

Before Augustine George Masih, J.

BRIJ LAL THROUGH LRS AND OTHERS—Petitioners

versus

THE STATE OF HARYANA AND OTHERS—Respondents

C.W.P. No.6392 of 1999

November 17, 2020

Constitution of India, 1950—Art. 226—Punjab Security of Land Tenures Act, 1953—Haryana Ceiling of Land Holdings Act, 1972—S. 18(6)—Petitioners, who are the sons of the big landowner, challenged orders of the Financial Commissioner, remanding the matter to the Collector, surplus area for a fresh decision—The Financial Commissioner had passed the above orders under Section 18(6) of the 1972 Act, after the issue of surplus area was decided 16 years and 24 years ago in two separate proceedings pertaining to the land belonging to big landowner, on separate applications moved by the sons of the big landowner—Having regard to the facts of the case, the High Court concluded that the words, “at any time” employed in Section 18(6) of the 1972 Act, means reasonable time, in the absence of fraud—The High Court restored the order of the Assistant Collector, to the effect that land holding in the hands of the sons of the big landowner were within permissible limits, and therefore they were entitled to eviction of the tenants—Writ petition allowed.

Held, that in view of the above, the settled proposition of law, therefore, can be culled out to state that the power under Section 18 (6) conferred upon the Financial Commissioner although not governed by any limitation with regard to the period for exercise of such power but the same can neither be said to be unfettered nor without any constraints as the order passed by the Financial Commissioner should reflect and justify in the facts and circumstances of the particular case the exercise of such powers. In a case, where power is intended to be exercised by the Financial Commissioner after a lapse of a long period of time from the date of passing of the order by a subordinate authority, not only the reasons for exercising such powers on the aspect of jurisdiction or merit be given but the aspect of lapse of time, its effect/consequences and why the same is being ignored/overlooked need to be considered and reflected in the order more so when the rights of private parties are involved. However, with regard to the

cases, where the fraud has been played upon the Court and a finding to that effect is recorded by the Financial Commissioner, there will be no limitation.

(Para 23)

Further held, that the aspect with regard to these orders having been passed in their favour was known to the private respondents as is apparent that it is in pursuance to the said declaration issued by the competent authority holding them as small landowners that the ejection petition was preferred against the private respondents in Form K-1. The private respondents should have immediately taken steps for challenging the said orders declaring the petitioners small landowners, which was not done by them. It is only after the Commissioner had passed the order dismissing the revision petition of Balbir Singh-respondent herein on 16.10.1992 after the dismissal of the appeal by the Collector, Sirsa, on 22.01.1992 challenging the order of ejection passed by the Assistant Collector 1st Grade, Dabwali, on 28.08.1991 and a revision had been preferred i.e. ROR No.381 of 1992-93 on 08.04.1993 that the orders of the year 1969 and 1977 were challenged by the respondents herein by filing the above referred revision petitions.

(Para 28)

Further held, that it is apparent from the above that the said orders were very much appealable and even revisions were maintainable against those orders but the private respondents preferred not to challenge the said orders. It is at a belated stage and that too when they found that they have already lost possession in the execution proceedings in September 1991 that resort for challenging the orders dated 15.07.1969 and 20.07.1997 has been made. This itself casts a doubt with regard to the conduct of the private respondents. The learned Financial Commissioner has not taken this aspect into consideration nor has any exceptional situation pointed out for exercising such jurisdiction as conferred under Section 18 (6) of the 1972 Act after such an inordinate delay.

(Para 29)

Further held, that nothing has come on record, which would indicate that the petitioners have approached the Court with unclean hands initially while filing applications dated 16.08.1976 under Section 9 of the Haryana Ceiling of Land Holding Act, 1972. The Financial Commissioner while passing the impugned orders dated 12.09.1997 and 10.03.1999 (Annexures P-15 and P-19) has not returned a finding

to that effect. Nothing has been culled out, which would show that there has been suppression of facts or a fraud having been played upon the State entitling interference on the part of the Financial Commissioner at this belated stage.

(Para 30)

Further held, that in the light of the above, especially in the light of the law, which has been laid down by the Hon'ble Supreme Court as well as this Court, I do not find any justification on the part of the Financial Commissioner to have exercised its jurisdiction under Section 18 (6) of the 1972 Act setting aside the orders dated 15.07.1969 and 20.07.1977 at this belated stage.

(Para 31)

Further held, that having come to the conclusion that the orders dated 15.07.1969 and 20.07.1977 have been wrongly set aside by the Financial Commissioner, it is apparent that the petitioners have orders in their favour to the effect that their land holdings fall within the permissible limits and, therefore, they are not big landowners. If that be so, the order of eviction passed by the Assistant Collector 1st Grade, Dabwali, dated 28.08.1991 (Annexure P-12) allowing the application of the petitioners in Form K-1 for ejection of the private respondents cannot be faulted with, especially in the light of the fact that Shri Bishan Singh, grandfather of Balbir Singh had already been allotted 80 *kanals* of land from the surplus pool, which has been collectively inherited by the private respondents and this alone is more than the land in question i.e. 73 *kanals* 6 *marlas*, allotment of which they are not entitled to from the surplus pool, which order has been upheld in the appeal as well as in the revision, which has been preferred by the private respondents.

(Para 32)

Further held, that it would not be out of way to mention here that the orders of ejection dated 28.08.1991 (Annexure P-12) passed by the Sub Divisional Officer (Civil) exercising the powers of the Assistant Collector 1st Grade, Dabwali, District Sirsa, order dated 22.01.1992 passed by the Collector, Sirsa, dismissing the appeal of the private respondents and the order dated 16.10.1992 (Annexure P-14) passed by the Commissioner, Hisar Division, Camp Sirsa, dismissing the revision petition of the private respondents, have been set aside vide impugned order dated 12.09.1997 and 10.03.1999 passed by the Financial Commissioner only on the ground that the order dated 15.07.1969 (Annexure P-4) and the orders dated 20.07.1977 and

09.08.1977 (Annexures P-5 to P-7) have been set aside exercising the powers under Section 18 (6) of the 1972 Act, which has been found to be without any jurisdiction.

(Para 33)

Prem Nath Aggarwal, Advocate, *for the petitioners.*

Manish Dadwal, Assistant Advocate General, Haryana.

L.N. Verma, Advocate for private respondents.

AUGUSTINE GEORGE MASIH, J.

(1) By this order, I propose to dispose of three writ petitions i.e. **CWP Nos.6392, 6393, 6394 of 1999** titled as ***Brij Lal through LRs and others versus The State of Haryana and others***, wherein challenge is to the orders dated 12.09.1997 and order dated 10.03.1999 passed by the Financial Commissioner, Haryana, whereby revision petitions preferred by the private respondents have been allowed and the matter remanded to Collector, Surplus Area, Sirsa, to decide afresh the surplus area cases of Pat Ram-deceased landowner and his sons (petitioners herein) as to whether they were big landowners in their independent capacity or have now become so after inheritance after death of their father Pat Ram, by giving opportunity to all the parties concerned and thereafter decide the purchase application of the old tenants i.e. private respondents.

(2) As common facts and law are involved, facts are being taken from CWP No.6392 of 1999. Briefly the facts of the case are that Pat Ram son of Dhan Raj, a displaced person, was allotted land in Tehsil Sirsa, District Hisar, now Tehsil Dabwali, District Sirsa, in the year 1949, in lieu of the ancestral land owned by him, which now falls in Pakistan. A suit was filed by his six sons for declaration that they were exclusive owners of 390 *bighas* 1 *biswa* of land, which was decreed on 18.06.1958. Mutation was also sanctioned in their favour on the basis of the said decree. Collector, Agrarian, Surplus Area, Sirsa, passed an order dated 26.07.1961 assessing 63.32 standard acres as the surplus area in the hands of Pat Ram, resident of Village Sakta Khera under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as '1953 Act'). This order was challenged by Pat Ram in an appeal before Commissioner, Ambala Division, which was dismissed on 24.07.1962 as not pressed on account of enforcement of Punjab Security of Land Tenures (Amendment & Validation) Act, 1962.

(3) Bishan Singh and Dalip Singh sons of Gurdit Singh residents of Village Sakta Khera, claiming themselves to be the tenants on a part of the holding of Pat Ram, filed two appeals challenging the order dated 26.07.1961 of the Collector, Surplus Area, Sirsa, asserting their right of purchase of the land in their possession. These appeals were accepted by the Commissioner, Ambala Division, Ambala Cantt. vide order dated 19.01.1966 (Annexure P-3) on the plea that the surplus area of Pat Ram has been declared without any notice to them and the case was remanded back to the Collector for reassessment of the area surplus with Pat Ram after affording opportunity of hearing to the appellants. This opened the case of reassessment of the surplus area of Pat Ram.

(4) The Special Collector, Haryana, Camp at Hisar, took up the matter on 15.07.1969, when Bishan Singh and Dalip Singh, the tenants, disclosed that Pat Ram had since died on 07.02.1966 leaving behind six sons namely Sohan Lal, Brij Lal, Hazari Lal, Ami Ram, Dhonkal Ram and Shankar Lal and, therefore, the situation has changed and fresh proceedings against heirs of Pat Ram are to be taken except to the extent of area declared surplus as being utilized. The proceedings were filed and the Collector, Agrarian, Sirsa, was requested to start proceedings according to law against the heirs of deceased-Pat Ram for determination of their status and surplus area, if any, with them. This order attained finality as no appeal or revision was filed by the respondents-tenants or the State Government.

(5) No file of the heirs of Pat Ram was prepared under the 1953 Act in compliance with the order dated 15.07.1969 (Annexure P-4) passed by the Special Collector, Haryana, Camp at Hisar, and no case was pending under the said Act on 23.12.1972, when the Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as '1972 Act'), came into force. Petitioners assert that as there was no existing, final and operative order of declaration of surplus area qua Pat Ram or his sons on the land, no land vested in the State of Haryana under the 1972 Act.

(6) All the six sons of Pat Ram filed their declaration form dated 16.08.1976 under Section 9 of the 1972 Act. The Sub Divisional Officer (Civil), Dabwali, passed separate orders dated 20.07.1977 on the applications, which had been submitted by three of the sons of late Shri Pat Ram namely Sohan Lal, Brij Lal and Hazari Lal and came to the conclusion that under the 1972 Act, no surplus area had been found. However, it was mentioned that if any land out of the land in

possession of the applicants is found to be surplus under the 1953 Act, the same will not be effected and that surplus land will be utilized according to law. These orders qua Sohan Lal, Brij Lal and Hazari Lal are dated 20.07.1977 (Annexures P-5 to P-7 respectively), qua Dhonkal Ram, the order is dated 09.08.1977 (Annexure P-8) and orders dated 27.04.1995 (Annexures P-9 and P-10) are qua Ami Lal and Shankar Lal sons of Pat Ram respectively.

(7) On 08.08.1967, sons of Pat Ram i.e. Sohan Lal and others, filed an application in Form K-1 under 1953 Act for ejectment of tenant-Dalip Singh son of Gurdit Singh. During the pendency of the said application, Dalip Singh made a statement before the Assistant Collector 1st Grade, Sirsa, on 06.12.1967 that the applicants were small landowners and he had no objection to his ejectment from the land in question and he did not want any compensation.

(8) Another application was preferred by the legal heirs of Pat Ram i.e. Brij Lal and others in Form K-1 against Balbir Singh son of Kartar Singh and others, which was contested by them. The same was finally decided on 28.08.1991 (Annexure P-12), wherein it was held after assessing the records that the petitioners, who were applicants before the authority, are small landowners and thus, are entitled to get ejectment of the tenants under Section 9 of the 1953 Act. It was also mentioned that Bishan Singh, father, who was the predecessor-in-interest of Balbir Singh and others, had already been allotted 80 *kanals* of land from the surplus pool, which had been collectively inherited by them and, therefore, they were not entitled to allotment of further land under surplus pool. This order was challenged before the Collector, Sirsa, who dismissed the appeal on 22.01.1992 (Annexure P-13), however, prior thereto, in the execution proceedings, actual possession of 73 *kanals*, 6 *marlas* (the land in question) was taken by Brij Lal etc. in September 1991. Revision petition preferred by Balbir Singh etc., the tenants, was also dismissed on 16.10.1992 (Annexure P-14) leading to filing of second revision before the Financial Commissioner i.e. ROR No.381 of 1992-93 on 08.04.1993.

(9) During the pendency of this revision petition, after about 16 years of passing of the order dated 20.07.1977 by the SDO (Civil)-cum- Prescribed Authority, Dabwali, declaring Sohan Lal, Brij Lal and Hazari Lal being not in possession of any surplus area as also the order dated 09.08.1977 relating to Dhonkal Ram, a revision petition i.e. ROR No.398 of 1992-93 was preferred before the Financial Commissioner challenging these orders. Another revision petition was preferred

before the Financial Commissioner i.e. ROR No.528 of 1992-93 by Balbir Singh and others on 29.06.1993 challenging the order dated 15.07.1969 of the Special Collector, Haryana, Camp at Hisar, consigning to the record the surplus area case of Pat Ram, landowner, on his death and directing Collector, Agrarian, Sirsa, to start fresh proceedings against heirs of Pat Ram, which order was passed in presence of Bishan Singh and Dalip Singh sons of Gurdit Singh. Yet another revision petition i.e. ROR No.596 of 1992-93 was preferred by Dalip Singh son of Gurdit Singh on 30.07.1993 challenging the order dated 20.07.1977 declaring that there was no surplus area of Sohan Lal, Brij Lal and Hazari Lal. This was after a period of almost 16 years.

(10) All these four revision petitions were taken up together and decided by a common order dated 12.09.1997 (Annexure P-15), whereby the Financial Commissioner, Haryana, has exercised his powers under Section 18 (6) of the 1972 Act holding therein that he was exercising the said powers on going through the records of the Courts below and finding that the surplus area case of Pat Ram should have been finalized under the 1953 Act irrespective of the fact that he had died in February 1966. This was observed keeping in view the fact that the surplus area case of Shri Pat Ram had been decided by the Collector, Surplus Area, vide his order dated 26.07.1961, appeal against which was dismissed by Commissioner on 24.07.1962 with the surplus area case having been reopened at the behest of old tenants by asserting that the tenants' permissible area has been declared as surplus area in the hands of Pat Ram. It was also held that the Special Collector, Haryana, has erred in passing his order dated 15.07.1969 holding that due to demise of Pat Ram on 07.02.1966, situation had changed and fresh proceedings had to be initiated against heirs of deceased landlord for determination of their status and surplus area with them. Delay in deciding the surplus area case qua two of the sons of Pat Ram i.e. Ami Lal and Shankar Lal, which was decided in April 1995, has also been mentioned. It was also observed that the surplus area case of Pat Ram and his sons had to be determined first under the 1953 Act as to whether they are big landowners in their own right and it is thereafter that the tenants would have a right to purchase the land, which would be determined after the surplus area case.

(11) This order of the Financial Commissioner was challenged by the petitioners, sons of Pat Ram by filing CWP No.15538 to 15541 of 1997, which were dismissed as premature by this Court on

18.11.1997 as meanwhile a review application against the order dated 12.09.1997 (Annexure P-15) was filed by the petitioners as well as the private respondents, which was disposed of vide order dated 10.03.1999 (Annexure P-19), wherein para 30 of the earlier order was amended and para 31 was replaced holding therein that the surplus area case of Pat Ram could not be dropped due to his demise and the surplus area case of Pat Ram as well as his sons should be decided first under the 1953 Act and thereafter under the 1972 Act followed by decision on the ejection applications.

(12) Petitioners again approached this Court by filing writ petitions challenging the orders dated 12.09.1997 (Annexure P-15) and 10.03.1999 (Annexure P-19) passed by the Financial Commissioner, Haryana.

(13) A Division Bench of this Court vide order dated 15.11.2000 dismissed CWP Nos.6392, 6393 and 6394 of 1999, whereas CWP No.6395 of 1999 was allowed in view of the compromise between the parties i.e. petitioners and Dalip Singh-respondent therein. Review petitions preferred by the petitioners in CWP Nos. 6392, 6393 and 6394 of 1999 were dismissed by the Division Bench of this Court on 19.01.2001.

(14) This led to the filing of Special Leave Petition in the Hon'ble Supreme Court by the petitioners i.e. Brij Lal etc., which was later on converted into Civil Appeals No.1645-1647 of 2001. These appeals were decided by the Supreme Court vide order dated 13.12.2007 by remitting the matter to the High Court to decide the case afresh after taking into consideration the judgment of the Supreme Court in the case of *Financial Commissioner, Haryana State and others versus Smt. Kela Devi and another 1980 (1) SCC 77*, wherein on considering Section 10-A (a) of the 1953 Act as also Rule 20-A, 20-B, 20-C and 20-D of the Punjab Security of Land Tenure Rules, 1956, it was held that a completed title does not pass to the allottee on a mere order of allotment. The said order is defeasible if the other conditions prescribed by law are not fulfilled. It was also held that in the light of the above, the utilization of the surplus area had not been completed by the time legal heirs by inheritance made the application to the authorities concerned for reassessment of their surplus area at their hands reducing their area in the holding below permissible area. Another aspect which was highlighted by the Supreme Court was with regard to the exercise of powers by the Financial Commissioner under Section 18 (6) of the 1972 Act after a long lapse of time, especially

when the private respondents had not challenged the said orders in favour of the petitioners by filing any appeal, which could disentitle them from any relief, which aspect has not been gone into by this Court. It was further observed that the expression 'at any time' as used in Section 18 (6) of the 1972 Act, obviously it has been reasonable time and it was the responsibility of the Court to examine whether it would be proper to grant relief for the same after long passage of time. It is in these circumstances that these writ petitions have come up again for consideration before this Court.

(15) I have heard the counsel for the parties, who have ably assisted me taking me through various orders, which have been passed from time to time by the authorities below as well as this Court and the Hon'ble Supreme Court.

(16) The arguments, which have been raised by the counsel for the parties, are related to all the aspects, which have been taken in the writ petitions but the same need not be gone into, especially on merits in the light of the fact that this Court, has in the light of the order passed by the Hon'ble Supreme Court, taken the issue with regard to the exercise of powers of the Financial Commissioner under Section 18(6) of the 1972 Act after an inordinate delay of almost 16 years in the case of orders dated 20.07.1977 (Annexures P-5 to P-10) and 24 years in the case of order dated 15.07.1969 (Annexure P-4).

(17) Counsel for the petitioners has, on this aspect which goes to the root of the issue with regard to the jurisdiction and exercise of extraordinary powers conferred upon the Financial Commissioner under Section 18 (6) of the 1972 Act, asserted that although the perusal of Section 18 (6) of the 1972 Act would show that no limitation as such has been prescribed under the statute to *suo moto* at any time call for the records of any proceeding or order of any authority subordinate to him for the purpose of satisfying himself as to the illegality or propriety of such proceedings or order but that does not mean that when such an order has not been challenged before the Appellate Authority or the Revisional Authority as per the statutory remedy, the Financial Commissioner can entertain such a revision after a lapse of several years and that too when there is no explanation for delay or earlier approach to the Appellate and Revisional Authority challenging the said order, which order was very much in the knowledge of the concerned party. In support of this contention, reliance has been placed upon the judgment of the Supreme Court in *Loku Ram versus State of*

***Haryana and others*¹ *State of Haryana versus Chandgi Ram*² *Latoor Singh and others versus State of Haryana and another*³ *Kitab Singh (dead) through LRs and others versus Karam Chand (dead) through LRs and others*⁴ *Budh Ram and others versus State of Haryana and others*⁵** wherein this Court in the given facts and circumstances of the case, had held that the exercise of powers under Section 18 (6) of the 1972 Act by the Financial Commissioner was not justified keeping in view the fact that no reasons have been disclosed for holding a particular period as reasonable on the facts of the case and that the said power cannot be utilized at the whims and fancies of the Financial Commissioner but should be more than that explaining firstly the period and the reasons for exercising such power.

(18) On the other hand, learned counsel for the respondents has, with reference to the powers of the Financial Commissioner under Section 18 (6) of the 1972 Act, has accepted that the said powers have been conferred upon the Financial Commissioner to meet exceptional situation as drastic remedies are required for ills which would perpetuate illegality. The power can be exercised particularly to prevent commission of fraud by big landowners and for doing justice, the technical hurdle of delay cannot be allowed to stand in the way of preventing commission of fraud. In support of these contentions, he has placed reliance upon the judgments passed by the Division Bench of this Court in ***Ram Niwas and others versus State of Haryana***⁶ ***Ram Partap versus State of Haryana***⁷

(19) On considering the submissions made by the counsel for the parties as also the statutory provision as finds mention in Section 18 (6) of the 1972 Act, I am of the considered view that in the given facts and circumstances of the present case, the impugned order dated 12.09.1997 and 10.03.1999 passed by the Financial Commissioner do not disclose any exceptional reasons, which would fall within the parameters as laid down by various judgments passed by this Court as also the Hon'ble Supreme Court for exercising the extraordinary power conferred on the

¹ 1999 (1) PLJ 1

² 2014 (1) PLJ 406

³ 2016 (4) RCR (Civil) 16 (P&H)

⁴ 2016 (4) RCR (Civil) 557 (P&H)

⁵ 2017 (2) RCR (Civil) 373 (P&H)

⁶ 2003 (1) PLJ 236

⁷ 2002 (2) PLJ 302

said authority while interfering in the orders, which have been passed almost 16 years prior to the date of passing of the above orders and in one case, after almost 24 years.

Section 18 (6) of the 1972 Act reads as follows:-

“18. Appeal, Review and Revision.-

(1 to 5) XXX XXX XXX

(6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu 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.”

(20) A perusal of the above would show that this is an extraordinary and exceptional power given to the Financial Commissioner irrespective of the other provisions of Section 18, where the said authority can call for records of any proceedings or order of any subordinate authority to him for the purpose of satisfying with regard to illegality or propriety of any proceedings or order and thereafter pass order in relation thereof as it may deem fit. This power obviously, at the first blush, appears to be unfettered and in fact, it is so provided. However, while exercising such extraordinary power, exceptional reasons are required to be spelt out in the order passed by the Financial Commissioner for exercising such powers, especially when there has been an inordinate delay. In *Loku Ram's case* (supra), the Hon'ble Supreme Court has held that no doubt the Section uses the expression 'at any time' but it cannot be indefinite. This power has to be exercised within a reasonable time and that length of reasonable time must be determined by the facts of the case and the nature of the order, which is being revised. For such observation, reliance was placed upon the earlier judgment of the Supreme Court in *State of Gujarat versus P. Raghav*⁸

(21) In *Chandgi Ram's case* (supra), where the power was exercised by the Financial Commissioner after 11 years of the order passed by the Prescribed Authority under the 1972 Act and in *Latur Singh's case* (supra), again the lapse of time was 11 years, the Court proceeded to hold that this cannot be said to be reasonable time for

⁸ AIR 1969 SC 1297

exercising this extraordinary jurisdiction in the given facts and circumstances. Similar was the result where seven years had passed in Budh Ram's case (supra).

(22) The judgments on which reliance has been placed by the counsel for the respondents also emphasizes upon the aspect of exercise of this extraordinary power within a reasonable time, however, it was observed that the length of reasonable time would be determined by the facts of the case and nature of the order being revised. However, it has been observed that in case of fraud committed on Court, delay would not be of any consequence nor does mere length of time for which the fraudulent order remains operative, would make a difference. This would not transform it into a legal or unassailable order. In support of these submissions, reliance was placed upon the judgment of the Supreme Court in *SP Changalvarya Naidu (dead) versus Jagan Nath*⁹ where it has been held that a judgment and decree obtained by fraud will be treated as nullity and *non est* in the eyes of law. Similar was the position in the case of Ram Partap (supra), where again the Financial Commissioner has given a specific finding with regard to a fraud having been played upon the Court. It is under these circumstances, despite there being delay of 18 years and 20 years respectively in these above two cases, the Court had upheld the orders impugned.

(23) In view of the above, the settled proposition of law, therefore, can be culled out to state that the power under Section 18 (6) conferred upon the Financial Commissioner although not governed by any limitation with regard to the period for exercise of such power but the same can neither be said to be unfettered nor without any constraints as the order passed by the Financial Commissioner should reflect and justify in the facts and circumstances of the particular case the exercise of such powers. In a case, where power is intended to be exercised by the Financial Commissioner after a lapse of a long period of time from the date of passing of the order by a subordinate authority, not only the reasons for exercising such powers on the aspect of jurisdiction or merit be given but the aspect of lapse of time, its effect/consequences and why the same is being ignored/overlooked need to be considered and reflected in the order more so when the rights of private parties are involved. However, with regard to the cases, where the fraud has been played upon the Court and a finding to that effect is recorded by the Financial Commissioner, there

⁹ AIR 1994 SC 853

will be no limitation.

(24) The time now is right for considering the orders dated 12.09.1997 and 10.03.1999 passed by the Financial Commissioner, Haryana, as to whether the power conferred under Section 18 (6) of the 1972 Act has been exercised within the legal parameters as laid down by Courts and a reasonable time or not.

(25) The facts, as have been narrated above, are not in dispute. The details thereof are not being referred to here to avoid repetition. On 26.07.1961, Collector, Agrarian, Surplus Area, Sirsa, passed an order regarding Pat Ram assessing him to be holding 62.32 standard acres as surplus beyond permissible area and accordingly the same was declared as surplus area. Appeal against the said order preferred by Pat Ram was dismissed on 24.07.1962 as not pressed in view of the Punjab Security of Land Tenure (Amendment & Validation) Act, 1962. Although the order of assessment dated 26.07.1961 qua Pat Ram can be said to have attained finality, however, that was not to be put as two appeals were preferred by Bishan Singh and Dalip Singh sons of Gurdit Singh, who were tenants under Pat Ram and they posed a challenge to the order dated 26.07.1961. These appeals were allowed vide order dated 19.01.1966 by the Commissioner, Ambala Division, Ambala, remanding the surplus area case of Pat Ram to the Collector for reassessment of surplus area and deciding the same by giving opportunity to the parties. Pat Ram died on 07.02.1966 opening his inheritance to his six sons. In compliance with the order dated 19.01.1966 passed by the Commissioner, Ambala Division, Ambala, Special Collector, Haryana, Camp Office at Hisar, who had opened the case of Pat Ram, landowner, for reassessment, consigned the surplus area case of Pat Ram to records in view of his death and directed the Collector, Agrarian, Sirsa, to start fresh proceedings against the heirs of Pat Ram.

(26) It would not be out of way to mention here that this order dated 15.07.1969 was passed in the presence of Bishan Singh and Dalip Singh sons of Gurdit Singh, the tenants. No appeal or revision was filed by the tenants or the State challenging the said order of the Special Collector and thus, it attained finality till it was challenged by filing a revision before the Financial Commissioner after about 24 years i.e. on 29.06.1993 in ROR No.528 of 1992-93. No explanation whatsoever is forthcoming with regard to the inordinate delay of 24 years in challenging the said order, when the statutory remedy of appeal and

revision had not been availed of by the private respondents herein, who are the legal heirs of Bishan Singh-tenant.

(27) Similar is the position with regard to the subsequent proceedings, which took place on filing of applications by the sons of Pat Ram in the declaration form submitted on 16.08.1976 under Section 9 of the 1972 Act, which resulted in passing of the order dated 20.07.1977 (Annexures P-5 to P-7) qua Sohan Lal, Brij Lal and Hazari Lal and orders dated 09.08.1977 qua Dhonkal Ram and orders dated 27.04.1995 (Annexures P-9 and P-10) qua Ami Lal and Shankar Lal, where it was held that there was no surplus area at their hands under the 1972 Act. These orders were, therefore, challenged as regards the 1977 orders are concerned after a period of almost 16 years.

(28) The aspect with regard to these orders having been passed in their favour was known to the private respondents as is apparent that it is in pursuance to the said declaration issued by the competent authority holding them as small landowners that the ejection petition was preferred against the private respondents in Form K-1. The private respondents should have immediately taken steps for challenging the said orders declaring the petitioners small landowners, which was not done by them. It is only after the Commissioner had passed the order dismissing the revision petition of Balbir Singh-respondent herein on 16.10.1992 after the dismissal of the appeal by the Collector, Sirsa, on 22.01.1992 challenging the order of ejection passed by the Assistant Collector 1st Grade, Dabwali, on 28.08.1991 and a revision had been preferred i.e. ROR No.381 of 1992-93 on 08.04.1993 that the orders of the year 1969 and 1977 were challenged by the respondents herein by filing the above referred revision petitions.

(29) It is apparent from the above that the said orders were very much appealable and even revisions were maintainable against those orders but the private respondents preferred not to challenge the said orders. It is at a belated stage and that too when they found that they have already lost possession in the execution proceedings in September 1991 that resort for challenging the orders dated 15.07.1969 and 20.07.1977 has been made. This itself casts a doubt with regard to the conduct of the private respondents. The learned Financial Commissioner has not taken this aspect into consideration nor has any exceptional situation pointed out for exercising such jurisdiction as conferred under Section 18 (6) of the 1972 Act after such an inordinate delay.

(30) Nothing has come on record, which would indicate that the petitioners have approached the Court with unclean hands initially while filing applications dated 16.08.1976 under Section 9 of the Haryana Ceiling of Land Holding Act, 1972. The Financial Commissioner while passing the impugned orders dated 12.09.1997 and 10.03.1999 (Annexures P-15 and P-19) has not returned a finding to that effect. Nothing has been culled out, which would show that there has been suppression of facts or a fraud having been played upon the State entitling interference on the part of the Financial Commissioner at this belated stage.

(31) In the light of the above, especially in the light of the law, which has been laid down by the Hon'ble Supreme Court as well as this Court, I do not find any justification on the part of the Financial Commissioner to have exercised its jurisdiction under Section 18 (6) of the 1972 Act setting aside the orders dated 15.07.1969 and 20.07.1977 at this belated stage.

(32) Having come to the conclusion that the orders dated 15.07.1969 and 20.07.1977 have been wrongly set aside by the Financial Commissioner, it is apparent that the petitioners have orders in their favour to the effect that their land holdings fall within the permissible limits and, therefore, they are not big landowners. If that be so, the order of eviction passed by the Assistant Collector 1st Grade, Dabwali, dated 28.08.1991 (Annexure P-12) allowing the application of the petitioners in Form K-1 for ejection of the private respondents cannot be faulted with, especially in the light of the fact that Shri Bishan Singh, grandfather of Balbir Singh had already been allotted 80 *kanals* of land from the surplus pool, which has been collectively inherited by the private respondents and this alone is more than the land in question i.e. 73 *kanals* 6 *marlas*, allotment of which they are not entitled to from the surplus pool, which order has been upheld in the appeal as well as in the revision, which has been preferred by the private respondents.

(33) It would not be out of way to mention here that the orders of ejection dated 28.08.1991 (Annexure P-12) passed by the Sub Divisional Officer (Civil) exercising the powers of the Assistant Collector 1st Grade, Dabwali, District Sirsa, order dated 22.01.1992 passed by the Collector, Sirsa, dismissing the appeal of the private respondents and the order dated 16.10.1992 (Annexure P-14) passed by the Commissioner, Hisar Division, Camp Sirsa, dismissing the revision petition of the private respondents, have been set aside vide impugned

order dated 12.09.1997 and 10.03.1999 passed by the Financial Commissioner only on the ground that the order dated 15.07.1969 (Annexure P-4) and the orders dated 20.07.1977 and 09.08.1977 (Annexures P-5 to P-7) have been set aside exercising the powers under Section 18 (6) of the 1972 Act, which has been found to be without any jurisdiction.

(34) In the light of the above, further merits of the case need not be gone into, especially when the power exercised under Section 18 (6) of the 1972 Act by the Financial Commissioner, Haryana, has been found to be without jurisdiction and unsustainable in law.

(35) As a result, these present writ petitions are allowed.

(36) Impugned orders dated 12.09.1997 and 10.03.1999 passed by Financial Commissioner, Haryana, are hereby set aside.

Pradeep Singh Bajwa