

1 **W.P. No.346/2009**
(Balban Gadariya & Anr. vs. State of M.P. and others)

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Shri Neeraj Shrivastava, Advocate for petitioner.

Shri S.K.jain, Government Advocate for respondents/State.

By this petition under Article 227 of the Constitution of India the petitioners have questioned the legality, validity and propriety of the order passed by the Collector, Datia dated 17/9/2007. By the aforesaid order, petitioners' Patta granted by the Naib Tahsildar on 10/4/1991 has been cancelled invoking *suo motu* revisional jurisdiction under Section 50 of the M.P. Land Revenue Code (herein after referred to as the 'Code').

Facts necessary for disposal of this petition are to the effect that the Naib Tahsildar had awarded Patta to 69 persons. The aforesaid allotment of patta to 69 persons was subject matter of complaint. On report being furnished, the Sub Divisional Officer had registered an appeal. Thereafter, passed a detailed order bringing on record the violations of the provisions of Revenue Book Circular for grant of patta to as many as 69 persons and cancelled the order of the Naib Tahsildar. On revision before the Commissioner, Gwalior Division, the revisional authority vide its order dated 14/11/2002 has found that there is

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gross irregularities and illegalities in award of patta to 69 persons, out of which 5 patta had been cancelled by the SDO and for the remaining 64 patta matter was remanded back to the Naib Tahsildar for enquiry, the Naib Tahsildar in his enquiry report has detailed the irregularities committed in grant of patta and thereafter the SDO has cancelled 64 patta also. But, the same was not found proper for want of jurisdiction, therefore, the matter was remanded back to the SDO to place the entire matter before the Collector for invoking *suo motu* revisional jurisdiction to scrutinize and decide the fact of award of Patta to as many as 69 persons in question with due advertence to the record. Accordingly, the SDO placed the entire matter before the Collector and this is how the Collector invoked the *suo motu* revisional jurisdiction under Section 50 of the Code.

Upon perusal of the order, show-cause notices were issued to all such 69 persons allegedly awarded patta by Naib Tahsildar. In reply thereto, it was contended that patta was awarded after due enquiry, physical possession was given, land records were corrected and Bhu-Adhikar Awam Rin Pustika was given to the patta holders, hence, under such circumstances *suo motu* revisional jurisdiction could not have been invoked after fifteen years. There is no

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illegality in the order granting patta and the proceedings deserve to be dropped. The Collector has quoted the report of the Naib Tahsildar in case No.78/A-6/88-89 dated 9/2/2007, wherein in respect of each patta justification for cancellation was detailed and reasonings assigned therein were made part of the *suo motu* revisional proceedings.

The order passed by the Collector dated 17/9/2007 has been impugned in this petition. It has been found therein that a detail procedure has been prescribed under clause 4(3) of the Revenue Book Circular, however, requirements were not fulfilled before granting patta, namely, comments of gram panchayat was not procured, advertisement was not published in accordance with the procedure, applications were not scrutinized, no comments were called from the patwari on each applications, no enquiry was held as regards domicile residents of applicants, no enquiry was made as regards entitlement of each family allotment of patta and how much land is in their possession, even persons who are the domicile of UP have been granted patta. Besides, the land has also been allotted in excess to the entitlement of the family. In view of the aforesaid, grant of patta by the Tahsildar was found to be in flagrant violations of the laid down procedure as

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contemplated under clause 4 (3) of the Revenue Book Circular, it was found apposite to cancel the patta and accordingly, the same was cancelled.

Apart from merits, learned counsel for petitioner raised the jurisdictional issue as regards limitation in the matter of exercise of *suo motu* revisional jurisdiction. It is submitted that in the light of the judgment rendered by the Full Bench in **Ranveer Singh and another Vs. State of M.P., 2010 (III) MPJR FB 347** within 180 days from the date of the order sought to be reviewed in *suo motu* revisional jurisdiction, the power under Section 50 of the Code can be exercised. In this case as patta was granted in the year 1991, *suo motu* revisional jurisdiction could not have been exercised by the Collector under Section 50 of the Code after long lapse of time, i.e.13-14 years, and patta could not have been cancelled vide order dated 17/9/2007.

Per contra, respondents/State has justified the order that the same has been passed after hearing the affected parties including petitioners and upon due scrutiny of the record. As regards limitation, it is submitted that *suo motu* revisional jurisdiction can be exercised within reasonable time from the date of knowledge, hence, it cannot be said that after fifteen years of issuance of patta *suo motu*

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revisional jurisdiction has been exercised. Therefore, after conclusion of revisional proceedings before the Commissioner, vide order dated 14/11/2002, the matter was placed before the Collector by the SDO and only then the fact as regards irregularities and illegalities committed in awarding patta came to the knowledge of the Collector and accordingly, *suo motu* revisional jurisdiction was exercised under Section 50 of the Code. Hence, no illegality has been committed by the Collector in passing the impugned order. That apart, it has also been submitted that the order passed under Section 50 of the Code is revisable under Section 50 as well as appealable under Section 44 of the Code. With the aforesaid submissions, it is submitted that the petition deserves to be dismissed.

Heard learned counsel for the parties.

There is no cavil of doubt that since 1991 petitioners-patta holders: poor villagers belonging to backward Community, is in settled possession of the land awarded to them on patta, ploughing the field and harvesting crops thereon and since then 23 years period has passed by. Even the order passed by the Naib Tahsildar on 10/4/1991 was attempted to be set aside by SDO vide order dated 13/7/1999 i.e. after eight years. The revisional proceedings

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before the Commissioner were pending consideration for three years and though the order impugned was found to be without jurisdiction, but at the same time the Commissioner ordered making over the same before the Collector in the year 2002 and thereafter the matter was placed before the Collector to exercise *suo motu* revisional jurisdiction, as ordered by the Commissioner. As such, on the directions of the Commissioner, the Collector has invoked *suo motu* revisional jurisdiction under Section 50 of the Code. At this stage, the objection as regards availability of alternative remedy of appeal before the Commissioner is considered and the same is rejected outrightly for the simple reason that the *suo motu* revisional jurisdiction has been exercised on the directions of the Commissioner and, therefore, the appeal under Section 44 or revision under Section 50 of the Code before the Commissioner cannot be said to be an alternative, efficacious remedy.

Now on the jurisdictional issue of limitation to exercise *suo motu* revisional jurisdiction it is considered apposite to refer view of Apex Court on extent, limit, ambit and scope of *suo motu* revisional jurisdiction at any time: it has been held that the same must receive contextual interpretation. In the context of HP Ceiling on Landholdings Act, 1972, Section

20(3), the Hon'ble Supreme Court in the case of **State of H.P. and others v. Rajkumar Brijender Singh and others, (2004) 10 SCC 585** has observed as under:-

"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) provided 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 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

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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 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

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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.”

In the case of **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham vs. K. Suresh Reddy and others, (2003) 7 SCC 667** followed in **State of Andhra Pradesh and another vs. T. Yadagiri Reddy and others, (2008) 16 SCC 299** the Hon'ble Apex Court has held as under:-

“9. Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo-motu power could be exercised even after long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-Section (4) of Section 50-B of the Act as to whether the suo-motu power could be exercised at any time strictly sticking to the language of that sub-Section or it could be exercised within

reasonable time. 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 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 sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which 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 Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers 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 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 dictionary meaning of 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 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."

There is nothing on record as to when the Collector had issued notice to the petitioners-land holders. However, from the order it is apparent that the reply to the notice was submitted on 6/1/2006. As such, in absence of any material on record, this Court presumes that notice issued to the petitioners-patta holders was as late as sometime in the year 2005 i.e. after expiry of three years from the date of order passed by the Commissioner in revisional jurisdiction. There is no explanation offered by the respondents as regards such delayed action on the part of Collector, even if the remand order is stated to be the date of placement of

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the matter before it for the purpose of date of knowledge. In the opinion of this Court, after such a long lapse of time i.e. 13-14 years and 3 years from the date of the order passed by the Commissioner, notice issued to the petitioner-patta holder is much beyond the reasonable time of 180 days as held by the Full Bench, therefore, in the opinion of this Court the power under Section 50 of the Code was not a *bonafide* exercise of power and the same is contrary to the law laid down by Apex Court and the Full Bench in **Ranveer Singh (supra)**. Accordingly, the impugned order, so far as it relates to petitioners, is quashed on the ground of limitation. Writ Petition stands allowed.

(Rohit Arya)
Judge

jps/-