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STATE OF H.P. AND ORS.

v

RAJ KUMAR BRIJENDER SINGH AND ORS.

APRIL 22, 2004

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[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Himachal Pradesh Ceiling on Land Holdings Act, 1972:

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S. 20(3)—Financial Commissioner—Exercise of suo motu power of revision after withdrawal of appeal by State Government against order of Collector—Held, Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State—Financial Commissioner while exercising the power under sub-s.(2) of s. 20 acts as a statutory authority and no restriction can be placed on exercise of such power on the ground that he is a part of the machinery of the State Government or an officer of the State—It is in a different statutory capacity under which Financial Commissioner exercises his power and is free to pass any order in accordance with law which may or may not be against the State Government.

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S.20(3)—Revision—By exercise of suo motu power by Financial Commissioner—Limitation—Order of Collector declaring certain land as surplus—Appeal by State Government before Commissioner—Later withdrawn—15 years thereafter Financial Commissioner exercising suo motu power of revision—Held, the order of the Financial Commissioner stands vitiated having been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—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 in sub-s.(3) of s.20.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 130 of 1999.

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From the Judgment and Order dated 23.6.97 of the Himachal Pradesh High Court in C.W.P. No. 96 of 1992

WITH

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C.A. No. 131 of 1999.

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J.S. Attri, Additional Advocate General, (H.P.), (AC) for the Appellants. A

B.S. Banthia for the Respondents.

The following Order of the Court was delivered :

The dispute in this appeal relates to declaration of surplus area under the provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the 'Act'). On coming into force of the aforesaid Act, ceiling proceedings were initiated and an order was passed by the Collector on 14.1.1976 as a result of which 9,000 bighas of land belonging to the original owner Raja Lakshman Singh, whose heirs are respondents in this appeal, was declared surplus and 1,000 bighas was left as the land which they were found entitled to hold within the permissible limits on the basis of the number of units in the family. B C

The State, it seems, felt aggrieved by the order passed by the Collector. Hence, it filed an appeal before the Commissioner. The appeal was, however, withdrawn by the State on March 20, 1976. As a result of the withdrawal of the appeal preferred against the order of the Collector, the order passed by the Collector attained finality. The Financial Commissioner, however, seems to have exercised his *suo moto* power under Section 20(3) of the Act and by Order dated 7.11.91 set aside the order of the Collector dated 14.1.1971. It may be noted here that the Financial Commissioner had initiated the *suo moto* proceedings on 21.8.1990. As a consequence of the order passed by the Financial Commissioner, the permissible area in the hands of the respondents was still reduced, hence, they preferred a writ petition against the order passed by the Financial Commissioner. A number of grounds had been taken by the respondents impugning the validity of the order passed by the Financial Commissioner. Out of the several points, one related to the power of the Financial Commissioner to exercise the *suo moto* power after the State had withdrawn the appeal and the other was regarding delayed exercise of the power, that is to say, about 15 years after passing of the order by the Collector. It may also be noted that the appeal preferred by the State against the order of the Collector before the Commissioner was also withdrawn around the same period, namely March, 1976. D E F G

The High Court observed that it was not necessary to go into the merits of different grounds raised by the respondents challenging the order of Financial Commissioner and preferred to deal with the question relating to power of the Financial Commissioner to take up the matter *suo moto* after the H

A appeal, preferred by the State Government, was withdrawn. So far as the question of delayed exercise of the power is concerned, that has only been mentioned but no further discussion has been held except to observe that normal period prescribed for filing appeal is 60 days and for revision, it is 90 days.

B We may consider the first ground regarding power of the Financial Commissioner to proceed *suo moto* after an appeal preferred by the State had been withdrawn. The view which has been taken by the High Court, is that it was not open to the Financial Commissioner to exercise those powers. The High Court further goes on to observe that a bare reading of the provision; C namely Section 20, shows that the exercise of the *suo moto* power is not available once an appeal preferred by the State is withdrawn. We, however, find that no such proposition flows from Section 20 of the Act. Section 20 of Act reads as under :

D “20. (1) Any person aggrieved by any decision or order of the Collector may, within sixty days from the date of the decision or order, prefer an appeal to the Commissioner :

E Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

F (2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may, within ninety days from the date of the order, file a revision petition before the Financial Commissioner so as to challenge the legality or propriety of such order and the Financial Commissioner may pass such order as he may deem fit. The order of the Financial Commissioner shall be final.

G (3) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may, at any time, call for the record 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.

H Sub-section 3 of Section 20, quoted above, clearly provides that notwithstanding anything contained in other sub-sections of Section 20, Financial Commissioner shall have power to call for the record of any

proceedings of any authority subordinate to him and satisfy himself about the legality and propriety of the order passed. Once the State Government had taken a decision to withdraw the appeal, it is submitted that the Financial Commissioner could not take any different view in the matter *suo moto* to pass any other order contrary to the decision of the State Government to withdraw the appeal. In our view, the argument is fallacious. The Financial Commissioner while exercising the power under sub-section (3) of Section 20 acts as a statutory authority. We also find that under sub-section 2 the Financial Commissioner is an appellate authority against the order of the Commissioner. While exercising such powers vested in him under sub-sections (2) and (3) of Section 20, no such restrictions can be placed on exercise of power of Financial Commissioner on the ground that he is a part of the machinery of the State Government or an officer of the State. It is in a different statutory capacity under which Financial Commissioner exercises his power and is free to pass any order in accordance with law which may or may not be against the State Government. Therefore, merely for the reason that one of the parties to the appeal, may be State Government, chose to withdraw an appeal filed before lower appellate authority, would be treated as a bar for the Financial Commissioner to exercise his power under sub-section 3 of the Act. We, therefore, find this part of the order of the High Court is not sustainable.

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 *suo moto* 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 moto* power, well it could be open for the State to submit that the facts and the circumstances were such that it would be within reasonable time but as we have already noted 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 some time in March 1976. The learned counsel for the appellant was not able to point out such other special facts and

- A** circumstances by the reason of which it could be said that exercise of *suo moto* 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 moto* in a suitable case even though an appeal preferred before 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 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
- C** power in sub-section (3) of Section 20.

In view of the discussion held above, we partly allow the appeal. As consequence thereof the order of the Financial Commissioner is set aside and order passed by the Collector shall stand restored and maintained. There would, however, be no order as to costs.

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CIVIL APPEAL NO. 131/1999

In view of our decision rendered in C.A. No. 130/1999 the impugned order of the High Court dated June 23, 1997 is maintained. The appeal filed by the State stands dismissed.

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- RP. C.A. No. 130/99 partly allowed.
C.A. No. 131/99 dismissed.