

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 23rd OF FEBRUARY, 2023
WRIT PETITION No. 143 of 2021**

BETWEEN:-

SHIVAKANT UPADHYAY S/O LATE SHRI SHIVARCHAN
UPADHYAY, AGED ABOUT 53 YEARS, OCCUPATION:
FARMER R/O VILLAGE JHALA TAHSIL RAMPUR
NAIKIN, DISTRICT REWA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRAKASH UPADHYAY - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH
DISTRICT COLLECTOR SIDHI, DISTRICT SIDHI
(MADHYA PRADESH)

2. COMMISSIONER REWA DIVISION, REWA
(MADHYA PRADESH)

3. COLLECTOR SIDHI DISTRICT SIDHI (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI DEVESH JAIN – GOVERNMENT ADVOCATE)

*This petition coming on for hearing this day, the court passed the
following:*

ORDER

I.A. No.1879/2021 has been filed by Pradeep Kumar Upadhyay
seeking his impleadment as respondent No.4.

2. It is submitted by Shri Yagyalk Shukla, counsel for respondent No.4 that since the proceedings have been initiated on the complaint of respondent No.4, therefore, he is a necessary party.

3. Per contra, it is submitted by the counsel for the petitioner that the appeal filed by Pradeep Kumar Upadhyay was rejected as barred by limitation and the respondents have exercised suo motu power of revision, therefore, he has no *locus standi*.

4. Considering the submissions made by the counsel for the parties, this Court is of the considered opinion that since the petition arises out of suo motu exercise of power of revision, therefore, Pradeep Kumar Upadhyay has no *locus standi* to get impleaded as respondent No.4.

5. Accordingly, **I.A. No.1879/2021** is hereby rejected.

6. This petition under Article 226 of the Constitution India has been filed against the order dated 20.11.2020 passed by Commissioner, Rewa Division, Rewa in RCMS No.0120/Appeal/2019-20.

7. The facts of the case in short are that the petitioner claims to have a small piece of agricultural land. According to him, he applied for allotment of survey No.483 having area 0.40 hectares situated at Village Jhala, Tehsil Rampur Naikin, District Sidhi. It is the case of the petitioner that he and his ancestors were in possession of the land in dispute and therefore, it was claimed that the land be allotted to him. The case was registered. The statements of the villagers were recorded. A report was called and a notice was published and after following due process of law, order dated 21.01.2000 was passed under RBC IV.3. The said proceedings attained finality and it was not subject to any kind of appeal or revision.

8. In the year 2017 one Pradeep Kumar Upadhyay, who is having a civil dispute with the present petitioner, filed an appeal against the order

dated 21.01.2000 primarily on the ground that the petitioner is not a landless person and the proceeding does not seem to be proper. The S.D.O. by order dated 21.07.2017 dismissed the appeal on the ground of limitation. However, recommended for suo motu revision and forwarded the matter to the Collector. Acting on the said recommendation, the Collector issued notice dated 29.11.2017 for initiating suo motu proceedings. The petitioner challenged the said notice primarily on the ground of limitation which has been dismissed by the Commissioner, Rewa Division, Rewa by impugned order dated 20.11.2020.

9. Challenging the show cause notice issued by the Collector on 29.11.2017, it is submitted by the counsel for the petitioner that the proceedings are hopelessly barred by limitation. The allotment was done by order dated 21.01.2000. The Full Bench of this Court in the case of **Ranveer Singh since dead through L.Rs. Kishori Singh and others Vs. State of M.P.** reported in **(2010) 4 MPLJ 178** has held that the revisional powers can be exercised by the revisional authority within a period of 180 days from the date of the knowledge of illegality or impropriety of any order passed or as to the irregularity of the proceedings committed by any revenue officer subordinate to it. In the present case, the show cause notice has been issued after 17 long years of the order of allotment. The counsel for the petitioner also relied upon the judgment passed by the Supreme Court in the case of **Joint Collector Ranga Reddy District and another Vs. D. Narsing Rao and others** reported in **(2015) 3 SCC 695** and submitted that where no limitation is provided under the statute, then the power should be exercised within a reasonable period.

10. Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that the present petition has been filed against

the show cause notice. Further the fraud played by the revenue authority came to the notice of the S.D.O. when an appeal was filed by one Pradeep Kumar Upadhyay. Once the fraud was detected by the SDO, therefore, he was within his right to refer the matter to the Collector for suto moto revision.

11. Heard the learned counsel for the parties.

12. The Supreme Court in the case of **Joint Collector Ranga Reddy District (supra)** has held as under:

9. It is Mr Nageswara Rao's further contention that the High Court failed to appreciate that the Government cannot be precluded from taking action to correct fraudulent entries in the khasra pahani by citing long lapse of time and the dismissal of the writ appeals is unsustainable in law. Mr R. Venkataramani, learned Senior Counsel appearing for the other appellant also assailed the impugned order for the same reasons. In support of their submissions reliance was placed on the following decisions of this Court:

9.1. In the decision in *Collector v. P. Mangamma* [(2003) 4 SCC 488] this Court while dealing with suo motu action against irregular assignments under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 held that it would be hard to give an exact definition of the word "reasonable" and a reasonable period would depend upon the facts of the case concerned and on the facts of the case in which the

decision arose, suo motu action taken after a period of thirty years was remitted to the High Court for fresh consideration.

9.2. In the decision in *State of Maharashtra v. Rattanlal* [(1993) 3 SCC 326] this Court while dealing with the revisional power under Section 45 of the Maharashtra Agricultural Land (Ceiling and Holdings) Act, 1961 held that suo motu revisional power may not be exercised after the expiry of three years from the date of the impugned order, however, where suppression of material facts, namely, existence of the undeclared agricultural land had come to the knowledge of the higher authorities after a long lapse of time, the limitation would start running only from the date of discovery of the fraud or suppression.

9.3. In the decision in *State of Orissa v. Brundaban Sharma* [1995 Supp (3) SCC 249] this Court while dealing with the power of revision under Section 38-B of the Orissa Estates Abolition Act, 1951 held that the Board of Revenue exercised the power of revision 27 years after the date of alleged grant of patta but its authenticity and correctness was shrouded with suspicious features and, therefore, exercise of revisional

power was legal and valid.

10. We have heard the submissions made by Mr U.U. Lalit, Mr Pravin H. Parekh, Mr Ranjit Kumar, Mr P.V. Shetty, learned Senior Counsel and also the other learned counsel appearing for the respondents.

11. The main submissions of the learned counsel appearing for the respondents are that the names of the predecessors-in-title of the respondents are found mentioned in the khasra pahani of the year 1954-1955 and the purchase of the subject land by the respondents from them under registered sale deeds are not in dispute and they have been regularly paying land revenue continuously since the year 1954 and substantial rights on account of continuous possession and enjoyment of the subject property has been accrued to the respondents and the exercise of suo motu revisional power after long lapse of time is arbitrary and summary remedy of enquiry and correction of records cannot be invoked when there is bona fide dispute of title and liberty has been given to the appellants to work out its remedies by way of filing civil suit and the findings of the High Court are sustainable on facts and law.

12. In support of their submissions reliance was placed by the learned counsel for the respondents on the following decisions of this Court:

12.1. In the decision in *State of Gujarat v. Patil Raghav Natha* [(1969) 2 SCC 187 : (1970) 1 SCR 335] this Court while

adverting to Sections 65 and 211 of the Bombay Land Revenue Code, 1879 held that though there is no period of limitation prescribed under Section 211 to revise an order made under Section 65 of the Act, the said power must be exercised in reasonable time and on the facts of the case in which the decision arose, the power came to be exercised more than one year after the order and that was held to be too late.

12.2. In the decision in *Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim* [(1997) 6 SCC 71] this Court while dealing with Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 held that though the said section does not prescribe for any time-limit for initiation of proceeding such power should be exercised within a reasonable time and on the facts of the case, the suo motu enquiry initiated under the said section after a period of nine months was held to be beyond reasonable time.

12.3. In the decision in *Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale* [(2009) 9 SCC 352 : (2009) 3 SCC (Civ) 749] this Court while dealing with the power of revision under Section 257 of the Maharashtra Land Revenue Code, 1966 held

as follows: (SCC pp. 356-57, paras 11-12)

11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

12. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of

revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30-3-1976 is flawed and legally not correct.”

12.4. In the decision in *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.* [(2007) 11 SCC 363] this Court while dealing with the revisional power under Section 21 of the Punjab General Sales Tax Act, 1948 held thus: (SCC p. 367, paras 17-19)

“17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo motu power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend

upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years.”

12.5. In the decision in *Ibrahimpattanam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy* [(2003) 7 SCC 667] this Court while dealing with suo motu power of revision under Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 held as follows: (SCC pp. 676-77, para 9)

“9. ... In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the

High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words 'at any time' in subsection (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. 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). Hence, it

appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words 'at any time' are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words 'at any time', the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too,

over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power 'at any time' only means that no specific period such as days, months or years are not (sic) prescribed reckoning from a particular date. But that does not mean that 'at any time' should be unguided and arbitrary. In this view, 'at any time' must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

16. No time-limit is prescribed in the above section for the exercise of suo motu power but the question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed an order reserving 477 acres of land in Survey Nos. 36 and 37 of Gopanpally Village for house sites to the government employees. In other words, the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24-9-1991 but no exception was taken to the entries found. Further the respondents

herein filed Writ Petition No. 21719 of 1997 challenging the Government Order dated 24-9-1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from Respondents 1 and 2 herein filed a civil suit in OS No. 12 of 2001 on the file of the Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in Survey No. 36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned notice dated 31-12-2004 the suo motu revision power under Section 166-B referred to above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.

13. The Full Bench of this Court in the case of **Ranveer Singh (supra)** has held as under:

36. *Ex consequenti* we hereby hold that in order to exercise *suo motu* power of revision envisaged under section 50 of the Code and looking to the scheme of Chapter V, it should be exercised by the revisional authority within 180 days from the date of the knowledge of the illegality or impropriety of any order passed or as to the irregularity of the proceedings of any revenue officer subordinate to it and it will not be justifiable to stretch it for any length of period even

for protection of the Government land or public interest.

14. Thus, the reasonable period as held by the Supreme Court in the case of **Joint Collector Ranga Reddy District (supra)** and the period of 180 days as held by the Full Bench of this Court in the case of **Ranveer Singh (supra)** has to be reckoned from the date of discovery of fraud.

15. In the present case, the alleged fraud came to the notice of the S.D.O. only when one Pradeep Kumar Upadhyay filed an appeal against the order dated 21.01.2000. The appeal was filed on 14.07.2107 and the S.D.O. by order dated 21.07.2017 dismissed the appeal as barred by time but on the very same day made a recommendation for suo motu revision. Thus, it is clear that the S.D.O. did not waste even a single day in making a recommendation for suo motu revision. It is not the case of the petitioner that the fraud played by the Naib Tehsildar, Rampur Naikin, District Sidhi was already in the knowledge of the revenue authorities. The appeal was filed on 14.07.2017 and immediately after coming to know about the fraud played by the revenue authorities, the S.D.O. made a recommendation for suo motu revision.

16. Under these circumstances, this Court is of the considered opinion that by no stretch of imagination it can be said that the power of suo motu revision is being exercised by the authorities even after the expiry of reasonable period from the date of discovery of fraud. Accordingly, no case is made out warranting interference.

17. The petition fails and is hereby **dismissed**.

18. The interim order granted on 19.01.2021 is also hereby vacated.

(G.S. AHLUWALIA)
JUDGE