
(2014) 07 P&H CK 0582

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 4322 of 1994

Mela Devi

APPELLANT

Vs

Financial
Commissioner

RESPONDENT

Date of Decision: July 17, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Haryana Ceiling on Land Holdings Act, 1972 - Section 18, 18(2), 18(4), 18(6), 21

Citation: (2014) 4 RCR(Civil) 310

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Amit Jain, Advocate for the Appellant; Sandeep S. Mann, Sr. DAG, Advocate for the Respondent

Final Decision: Allowed

Judgement

Paramjit Singh Patwalia, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 06.01.1994 (Annexure P-2) passed by respondent no.

1-Financial Commissioner, Haryana whereby case of petitioners of surplus area has been re-opened.

2. Brief facts of the case are to the effect that Suraj Bhan (since deceased) had filed a declaration on 13.08.1976 before the Prescribed Authority, Hansi u/s 9 of the Haryana Ceiling on Land Holdings Act, 1972 (in short "1972 Act"). He stated that his family consisted of himself, his wife-Mela Devi and minor son-Vinod Kumar and disclosed a total area held by all the members of the family to be 540 kanals 4 marlas. He claimed one permissible unit. He also transferred or disposed of 116 kanals of ordinary land or 182 kanals 2 marlas of "C" category land after 24.01.1971. The Prescribed Authority excluded the area of 116 kanals (ordinary) land sold by the landowner and after allowing the

permissible area, declared that there was no surplus land with the land owner. The Prescribed Authority considered the declaration and decided the case of Suraj Bhan (since deceased), vide order dated 29.01.1979 (Annexure P-1) wherein Suraj Bhan and his family members were found to be small land owners and it was held that the holding/area in the hands of Suraj Bhan and his family members is less than their permissible area, therefore, no area of land owners was declared surplus. After lapse of approximately eight years, State of Haryana filed a revision before the Financial Commissioner in the year 1987 wherein the Financial Commissioner exercising the suo motu powers proceeded u/s 18(6) of the "1972 Act" on the ground that area left with the landowner is enough to make good the surplus area which would only come to 108 kanals 4 marlas. Hence, this petition.

3. I have heard learned counsel for the petitioners and perused the record.

4. Learned counsel for the petitioners vehemently contends that impugned order was not challenged by the Government. At that time, the Prescribed Authority had considered the entire case. Neither an appeal nor revision was filed, however, revision was filed by the Government before the Financial Commissioner in the year 1987 u/s 18(6) of the "1972 Act" praying for invoking his suo motu power to look into the legality of the order passed by the Collector. The Financial Commissioner, after hearing both the parties, set aside the order (Annexure P-1) and passed the impugned order (Annexure P-2) holding that the order was vitiated by patent illegality. Learned counsel further contends that the Financial Commissioner should not have exercised the revisional power after lapse of approximately eight years from the date of order passed by the Prescribed Authority as the State never filed an appeal or revision against the order. Therefore, the impugned order (Annexure P-2) is not sustainable in the eyes of law. In support of his contentions, learned counsel relies upon [Chandgi Ram Vs. State of Haryana and Others](#),

5. Per contra, learned State counsel vehemently opposes the contentions raised by learned counsel for the petitioners and contends that powers of the Financial Commissioner are very wide under the provisions of the "1972 Act". Learned State counsel further contends that the Financial Commissioner can exercise the power suo motu at any time and call for the record of any proceedings or order of any authority subordinate to him, u/s 18(6) of the "1972 Act".

6. I have considered the rival contentions of learned counsel for the parties.

7. It would be appropriate to reproduce Section 18 of the "1972 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 subsection (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.

8. No doubt, Section 18(6) of the "1972 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.

9. Further perusal of Section 18(2) of the "1972 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.

10. In Chandgi Ram (supra), this Bench had an occasion to deal with the identical issue involved in the present case and held as under:

11. On this basis a view is possible that for limitation purposes the period of limitation provided in Section 18 of the 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 accordingly to his whims. 12. 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.

13. There is no plea raised before me on behalf of the respondents 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, impugned order (Annexure P-3) cannot be sustained as order does not disclose any reason to hold that period of 11 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. For the reasons afore-mentioned, writ petition is allowed. Impugned order passed by Financial Commissioner (Annexure P-3) is hereby set aside and order of Prescribed Authority (Annexure P-1) is restored. No order as to costs.

11. The matter in hand squarely covers with the decision rendered by this Bench in Chandgi Ram (supra).

12. In view of decision rendered in Chandgi Ram (supra), instant petition is allowed, impugned order (Annexure P-2) passed by the Financial Commissioner is set aside and order (Annexure P-1) passed by the Prescribed Authority is restored.

13. No order as to costs.