



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5539 OF 2012

SMT. SHYAMO DEVI AND OTHERS

...APPELLANT(S)

VERSUS

STATE OF U.P. THROUGH
SECRETARY AND OTHERS

...RESPONDENT(S)

J U D G E M E N T

Aravind Kumar, J.

1. This appeal is directed against the judgment dated 19.01.2010 passed in Writ Petition No.1995 of 2010 by the High Court of judicature at Allahabad whereunder the writ petition filed by the appellants herein (hereinafter referred to as '*writ petitioners or petitioners*') challenging the order dated 23.09.2009 passed in Revision No.68 of 2008-09 came to be dismissed and said order came to be upheld for the reason that the revision

petition is not maintainable and consequently the order dated 07.02.2008 passed by the Additional Collector holding that proceedings for cancellation of the *patta* could be started at any time came to be upheld.

2. By our order dated 13.03.2024, we had made it clear that since none had appeared on behalf of the appellants (writ petitioners) no further adjournment would be granted and in the interest of justice one last opportunity came to be extended to the writ petitioners. However, even today when the matter is called in the second round none has appeared on behalf of the appellants. Hence, we have proceeded to examine the case on merits by considering the pleas advanced in the appeal, grounds urged therein and the arguments advanced on behalf of the respondents' counsel.

3. Short facts leading to the filing of this appeal are as under:

4. In the year 1969-70, the khasra plot No.185 in Rampur Kedhar Village, UP was designated as a Panchayat Ghar but later it was declared unsuitable in 1993. On the request of the village Pradhan a portion of the said plot was re-assigned for residential use by the Assistant Collector and subsequently different plots of land in said survey number came to be allotted to different individuals including the writ petitioners under Section 122-C(i)(d) of Uttar Pradesh Zamindari Abolition and Land Reforms Act (hereafter referred to as '*UPZALR Act*' for short).

5. After 13 years, the Secretary/Lekhpal of Bhumi Prabandhank Samiti, Rampur forwarded a report to the jurisdictional Tehsildar opining thereunder that plot No.185 had been originally designated as Panchayat Ghar and classified under Section 132 of UPZALR Act and accordingly recorded in the revenue records, which had been unlawfully allotted for residential use. Hence, he proposed for cancellation of the allotments made and to take possession of the land from all the allottees including writ petitioners. The Tehsildar in turn forwarded a proposal to the District Magistrate for cancellation of the allotment vide communication dated 18.06.2007. This, resulted in show cause notices dated 05.07.2007 being issued to the writ petitioners and same was duly replied by them by filing objections on 04.10.2007. An application came to be filed by the petitioners to decide the issue of the limitation as preliminary issue, since the proceedings had been initiated after 13 years from the date of allotment contending *inter alia* that within a period of 3 years the proceedings ought to have been initiated. The Additional Collector by order dated 07.02.2008 was of the view that action initiated being *suo moto*, no limitation has been provided under Section 122-C(6) of UPZALR Act; that during the consolidation proceedings the land had been specified “Panchayat Ghar” and it was covered under Section 132(6) of the UPZALR Act; the allotment of land being irregular and no time limit having been fixed for

cancellation of allotment made under Section 122-C(6). Hence, he arrived at a conclusion that there is no limitation fixed under the Act and proceeded to reject the application filed.

6. Being aggrieved by the said order the revision petition came to be filed before the Additional Commissioner which came to be entertained on merits and dismissed.

7. Being aggrieved by the aforesaid two (2) orders, the writ petitioners challenged the same in Writ Petition No.1995 of 2010 which came to be dismissed on two grounds namely the revision petition filed was not maintainable in the teeth of Section 122-C(7); and, on the ground that impugned order dated 07.02.2008 passed by the Additional Collector over-ruling the objections of the writ petitioners with regard to limitation is correct and it was meritless. Hence, this appeal.

8. As already noticed by us herein above, none have appeared on behalf of the writ petitioners. Shri Tanmaya Agarwal, learned counsel appearing for the respondent-state has vehemently contended that fraud vitiates all acts and in the instant case the revenue was empowered under the UPZALR Act to cancel the illegal and fraudulent allotment of land made in favour of the writ petitioners and as such suit had been instituted for cancellation of allotment for which no limitation has been specified

under Section 122-C(6) of UPZALR Act and particularly when the land in question had been reserved as Panchayat Ghar it would be governed under Section 132 of the UPZALR Act. He would also submit that even otherwise where a bhumidhar uses the land for a purpose not connected with agriculture, horticulture or animal husbandry same would be in contravention of Section 143 and admittedly no permission had been procured for the usage of the land for residential purposes as required under Section 143. Hence, he would contend that the authorities were within their jurisdiction to initiate the proceedings for cancelling the allotment and the revenue authorities as well as the High Court had rightly refused to interfere with the impugned order dated 07.02.2008 and rejected the writ petition whereunder they had sought for the suit being dismissed as barred by limitation. Hence, he prays for rejection of this appeal.

9. Having heard the learned Counsel representing the State, it would be apposite to note the order dated 17.07.2012 passed by this Court. It reads:

“Leave granted.

In the meanwhile, **the parties are directed to maintain status quo in respect of the disputed land**, as it is obtaining today. This would necessarily mean that neither party shall change the present character of the property or alienate the same to any other person in any manner whatsoever.”

(Emphasis Supplied by us)

10. The writ petitioners who are rustic and illiterate villagers had submitted applications for allotment of land for purposes of house construction in the village Dhodhar, Tehsil Thakurdwara, District Moradabad. Pursuant to the same the writ petitioner's husband/father amongst others were allotted 150 sq. yards land each in Gata No. 185 Mi. The said allotment came to be approved by the Sub-District Magistrate on 27.06.1994 and allotment was made in pursuance to the proposal dated 15.05.1994 forwarded by The Land Management Committee, Rampur, Dhodhar. Hence, the writ petitioners and other allottees have put up construction by putting up residential accommodation and have been residing therein with their family members. However, after a period of 13 years namely on 13.06.2007 the Lekhpal submitted a report for cancellation of such allotment on the ground that the land allotted to the writ petitioners and other allottees were classified as Panchayat Ghar and as per Section 132 of UPZALR Act the same could not have been allotted to the writ petitioners. Based on the said report, Tehsildar, on 18.06.2007 forwarded a report to the Sub-District Magistrate, proposing thereunder to initiate proceedings and recommended for cancellation of the allotment. Hence, the proceedings for cancellation of the allotment came to be initiated by issuance of show cause notice dated 05.07.2007 to all the allottees.

11. Thus, it emerges from the afore-stated facts that the authorities initiated the proceedings for cancellation of the allotment initially based on the report dated 13.06.2007 of the Lekhpal which was undisputedly after 13 years from the date of allotment. It is no doubt true that there is no limitation fixed for initiation of the proceedings under the UPZALR Act as contended by the learned Counsel for the Respondents. This Court in *Additional Commssioner, Revenue and Others v. Akhalaq Hussain and Another, (2020) 4 SCC 507* vide paragraph 28 has held that sub-section (6) of Section 122C empowers the collector to enquire with regard to the manner of allotment being irregular and may proceed to cancel the allotment if he satisfies that such allotment is irregular. Section 122C (6) reads as under:

“122C (6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.”

12. However, the question which requires to be addressed is whether such initiation of the proceedings can be at any length of time or at any point of time where no limitation is prescribed. This Court in **State of**

Punjab Vs. Bhatinda Milk Producer Union Limited reported in (2007)

11 SCC 363 has held:

“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.”

13. This Court had an occasion to consider similar issue in the matter of **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy, (2003) 7 SCC 667** namely the exercise of *suo moto* power under sub-section (4) of Section 50-B of Andhra Pradesh (Telangana Area) Tenancy and Agriculture Lands Act, 1950 (for short ‘AP Act’) i.e., can it be at any time or such power is to be exercised within a reasonable time and if so, within what time? The facts obtained in the said case was that the owners of the subtle land executed various sale deeds in favour of different persons on plain paper and possession of the lands was also delivered to the purchasers. The vendees applied under Section 50-B of the AP Act for validation of sales and the concerned Tehsildar issued validation certificates on various dates. The said orders of the Tehsildar came to be challenged before the Joint Collector of the District by the Special Tehsildar and authorised officer (land reforms) which appeals came to be dismissed in 1988. It is thereafter the Joint Collector issued show cause notices purporting to exercise the *suo moto* power under sub-section (4) of

Section 50-B of the Act to both the vendors and the vendees as to why the validation certificates issued in the year 1974 or earlier should not be cancelled after considering the objections filed in response to the show cause notices, the Joint Collector set aside the validation certificates in 1989. The learned Single Judge before whom challenge was laid accepted the plea of the writ petitioners by arriving at a conclusion that *suo moto* power of revision ought to have been exercised within a reasonable period, though Section 50-B (4) of the Act empowers the authority to exercise such *suo moto* power at any time. The impleading applicants who had filed the complaint, assailed the order of learned Single Judge before the Division Bench without success. In so far as the validation certificates which were found to be fraught with fraud came to be set aside by the Division Bench and also taking into account that the parties did not produce the documents.

14. Sub-section (4) of Section 50-B of the AP Act can be juxtaposition with sub-section (6) of Section 122-C of the UPZALR Act for immediate reference and it reads:

Section 122-C (6) of UPZALR Act	Section 50-B (4) of AP Act
122-C (6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the	50-B (4) The Collector may, suo-motu at any time, call for and examine the record relating to any certificate issued or proceedings taken by the Tahsildar under

<p>manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.</p>	<p>this section for the purpose of satisfying himself as to the legality or propriety of such certificate or as to the regularity of such proceedings and pass such order in relation thereto as he may think fit: Provided that no order adversely affecting any person shall be passed under this sub-section unless such person has had an opportunity of making his representation thereto.</p>
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15. In **Ibrahimpatnam’s** case (supra) wherein sub-section (4) of Section 50-B was pressed into service discloses that the expression *‘the collector may, suo moto at any time;* is occurring while such expression is conspicuously absent in sub-section (6) of Section 122-(C) of UPZALR Act. In the aforesaid case, it came to be held by the Apex Court that *suo moto* power should be exercised within a reasonable period even in case of fraud and within a reasonable time from the date of discovery of fraud and it depends on facts and circumstances of each case. It came to be further held:

“**12.** The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words “at any time” in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what

is “reasonable time” has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time.

19. It is also necessary to note that the suo motu power was sought to be exercised by the Joint Collector after 13-15 years. Section 50-B was amended in the year 1979 by adding sub-section (4), but no action was taken to invalidate the certificates in exercise of the suo motu power till 1989. There is no convincing explanation as to why the authorities waited for such a long time. It appears that sub-section (4) was added so as to take action where alienations or transfers were made to defeat the provisions of the Land Ceiling Act. The Land Ceiling Act having come into force on 1-1-1975, the authorities should have made inquiries and efforts so as to exercise the suo motu power within reasonable time. The action of the Joint Collector in exercising suo motu power after several years and not within reasonable period and passing orders cancelling validation certificates given by the Tahsildar, as rightly held by the High Court, could not be sustained.”

In the teeth of the expression ‘**any time**’ not being found in sub-section (6) of Section 122-C, it would not detain us for too long to set aside the impugned orders.

16. However, in order to satisfy ourselves as to whether the issue of fraud would arise in the instant case? And if so, whether such foundational facts had been laid in the proceedings initiated? Or such fraud, if any, has been committed by the writ petitioners or attributed to them under the show cause notices has also been examined. The foundational facts

narrated herein above, at the cost of repetition requires to be noticed namely the report or the communication of the Lekhpal dated 13.06.2007 forwarded to the Tehsildar. Perusal of the same does not even suggest or indicate of such fraud having occurred or alleged against writ petitioners. However, in the report dated 18.06.2007 submitted by the Tehsildar to the District Magistrate, it has been stated therein that subject land had been preserved for Panchayat Ghar and it is based on the information furnished by the peshkar working in the office Sub-District Magistrate who is said to have intimated that the file does not bear the signature of the then Sub-District Magistrate and the Tehsildar is also said to have found certain irregularities. In other words, on the basis of such presumed irregularities he has jumped to the conclusion that allotment was irregular, against law and approval of allotment was on the basis of forged signature of Sub-District Magistrate. However, the basis of such conclusion namely signature of the Sub-District Magistrate having been forged is not specified or in other words report is silent. It is also interesting to note that no allegation of whatsoever nature has been attributed to the allottees of they having forged the signature/s. In this background, we are of the considered view that the principles enunciated by this Court in **Ibrahimpatnam's** case (supra) would be squarely applicable to the facts on hand and as such the order impugned herein cannot be sustained.

17. We also make it clear that though the power of the Collector is available to initiate *suo moto* action for cancellation of allotment under sub-section (6) of Section 122-C in case of fraud and such foundational facts would disclose the same, it would suffice to initiate the proceedings as fraud vitiates all proceedings as held in **Akhalaq Hussain's** case referred to supra. By making this position of law explicitly clear and in the facts and circumstances of the present case as unfolded which is discussed in detail herein above disclosing same not being laid in show cause notices, we are of the considered view that impugned order as well as the orders impugned before the writ court would not be sustainable.

18. Yet another factor which has swayed in our mind to quash the impugned order is the fact that pursuant to the allotment made on 27.06.1994 the allottees who are poor rustic villagers have constructed their houses and the allotment was made based on the approval granted by the then Sub-District Magistrate and they have been residing in the residential buildings so constructed by them for the last several years and to unsettle the same would result in heaping injustice to those poor hapless persons and particularly when the subject land has been utilized for allotment to the poor and houseless persons.

19. For the cumulative reasons afore-stated, appeal is allowed and the impugned order dated 19.01.2010 as well as the order dated 07.02.2008, passed by Additional Collector- respondent No.3 herein and the order dated 23.09.2009 passed by the Additional Commissioner, (Administration) Moradabad Division are hereby set aside subject to observation made herein above. No order as to costs.

.....J.
(C.T Ravi Kumar)

.....J.
(Aravind Kumar)

New Delhi,
May 16, 2024