him was legal and valid. They also submitted that no action could be taken on the belated application.

By the impugned order, passed on 15-4-1982, Annexure D, learned President of the Board of Revenue accepted the request of the State Government to act suo motu u/s 42 of the Act. It appears that counsel for the non-applicants (instant petitioners) was heard by him and the latter had raised a preliminary objection that the "holder" Bapu-rao Pawar being dead, the revision application was not maintainable. However, that objection apparently did not prevail as the learned President considered it necessary to set aside the order passed by the Commissioner-cum-Competent Authority on 31-12-1975 in the facts and circumstances of the case and directed that a fresh order shall be rendered in the proceedings. This view, he took after looking into the records of the case and reading the impugned order. He found that the Competent Authority had given no consideration to Section 4(5)(ii) of the Act in regard to the set-off allowed in respect of 113.87 acres of land as validity of Civil Court's decrees in regard to those lands had to be adjudged before doing so and that had not been done. In regard to the other contention of the State, he expressed dissatisfaction similarly with the finding and conclusion of the Competent Authority as the order passed by the latter did not disclose the reason and basis for the entitlement of Smt. Malvika.

The Act evidently is an agrarian measure enacted to implement the Directive Principle of State policy enshrined in Article 39, Clauses (b) and (c) of the

Constitution. It is a historical fact that during the pre-independence era, an inequitable land tenure system had been in operation in the country for a long time. Actual tillers of the soil had no ownership right and they served the masters owning the land either as labourers or, at best, their tenants. Not only in the State of Madhya Pradesh, in other parts of the country as well, advent of the independence saw similar measures enacted to fulfil the aspirations of the vast multitude of landless people by ensuring equitable distribution of land. Indeed, concentration of wealth and means of production to the common detriment of the people of India as would permit operation of an inequitable economic system and would prevent distribution of ownership and control of the material resources of the community to subserve the common good is made an immutable constitutional obligation of the new Republic. The Act has been included in the Ninth Schedule for that reason so that its provisions are regarded as sacrosanct and insulated against judicial scrutiny in virtue of Article 31B of the Constitution. The constitution, in specific terms, vide Article 31-A(1), provides for acquisition of any "estate" except to the extent of the safeguard enacted in the second proviso thereof and the Act is a measure in regard to the "ceiling limit" contemplated under the proviso.

The constitutional objective which the Act is supposed to subserve is projected in its long title-- "an Act to provide for the imposition of ceiling on agricultural holdings, acquisition and disposal of surplus land and matters" ancillary thereto." It would be rewarding, however, to refer also to some of the crucial provisions of the Act in which may be found exposed its salient feature. The Act came into force on 15th November, 1961, but the "appointed day", as defined in Section 2(b), in now 7th March, 1974 as that is the date of commencement of M. P. Ceiling on Agricultural Holdings (Amendment) Act, 1972. The "Competent Authority", as defined in Section 2(c), is empowered u/s 4(1) to declare void any transfer or partition made between 1st January, 1971 and the appointed day, to prevent frustration of the objection of the Act. The wide sweep of Section 4 covers not only sale, gift, exchange, but also "decree of any Court" obtained "in anticipation of or to defeat the provisions of this Act"; Sub-section (5) expressly excludes jurisdiction of any Court to entertain any suit for the specific performance of any contract of sale of land and to pass any decree on the basis of any agreement or document made on or before 1st January, 1971 should such a suit or decree be for the purpose of defeating the provisions of the Act. Section 7-provides the maximum extent of land to be held by person or "family", defined in Section 2(gg), that the holder is a member of the family of five members or less is entitled to hold 54 acres only as from the appointed day and in other cases, other limits are specified; while the term "family" is defined to mean the husband, wife and their minor children, if any. Every holder holding land in excess of the prescribed ceiling area is required to submit return u/s 9 in the manner prescribed there-under, but u/s 10, the Competent Authority is empowered to collect informations in regard to the holding of such a person from other sources as well in the manner prescribed.

6-A. A draft statement has to be prepared by the Competent Authority after making necessary enquiry u/s 13 in respect of the area held in excess of the ceiling area by any person; and objections are heard and decided by him under Sub-sections (4) and (5) in that regard. When any question of title of a particular holder is raised in any objection and that is decided, the order of Competent Authority in that regard, as per Sub-section (5), is excluded from the purview of appraisal of revision; and that order can be set aside only by Civil Courts whose decision is made binding on the Competent Authority in the same manner as on the parties to the suit. After the final statement is published u/s 11(6), the surplus area declared thereunder is deemed, as per Section 12, to be needed for public purpose and that vests in the State absolutely free from all encumbrances from the date of declaration. Payment of compensation for the surplus land vesting in the State is contemplated under Chapter IV of the Act (Section 16 et. seq.), but u/s 13-A, the State Government can also claim compensation from the holder for profits on surplus land earned by him during the period the land remained with him after the appointed day.

Provision for appeal and Revision are made in Sections 41 and 42 respectively and same period of limitation, namely, 60 days, is provided u/s 44 for that. According to Section 41, every order of a Revenue Officer or competent authority passed under the Act is made appealable except in cases in which the right is expressly excluded. For the hierarchy of officers passing an order under the Act, as a competent authority, and forum of appeal in respect of those orders, Section 2(c) defining the term "competent authority" is required to be synchronised with Section 44(1) of the M. P. Land Revenue Code, 1959, for short, the "Code". Reading together the two provisions, it appears clear that there is no provision for a second appeal under the Act though forums of appeal may be the Collector, Commissioner, or the Board in case of an order passed respectively by a Sub-Divisional Officer, Collector and Commissioner, Because, a competent authority may be any of the last-mentioned three officials as per Section 2(e), according to the location and extent of the land.

We extract in extetiso Section 42 :

"42. Revision.-- The Board of Revenue or the Commissioner may on its/his motion or on the application by any party at any time for the purpose of satisfying itself/ himself as to the legality or propriety or any order passed by or as to the regularity of the proceedings of any competent authority subordinate to it/ him call for and examine the record of any case pending before or disposed of by such competent authority and may pass such orders in reference thereto as it/ he thinks fit :

Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard :

Provided further that no application for revision shall be entertained against an order against which an appeal is provided under this "Act." (Our underlining).

On its own term and language, there is little ambiguity, in our opinion, about the ambit of the power of revision contemplated under the provision extracted. The Legislature has deliberately provided twin modes for exercise of the power -- on the "application" of any party; and suo motu. Concurrent jurisdiction is vested in the Board and the Commissioner in that respect. There is, no doubt, a striking resemblance between Section 50 of the Code and Section 42 of the Act as both provisions relate to revisional jurisdiction to be exercised, albeit by the Revenue Authorities named disparately in the two provisions. What is, however, clear is the nature of jurisdiction contemplated under both enactments. What is contemplated is exercise of supervisory under both enactments by the superior authority or the top brass of Revenue Administration, vested with the ultimate responsibility of administration of the enacted laws. The revisional authority is empowered under both enactments to satisfy as to the "legality or propriety of any order" passed by subordinate officers and also as to "regularity of the proceedings" of those officers. In both enactments, however, there is specific bar against exercise of revisional jurisdiction on an "application", against an appealable order.

It is indeed the consanguinity of the two provisions of the Code and the Act and the resemblance between the two that has provided the cause for the instant Reference. A Division Bench of this Court in *Ajgar Singh v. S.D.O., Shujalpur* (1981 RN 333) has expressed the view that suo motu revisional powers u/s 50 of the Code cannot be exercised in respect of an appealable order. Despite the two provisions being in pan materia, it is necessary at this state to point out the inartistic drafting of Section 42 and to demonstrate that, we extract also the relevant portion of Section 50(1) of the Code :

"50. Revision.-- (1) The Board or the Commissioner or the Settlement Commissioner of the Collector or the Settlement Officer may at any time on its/ his motion or on the application made by any party...." (Underlining ours),

Whether the expression "at any time" in the above extract has suffered a deliberate Collocational change in Section 42 of the Act is a question to which we shall address ourselves in due course. At this stage, it will suffice to say that counsel for the petitioners, relying on *Ajgar Singh* (supra) contended that the impugned order passed by the Board on 15-4-1982 was without jurisdiction because the order dated 31-12-1975, passed by Commissioner-cum-Competent Authority, was an appealable order. It is necessary, therefore, to examine first correctness of the view expressed in *Ajgar Singh* (supra).

It is true that at para 5 of the Report of the decision cited there is an observation which supports counsel's contention. It runs thus -- "The Collector started revision proceedings suo motu admittedly the order of the Naibtahsildar was appealable and no revision was competent against that order in view of Section 50 of the M. P. Land Revenue Code." However, no reasons are given for the view expressed except that the objection was raised before the Collector and the Collector even after accepting the objection had passed the impugned order. Shri

Jain, Deputy Advocate General, rightly submitted that the decision was in fact rendered on merits of the Stamp Act because, Collector had impounded a document acting u/s 33(1) of the said Act. It was inter alia held by this Court that such an action was beyond the purview of the said Section 33 because the document in question was Dot produced by the petitioner before the Collector of his own accord, but the Collector had called for the document, acting u/s 50 of the Code. However, petitioners' counsel, Shri Bhargava, tried to derive support from certain observations of their Lordships of the Supreme Court in the case of Smt. Sadiqua Begum and Others Vs. Board of Revenue, Madhya Pradesh and Another, cited by Shri Jain. We are required, therefore, to examine the proposition canvassed by him.

In Sadiqua Begum (supra), a question had arisen under the provisions of the M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. Against an order of Collector, passed u/s 6 of that Act, a revision was entertained by the Commissioner u/s 50 of the Code and Commissioner's view was confirmed by the Board. In the writ petition, the High Court upheld orders of the Commissioner and the Board. Before their Lordships, it was contended that the Collector's order was an appealable order and revisional power could not be exercised against that order. At para 4 of the Report, their Lordships noted what was "sheet-anchor" of appellant's contention. It was argued before them that no suo motu revision could lie unless a revision or appeal was filed by the parties before the Commissioner. At para 5, their Lordships discussed and rejected the contention holding that the Commissioner and the Board being both appellate and revisional authorities under both enactments, exercise suo motu of revisional jurisdiction by them was not impermissible. They observed -- "The contention could have some substance if there would have been any statutory embargo on the hierarchy of the Officers mentioned above to entertain any revision against an order passed by one authority without filing an appeal before it". It is indeed this particular observation on which Shri Bhargava has placed implicit reliance, but we see no substance in that.

We are rather of the view that Smt. Sadiqua Begum and Others Vs. Board of Revenue, Madhya Pradesh and Another, (supra) has impliedly overruled Ajgar Singh (1981 RN 333) (supra) as contended by Shri Jain although in neither decision there is any detailed discussion of the language or of the scope or ambit of the provisions in question. What is clear however on their Lordships' affirmative holding in Sadiqua Begum (supra) is that suo motu revision u/s 50 would lie against an appealable order; they found no embargo in Section 50 against exercise suo motu of revisional power thereunder against an appealable order. We have analysed the language of Section 50 of the Code and Section 42 of the Act and have found that in clear terms bar thereunder is contemplated only against revision being entertained "on application" made, and in case of an appealable order. Such a bar does not operate when the revisional jurisdiction is exercised suo motu. We are of the considered opinion that the view expressed in Ajgar Singh (supra) is incorrect and it has indeed ceased to be a good law after

their Lordships" decision in *Sadiqua Begum* (supra). Shri Bhargava cited *Smt. Vidya Vati Vs. Shri Devi Das*, but that was on Section 115, C.P.C. In that regard, suffice it to say that the nature of revisional power contemplated therein is quite different. It is axiomatic that powers of appeal or revision are creatures of statute and the scope and ambit thereof are to be determined with reference to relevant statutory provision. u/s 115, C.P.C., express bar is contemplated against revisional jurisdiction being exercised in respect of an appealable order. But obviously, that position does not obtain in the case of Section 42 of the Act.

We may now examine the basic premise of the question referred because Shri Bhargava has urged strenuously that the Board had not exercised revisional jurisdiction suo motu in passing the impugned order u/s 50. We would at once point out that the contention is devoid of factual basis because the application Annexure, B clearly and explicitly invokes suo motu exercise of jurisdiction and the Board also, in passing the impugned order Annexure D, had mentioned that the request made in the application in that regard was accepted and revisional power was exercised suo motu. We do not think if Board's power to act suo motu can be regarded as impaired in any manner as a result of the Board acting on the application. Annexure B. We are not impressed by the argument that the Board had no option in regard to that application except to consider the same to be an "application" within the meaning of the term used in Section 42 of the Act. Shri Jain has cited a Division Bench decision of the Andhra Pradesh High Court in the case of *The State of Andhra Pradesh Vs. J. Papaiah Ch. Simhachalam Company*, on the scope and manner of exercise suo motu of statutory revisional power. That was a case under Andhra Pradesh Sales Tax Act and the relevant provision, Section 20 of that Act, was couched in almost same language as of Section 42 of the Act except for use of the words "suo motu" for the words "on his own motion", used in aforesaid extracted Section 42. It was observed that revisional authority was free to act on any information supplied or coming to his knowledge as a result of his own enquiry. All that was required of him was that he should apply his mind to the information which he had received and that he was satisfied on the basis thereof before taking action in exercise of his powers of revision.

We are in respectful agreement with the view expressed by the Andhra Pradesh High Court because that is supported not only by the language of the provision, but also by the purpose and object underlying the provision. It cannot be jurisprudentially disputed that revisional jurisdiction is of the nature of supervisory jurisdiction exercised generally by the superior Court or authority and when such Court or authority is invested with power to Act suo motu, it carries the implication that complete independence of action is thereby allowed to such Court or authority to exercise that power to fulfil the purpose statutorily contemplated. However, the power can be exercised when cogent materials are available. The revisional authority must be possessed of relevant information or material to which it can apply its mind in taking decision in regard to exercise of its jurisdiction. Whether in a particular case, such jurisdiction is properly

exercised or not may be a different matter as that would depend on several circumstances, but what is very clear is that in the matter of suo motu exercise of revisional jurisdiction, the choice of revisional authority in acting on any particular information from any particular source cannot be limited. If that view is not taken, the very object of the Legislature of vesting in the revisional authority suo motu power of revision shall be defeated. Indeed, that power is meant to be exercised to ensure that the purpose and object of the enacted law is not defeated and powers exercised by subordinate authorities under the relevant enactment do not transgress the prescribed parameters producing forbidden result. The revisional authority, in essence, carries the responsibility of ensuring due administration of the law and implementation of the policy underlying the various provisions of the law in question.

The scheme and object of the Act lend substance to the wide power of suo motu revision contemplated u/s 42. It is not that in all cases the "competent authority" is a superior and experienced Revenue Officer because as official of the rank of Sub-Divisional Officer or Deputy Collector who may be a new hand, can also function as such authority. On the other hand, powers that are to be exercised by him carry heavy and onerous responsibility bearing an impress of constitutional obligation. Among decisions that he has to render, he is required to finally settle and publish the declaration of any person's agricultural holding after determining the "surplus" that would be available for vesting in the State Government to subserve the ultimate object of the same being distributed among landless people. The nature of proceedings contemplated under the Act are obviously of a summary nature as he has been given the power to collect information from other Sources as well pertaining to the return filed. The wide amplitude of his powers are indicated by Section 11(5) which makes his order rendered u/s 11(4) immune to appeal or revision and subject only as civil Court's decision. Whether in collecting information u/s 10 or taking decision u/s 11(5) or even publishing declaration u/s 11(6), he exercises plenary power of a very wide amplitude. There will be evidently few cases of a person filing return under the Act suffering irremediable damage because he would have the right to prefer appeal or revision. There may be many cases, however, of remissness of the Competent Authority or of the subordinate staff associated with different steps of "enquiries" or collection of "Information" under the Act as a result of which the declaration of "surplus" contemplated u/s 11(6) may be such as would render proper and effective administration of the Act impossible and ineffective. It would, therefore, be wrong to deny to the State Government the opportunity to invoke jurisdiction of the revisional authority to act suo motu u/s 42 to take care of such situations. The object and purpose of Section 42 in the context of the scheme, object and purpose of the Act support this view.

The question which needs to be considered now is of interpretation of the expression "at any time" of Section 42, on which we had reserved opinion. In our view, the expression "at any time" qualifies obviously exercise of the power "on its/his motion" only. Because, revisional power "on application" is circumscribed

by Section 44 under which 60 days" limitation is prescribed for making such application. This position is made clear by the language of the cognate provision, Section 50 of the Code. The expression "at any time" occurs therein at its rightful place, immediately preceding the words "on its/his motion." Any other view would lead to an absurd result and it will be difficult to harmonise the second proviso of Section 42 with Section 44 and the main enactment of Section 42. It has indisputably crystallised as a salutary principle of statutory interpretation that literal construction leading to absurdity has to be avoided and that it is the constitutional duty of the Court to interpret any provision in such manner as would eschew absurdity or anomaly, avoiding at the same time injustice and inconvenience. Indeed, deviation from strict grammatical interpretation is permissible to the extent of modification of the language used, if necessary. The Legislature is presumed to be reasonable and it is not supposed to legislate irrationally, arbitrarily or unobjectively to produce absurd or ridiculous result. (See *Tirath Singh Vs. Bachittar Singh and Others*, ; *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, *Ram Prasad Dagduram Vs. Vijay Kumar Motilal Mirakhanwala and Others*, , *Bhudan Singh and Another Vs. Nabi Bux and Another*, *R.S. Nayak Vs. A.R. Antulay*, , *American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another*,). As held recently in *Aundal Ammal Vs. Sadasivan Pillai*, , Courts are required to construe any particular statutory provision not only on its language and its setting, because it is their inexorable duty to ensure that the interpretation is not repugnant to the scheme of the Act and not in derogation of public policy or public interest underlying the enactment.

We have, however, no hesitation in accepting the submission of Shri Bhargava that power of revision suo motu contemplated u/s 42 of the Act can be, and has to be, exercised within a reasonable time and that is the meaning to be attributed to the term "at any time" used therein. Counsel's reliance on *The State of Gujarat Vs. Patil Raghav Natha and Others*, in support of that contention is indeed well-merited. There can be no dispute with that proposition because of the constitutional imperative requiring statutory authorities to act reasonably and not arbitrarily. However, what should be the reasonable time for exercise of the power, as held in *P. Raghav (supra)*, must be determined with reference to the facts and circumstances of the case and the nature of the order which is being revised.

Our conclusion, therefore, on the basis of the foregoing discussion, is that the question referred has to be, and is, answered in the affirmative. We make it clear that u/s 42 of the Act, suo motu power of revision can be exercised even in case of an appealable order and in a case in which no appeal is filed. The State Government is entitled to furnish by way of an application necessary information to the Board of Revenue to act suo motu u/s 42 of the Act and such an application is not to be regarded as an "application" to invoke revisional power thereon. When request made in such an application accepted and an order is passed manifesting application of mind to the necessary materials made available in such an application or pursuant thereto, it will be a case of exercise

suo motu of the revisional power.

We have no doubt that in the instant case, by the impugned order, Annexure D, the Board had exercised suo motu its power u/s 42. Not only did not Board observe explicitly of its acting in that manner, what is also manifested in the order is its application of mind to the contentions of fact and law stated in the application Annexure B filed by the State, as also in the reply to those contentions which respondents had submitted vide Annexure C. Saying so, we would like to observe further that it has to be considered by the Bench making the reference as to whether, in the instant case, in the facts arid circumstances of the order, the power has been; rightly exercised and it is exercised within reasonable time. On the determination of those questions shall depend the final fate of the petition.

The matter shall, therefore, be placed now before the Referring Bench for further hearing on merits for final disposal of the petition.