Neutral Citation No. - 2023:AHC:243237

A.F.R.

Court No. - 49

Case :- WRIT - C No. - 26762 of 2023

Petitioner :- Nirmala Devi
Respondent :- State Of U.P. And 4 Others
Counsel for Petitioner :- Vishal Khandelwal
Counsel for Respondent :- C.S.C.,Anil Kumar,Avinash Chandra Srivastava,Satish Kumar Pandey

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Vishal Khandelwal, learned counsel for the petitioner; Sri Awadesh Kumar Patel, learned Standing Counsel appearing on behalf of the State-respondent nos. 1 to 3, Shri A.C. Srivastava, learned counsel for the Land Management Committee (respondent no. 4) and Sri Satish Kumar Pandey, learned counsel for the respondent no. 5.

2. The present writ petition has been filed seeking a writ in the nature of certiorari quashing the impugned order dated 29.05.2023 passed by the Additional Commissioner (Judicial), Agra Division, Agra (respondent no. 2) dismissing the Revision having Case No. 02238 of 2018 as well as the order dated 14.09.2018 passed by the District Magistrate/Collector, Mainpuri (respondent no. 3), by means of which the Collector (respondent no. 3), took the decision to *suo moto* proceed for cancellation of the allotment and lease in Case No.1858 of 2018.

3. With the consent of the learned counsel for the parties, this Court proceeds to decide the present Writ Petition at the admission stage itself.

4. The facts in a nutshell, as are available on record before this Court, are that by a Resolution passed by the Land Management Committee (respondent no. 4) in its meeting held on 19.05.1979, lease was granted in favour of 150 persons including one Naresh Singh, son of Munshi Lal. In pursuance of the said lease, plot no. 60-M ad-measuring area

0.202-hectare, plot no. 360 ad-measuring area 0.526 hectare and plot no. 363 ad-measuring area 0.405 hectare were allotted in favour of the said Naresh Singh and accordingly his name was entered in the revenue records.

5. Subsequently, the aforesaid Naresh Singh transferred the said plots in favour of the petitioner whereby the petitioner was delivered possession of the same and subsequently, her name was recorded in the revenue records as ‘bhumidhar with transferable rights'.

6. After a lapse of about 39 years, on an application/complaint dated 21.09.2017 moved by Pradeep Kumar (respondent no.5); proceeding for cancellation of allotment and lease, under Section 128 of the U.P. Revenue Code, 2006, was instituted against the aforesaid Naresh Singh and also against the petitioner being the transferee of Naresh Singh. The said proceeding was registered as Case No. 01858 of 2018.

7. The petitioner along with the aforesaid Naresh Singh preferred preliminary objections regarding the maintainability of the said proceeding on the ground of limitation. A reply to the notice was also filed by the petitioner on 29.05.2019, asserting therein that the aforesaid proceeding is not legally tenable; firstly, for the reason that the same is barred by time having been initiated after a lapse of about 39 years and secondly, the complainant/applicant (respondent no.5) was a minor at the time when the allotment in question was made in the year 1979 and being a minor, he was not eligible for the grant of the said lease in his favour, as such, he does not fall within the category of an ‘aggrieved person’. Further, there was no illegality or infirmity in the allotment in question in favour of Naresh Singh and the same was made perfectly in accordance with the procedure as prescribed under law, after due approval of the resolution and the names in *Aakar Pattra* 57-*kha*, as has been reported by the Tehsil authorities and is available in the concerned Records. As such, the

proceeding under Section 128 of the U.P. Revenue Code, 2006 are not at all maintainable and is liable to be dropped.

8. The District Magistrate/Collector, Mainpuri (respondent no.3) called for an inquiry report and in pursuance of the same the Sub-Divisional Officer concerned got the said inquiry conducted through the Tehsildar and forwarded the same to the Collector (respondent no.3) on 08.12.2017. On the basis of the same, the Collector (respondent no.3) proceeded with the aforesaid proceeding and passed the order dated 14.09.2018, categorically holding therein that although, the said proceeding is 'barred by time' (कालबाधित है) but as per the report submitted by the Sub Divisional Officer, the lessee was not a resident of the concerned Gaon Sabha at the time of the allotment and lease as such the allotment in question is 'proved illegal' (अवैधानिक साबित है). Thereby, the Collector (respondent no. 3) decided to proceed *suo moto,* for cancellation of the allotment and lease and consequently, issued notice to the lessee.

9. Assailing the aforesaid order dated 14.09.2018, the petitioner along with the aforesaid Naresh Singh filed a Revision before the Commissioner, Agra Division, Agra, under section 210 of the U.P. Revenue Code, 2006, which was registered as Case No. 02238 of 2018. The main ground raised by the petitioner in the said Revision was that the aforesaid proceeding under section 128 of the U.P. Revenue Code, 2006 is vitiated as it could only be instituted up to the period of five years after the grant of lease, but since the proceeding in question has been initiated beyond the prescribed period, rather, after a lapse of about 39 years, the same is not at all maintainable. It was further pleaded by the petitioner that the question of limitation goes to the root of the jurisdiction of the Court and as such, the Collector (respondent no.3) could not have proceeded with the case in the teeth

of the fact that the Collector (respondent no.3) by the same order himself held the proceeding as barred by time.

10. The learned Additional Commissioner, Agra Division, Agra (respondent no. 2) declined to entertain the aforesaid revision by treating the aforesaid order dated 14.09.2018 passed by the learned Collector (respondent no.3) to be an order of interlocutory nature and dismissed the said Revision having Case No. 02238 of 2018; vide order dated 29.05.2023, with the observation that the Revisionists have ample opportunity to contest their case before the respondent no.3.

11. Being aggrieved by the above-mentioned orders dated 29.05.2023 and 14.09.2018, the petitioner preferred the instant writ petition, inter alia, praying for the following reliefs:

> *"i. Issue a writ, order or direction in the mature of Certiorari quashing the impugned order dated: 29.5.2023 (Annexure No. 9) passed by the respondent no. 2 Additional Commissioner (Judicial), Agra Division, Agra, in Revision No. 02238/2018 (computerized no. C201801000002238) as well as that of order dated: 14.9.2018 (Annexure No. 6) passed by the respondent no. 3- District Magistrate/Collector, Mainpuri, in Case No. 1858/2018 (computerised no. D20181490001858).*
>
> *ii. Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
>
> *iii. Award the cost of the petitioner to the petitioner."*

12. At the very outset, Shri Awadesh Kumar Patel, learned Standing Counsel appearing on behalf of the State (respondent nos. 1 to 3) and Shri Avinash Chandra Srivastava, learned Standing Counsel for the Land Management Committee (respondent no. 4) have raised serious objections on the maintainability of the present writ petition and have made the following submissions:

12.1. It has been contended on behalf of the respondents that the order impugned in the present Writ Petition is simply a show cause notice and the petitioner has every opportunity to defend her case before the learned District Magistrate/Collector (respondent no.3) by a detailed reply to the show-cause notice and as such the writ petition is not at all

entertainable under Article 226 of the Constitution of India. In support of his submission, the learned Standing Counsel has relied upon the judgment passed by this Court in the case of **Ghanshyam and 11 others** versus **Union of India and 2 others: Writ-C No. 5606 of 2020**.

13. Refuting to the objections raised by the learned standing counsels on the maintainability of the present writ petition; Sri Vishal Khandelwal, learned counsel for the petitioner has advanced the following submissions:

13.1. He submits that in the present case, the impugned order dated 14.09.2018 passed by the Collector (respondent no. 3) is a premeditated order that has finally decided the question of limitation and moreover, determined the allotment and lease of the plots in question, as 'proved illegal' (अवैधानिक साबित है). The said show cause notice is inflicted by premeditated adjudication on the legality of the question of allotment and lease holding the same to be illegal thereby adversely affecting the valuable rights of the petitioner. Therefore, the said impugned order dated 14.09.2018/show cause notice is not a mere show cause notice simpliciter and as such deserves interference by this Court in exercise of its powers under Article 226 of the Constitution of India. In support of his case, he has placed before this Court, the judgment passed by the Hon'ble Supreme Court in the case of **Siemens Ltd.** versus **State of Maharashtra and others**, reported in **(2006) 12 SCC 33**; and the judgment passed by the Hon'ble Calcutta High Court in the case of **Joyous Blocks and Panels Pvt. Ltd. and another** versus **Assistant Commissioner, Commercial Taxes, Ballygunj Charge and another**, reported in **2022 SCC Online Cal 2032.**

14. Addressing on the merits of the case, Sri Vishal Khandelwal, learned counsel for the petitioner pressed the following arguments:

14.1. He submits that undisputedly the proceeding for cancellation of the allotment and lease granted in the year 1979 has been initiated after

a lapse of about 39 years, i.e., in the year 2017. Thus, the same is highly barred by the limitation as contemplated under Section 128 of the U.P. Revenue Code, 2006. Further, the said bar of limitation applies to the proceedings initiated on the basis of application/complaint as well as *suo moto* proceedings.

14.2. Moreover, the proceeding for cancellation of allotment and lease was initiated on the basis of an *ex-parte* inquiry report dated 08.12.2017 as no prior notice of the aforesaid inquiry was ever given to the petitioner or to the aforesaid Naresh Singh as they were never afforded any opportunity to participate in the aforesaid inquiry. Not only this much, even the said inquiry report was not formally proved in the manner as provided under law, and therefore, the same is inadmissible as evidence and cannot be relied upon.

14.3. Further, proceeding in question whereby the lease has been sought to be cancelled is based on the ground of alleged ineligibility of the allottee namely Naresh Singh (through whom the petitioner is claiming) that he was a resident of different village at the time of allotment in question, is not an illegality but a mere irregularity, if any, in the grant of lease and that does not come within the purview of fraud, especially when that the tehsil report itself categorically acknowledges the resolution of the respondent no. 4 passed in its meeting held on 29.5.1979 regarding the allotment and also entry of the name of the allottee at serial no. 78 in the *Aakar Pattra* 57 *kha*, as is evident from the said Tehsil report as contained in Annexure No.5 to the writ petition. Therefore, the allegations made in the impugned orders are contrary to the records inasmuch as the same do not match the facts mentioned in the said report.

14.4. The next submission of the learned counsel is that the Land Management Committee passed the resolution dated 29.5.1979 for allotment in favour of 150 persons including one Naresh Singh son of

Munshi Lal, who after acquiring the status of 'bhumidhar with transferable rights' transferred the plots in question in favour of the petitioner and accordingly the petitioner was delivered possession and later on her name was duly entered in the revenue records, as is evident from the *khatauni* as contained in Annexure No.1 to the writ petition. Therefore, after the change of the legal status of the allottee from lessee to 'bhumidhar with transferrable rights', no proceeding for cancellation of allotment and lease under section 128 of the U.P. Revenue Code, 2006 is maintainable.

14.5. Further, he contended that a large number of villagers filed affidavit as contained in Annexure No.10 to the writ petition, deposing therein that the allottee was residing in the village concerned.

14.6. It has been vehemently argued by Shri Khandelwal that the respondent no.5 does not come within the purview of 'aggrieved person' as the complainant was a minor at the time when the allotment in question was made in the year 1979 and being a minor, he was not eligible for the grant of the said lease in his favour. Further, by way of single resolution the lease was granted to 150 persons including Naresh Singh, but the present proceeding has been initiated only against the petitioner/ Naresh Singh at the behest of the respondent no.5 who is not even qualified to move the application as per the requirement contemplated under Section 128 of the U.P. Revenue Code, 2006.

14.7. The learned counsel further contended that the proceedings for cancellation of the allotment and lease is solely based on the allegation that the allottee was not a resident of the Gram Sabha concerned at the time of allotment in question. He submits that for the sake of argument even if it be assumed, though not admitted to be true that the allottee was ineligible for allotment and lease, that may at the most be taken as an irregularity, and cannot be attributed as fraud on the part of the allottee, especially when the inquiry report dated 08.12.2017

specifically provides that there is a valid resolution of the Land Management Committee for the said allotment and a due entry in the *Aakar Pattar* 57 *kha*.

14.8. As, in the present case, neither there is any allegation of fraud nor fraud has been specifically pleaded or proved, the limitation of 5 years as stipulated under section 128 of the U.P. Revenue Code, 2006, is inevitable.

14.9. Moreover, the learned counsel drew attention of this Court to the provisions of section 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. He submitted that the same is *pari materia* to section 128 of the U.P. Revenue Code, 2006. He submits that it has been held by this Court, time and again, that the period of limitation as stipulated in the Act cannot be stretched beyond its limits irrespective of the fact that the proceeding for cancellation of allotment and lease was initiated on an application by the aggrieved person or by the Collector, *suo moto*. In support of this contention, he has placed reliance on the judgments passed by this Court in the case of **Subhag and Another** *versus* **Board of Revenue U.P. at Allahabad and others,** reported in **2011 (114) RD 219; Suresh Giri and others** *versus* **Board of Revenue U.P. at Allahabad and others,** reported in **2010 (109) RD 566** and **Jiya Ram and others** *versus* **State of U.P. and others,** reported in **2012 (115) RD 372.**

14.10. It has also been contended by the learned counsel for the petitioner that the entire proceeding is not only irrelevant but patently illegal as the petitioner is a bonafide purchaser of the abovementioned plots for valuable consideration and her rights stands protected by virtue of Section 41 of the Transfer of Property Act, 1882.

14.11. Assailing the order dated 29.05.2023 passed by the Additional Commissioner (respondent no.2), the contention of the learned counsel is that by means of the said impugned order, the revisional court has declined to entertain the revision filed by the petitioner treating the

order dated 14.09.2018 passed by the Collector (respondent no. 3) as an ‘interlocutory order’. His contention is that the learned Revisional Court has failed to appreciate the very nature of the impugned order dated 14.09.2018 by treating it to be an interlocutory order, whereas the same is an order giving finality to the issue of limitation and adversely affected the valuable rights of the petitioner/revisionist. Therefore, the same being arbitrary is liable to be set aside.

15. Sri Satish Kumar Pandey, learned counsel for the respondent no.5 vehemently opposed the writ petition by refuting the submissions made on behalf of the petitioner and has raised the following arguments:

15.1. The learned counsel has argued that the learned Additional Commissioner (respondent no. 2) has very rightly dismissed the revision filed by the petitioner challenging the impugned order dated 14.09.2018, which is an interlocutory order and against which revision does not lie and this issue has already been taken into consideration by this Court in the case of **Smt. Bhoodevi** versus **Board of Revenue and others** reported in **1994 RD 92 (HC)** wherein it was held that a decision taken *suo moto* or an application of an aggrieved party to start proceeding for cancellation of allotment under section 198(4) of U.P. Zamindari Abolition and Land Reforms Act, 1950 is an order to commence the proceeding. Mere decision to commence the proceeding would not tantamount “to any suit or proceeding decided”. He contended that the impugned order dated 29.05.2023 passed by the revisional court of Additional Commissioner (respondent no. 2) is just and legal.

15.2. The learned counsels further submit that as the proceedings for cancellation of allotment were initiated *suo moto*, the benefit of the period of limitation is not available to the petitioner in the instant case. In support of his contention, he placed reliance on the judgment passed

by this Court in the case of **Kishnu and others** versus **Sheesh Pal and others,** reported in **2011(7) ADJ 684.**

15.3. Next submission advanced by the learned counsel for the respondent no. 5 is that the petitioner has failed to establish that the original allottee, namely, Naresh Singh, was the resident of the concerned village at the time of allotment and as such, the learned Collector (respondent no.3), vide order dated 14.09.2018 has rightly speculated that the allotment and lease in question has been obtained by fraud and held it to be illegal.

15.4. In addition to the above, Shri Pandey, learned counsel for respondent no. 5 contended that the petitioner as well as the original allottee Shri Naresh Singh, are not entitled to avail the benefit of the restriction of time limit prescribed for the initiation of the proceeding of cancellation of allotment and lease, for the simple reason that the petitioner could not bring on record any evidence to establish the fact that Shri Naresh Singh was the resident of the village concerned at the time of allotment in question, which is a mandatory requirement under law and as such, the allotment made in favour of Naresh Singh was fraudulent. He submits that it is well settled that fraud unravels everything and further vitiates every solemn act, and an act of fraud is always to be viewed seriously. In support of his contention, he has relied upon the judgment passed by this Court in the case of **Suresh Giri and others** versus **Board of Revenue and others,** reported in **2010 (3) AWC 2834.**

16. Before delving into the merits of the case, this Court finds it imperative to firstly deal with the issue of entertainability of the present writ petition.

17. From a bare perusal of the impugned order dated 14.09.2018, it is abundantly clear that, although, the learned Collector (respondent no. 3) has held that the claim of the applicant as ‘barred by time’

(कालबाधित है) but on the footing of a report dated 08.12.2017 submitted by the Sub-District Magistrate concerned, recorded a finding that since the defendant is not the resident of the Gram Sabha Division, the allotment in his favour is prima facie 'proved illegal' (अवैधानिक साबित है) and by relying upon the judgment passed by this Court in the case of **Jairam** versus **State of Uttar Pradesh and others**, reported in **2013 RD (119) 567** has contemplated that the issue of limitation in the present case is 'not worth consideration' (काल सीमा का बिन्दु विचारणीय नहीं है). It is relevant to mention here that the learned Collector (respondent no. 3) has completely turned a blind eye to the fact that the Order dated 18.09.2012 passed by this Court in the case of **Jairam** ***(Supra)*** was already reviewed and set aside by this Court vide Order dated 12.08.2013 passed in **Review Application No. 316024 of 2012** In: **WRIT-C No. 51989 of 2007**. For ready reference, the relevant portion of the impugned order dated 14.09.2019 is extracted hereinbelow,

> *"...दावा वादी कालबाधित है, परन्तु उपजिलाधिकारी की आख्या से प्रतिवादी का आवंटन प्रथम दृष्टया प्रतिवादी के ग्रामसभा मण्डल से बाहर का निवासी होने के कारण अवैधानिक साबित है। जिला शासकीय अधिवक्ता राजस्व द्वारा प्रस्तुत आर.डी.-2013 (119/पृष्ठ 567) जयराम बनाम स्टेट आफ उ० प्र० में उद्धृत माननीय उच्च न्यायालय की विधि व्यवस्था पूर्णतः लागू होती है। ऐसी स्थिति में इस वाद में काल सीमा का बिन्दु विचारणीय नहीं है।..."*

18. The Collector (respondent no. 3) on the aforesaid premise took the decision to initiate the *suo moto* proceeding for cancellation of the allotment and lease, against the allottee by issuing notice to him.

19. It would not be out of place to elucidate that the power to issue prerogative Writs under Article 226 of the Constitution of India is plenary in nature. It does not, in terms, impose any restraint on the exercise of the power to issue Writs. It is the discretion of the Writ Court to entertain writ petition or not, depending upon the facts and

circumstances of each case. One of the self-imposed restrictions on the exercise of the power under Article 226 of the Constitution that has evolved through judicial precedents, is that the High Court should normally not entertain a writ petition against a show-cause notice unless the same, inter alia, appears to have been issued without jurisdiction.

20. The Hon'ble Supreme Court in the case of **Siemens Ltd.** (*Supra*) and also the Hon'ble Division Bench of the Calcutta High Court in the case of **Joyous Blocks** *(Supra)* have held that if the authority has pre-decided the issue and the show-cause is pre-mediated then it is not a show-cause and in such a situation, the Writ Court may very well interfere with the said notice/order, in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

21. As far as the judgment passed by this Court in the case of **Ghanshyam** *(Supra)* is concerned, which has been relied upon by the learned Standing Counsel, the same is in respect of the issue of entertainability of the writ petition against a show cause notice simpliciter and in the light of the discussion made herein above the same is not attracted in the instant case.

22. It is a well settled legal position that wherever there is an infringement of any legal right, the Writ Court has the jurisdiction to take cognisance of the same, in exercise of its power conferred under Article 226 of the Constitution of India. Taking into consideration the aforesaid legal preposition, this Court finds substance in the submission advanced by the learned counsel for the petitioner that the impugned order dated 14.09.2018 passed by the Collector (respondent no. 3) is a premeditated order and not a show cause notice simpliciter that has finally decided the question of limitation by recording a categorical finding that the issue of limitation in the present case is 'not worth consideration'(काल सीमा का बिन्दु विचारणीय नहीं है) and

moreover, virtually determined the allotment and lease of the plots in question, as 'proved illegal' (अवैधानिक साबित है). The impugned order in the name of show cause notice is inflicted by premeditated adjudication on the legality of the question of allotment and lease, holding the same to be illegal that adversely affects the valuable rights of the petitioner and further, the petitioner being a recorded 'bhumidhar with transferable rights' carries a valuable right and interest in the property / plots in question. Her rights of not to be deprived of property save by the authority of law are protected under Article 300 A of the Constitution of India.

23. Since, the issue of limitation goes to the root of the matter and once the limitation expires, it attaches finality to the rights of the parties by operation of law. In view of the factual matrix of the case, the question of jurisdiction as well as the violation of the rights guaranteed under the Constitution of India, is involved in the instant case; justice demands indulgence by this Court in exercise of its Writ jurisdiction under Article 226 of the Constitution of India.

24. Once the preliminary objection raised by the learned standing counsels regarding the maintainability of the present writ petition has been overruled; it would now be apt to delve into the merits of the case.

25. Having heard the learned counsels for the parties and on considering the materials available on record; the pivotal issue that has emerged for consideration is that whether after a lapse of about 39 years, the impugned Order dated 14.09.2018 passed by the learned Collector (respondent no.3) to proceed for the cancellation of the allotment and lease of land, will endure the test of the time frame, as envisaged by Section 128 of the U.P. Revenue Code, 2006 ?

26. Before proceeding further, it would be germane to go through the provisions of Section 128 of the U.P. Revenue Code, 2006. For a ready reference, the same are extracted below:

> *"128. Cancellation of allotment and lease.– (1) The Collector may, of his own motion and shall on the application of any person aggrieved, inquire in the manner prescribed into any allotment and if he is satisfied that the allotment is in contravention of the provisions of this Code or any of the enactments repealed by this Code or the rules made there under, he may cancel the allotment and the lease, if any.*
>
> *[(1-A)] Under the provisions of sub section (1), an application may be moved in the case of an allotment or lease of land made before or after the commencement of this code, within five years from the date of such allotment of lease.*
>
> *(2) Where the allotment or lease of any land is cancelled under sub-section (1), the following consequences shall ensue, namely-*
> *(a) the right, title and interest of the allottee or lessee or any other person claiming through him in such land and in every tree or other improvement existing thereon shall cease, and the same shall revert to the Gram Panchayat;*
>
> *(b) the Collector may direct delivery of possession over such land, tree or improvement forthwith to the Gram Panchayat after ejectment of every person holding or retaining possession thereof and may for that purpose use or cause to be used such force as may be necessary.*
>
> *(3) Where in proceedings for cancellation of allotment or lease referred to in clause (b) of sub-section (1) the Collector is satisfied that any land referred to in section 77 excepting clause (a) or clause (h) or (i) thereof has been allotted to any person as bhumidhar with non-transferable rights, he may instead of cancelling the allotment, or lease, direct that the allottee or lessee shall be treated as an asami under clause (b) of section 125.*
>
> *(4) Every order made by the Collector under this section shall, subject to the provisions of section 210, be final.*
>
> *(5) The provisions of sections 5 and 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953 shall not apply to the proceedings under this section."*

27. From a bare perusal of the aforesaid provisions of Section 128 of the U.P. Revenue Code, 2006, it is evident that the said Section contains the following two situations in which the Collector can proceed for cancellation of allotment and lease by holding inquiry:

(i) the collector may, of his own motion inquire in the manner prescribed, into any allotment.

(ii) the collector shall on the application of any person aggrieved, inquire in the manner prescribed, into any allotment.

28. Further, the sub-section (1-A) specifically provides the limitation of five years for an application to be moved from the date of such allotment and lease. As such, in clear words, the limitation mentioned under the said sub-section (1-A) applies to the application moved by an aggrieved person. It is also noteworthy that the Appendix-I appended to Rule 191 of the U.P. Revenue Code Rules, 2016, which specifies the period of limitation for the suits, applications and proceedings also does not mention any limitation regarding cancellation of allotment and lease as provided under section 128 of the U.P. Revenue Code, 2006.

29. The learned counsel for the petitioner has placed heavy reliance on the judgments passed by this Court in the case of **Subhag and another** versus **Board of Revenue U.P. at Allahabad and others,** reported in **2011 (114) RD 219; Suresh Giri and others** versus **Board of Revenue U.P. at Allahabad and others,** reported in **2010 (109) RD 566** and **Jiya Ram and others** versus **State of U.P. and others,** reported in **2012 (115) RD 372.**

30. Since, the above-mentioned judgments relate to the issue of limitation as provided under section 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and in the present case the dispute relates to the proceeding under section 128 of the U.P. Revenue Code, 2006. As such, for a better understanding, it would be apt to have a brief comparative study of both the said sections, particularly the provisions of limitation contained therein, in respect of the proceeding for cancellation of allotment and lease.

31. It would not be out of place to mention here that the provisions of section 128 of the U.P. Revenue Code, 2006 are *pari materia* to the provisions contained in Section 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, which now has been repealed. For a better appreciation of the same, the sub-sections (4), (5) and (6) of the said section 198 are extracted below,

> ***"198. Order of preference in admitting persons to land under Sections 195 and 197.—***
>
> *[(4) The [Collector] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.*
>
> *(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives:*
>
> *…*
>
> *(6) Every notice to show' cause mentioned in sub-section (5) may be issued-*
>
> *(a) in the case of an allotment of land made before November 10, 1980, (hereinafter referred to as the said date), before the expiry of a period of [seven years from the said date; and*
>
> *(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of [five years from the date of such allotment or lease or up to November 10, 1987, which ever be later].***"**

32. The aforesaid sub-section (4) of Section 198 provides the manner and the power of the Collector to inquire into the matter, before proceeding for cancellation of an allotment or lease.

33. At this stage, it would be relevant to refer to the judgment passed by this Court in the case of **Smt. Sona Devi** versus **Board of Revenue, WRIT-B No. 48418 of 2015**, wherein it has been held that the phrase "every notice to show cause" as mentioned in section 198 (6) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, makes it clear that there is one limitation for the action in the case filed by aggrieved

persons as well as *suo motu* initiation of proceeding for cancellation of patta. For a ready reference, Paragraph 8 of the said judgment is quoted hereinbelow,

> *"8. By U.P. Act No. 20 of 1982 and U.P. Act No. 24 of 1986, the Act itself provided limitation for initiation of cases for cancellation of patta under Section 198 (4) of the Act, as such the limitation as provided in Appendix III (vide Entry 24) has become redundant. In case of contradiction between the Act and the Rules, the Act will prevail. The phrase "every notice to show cause", as mentioned in Section 198 (6) of the Act, makes it clear that different limitation as previously provided for suo motu action under Entry 24 of Appendix III has also came to an end and by using words "every notice to show cause" under Section 198 (6) of the Act, one limitation for the action in the case filed by aggrieved persons as well as suo motu initiation of proceeding for cancellation of patta has been provided. Full Bench of Board of Revenue U.P. in Virendra Singh vs. State of U.P., 1994 RD 540 has not taken notice of above legislative change and does not hold the good law."*

34. Similarly, in the case of **Suresh Giri** ***(Supra)***, a Co-ordinate Bench of this Court has repelled the argument that the limitation has no application for initiation of suo motu action under Section 198(6) of the U.P. Zamindari Abolition and Land Reforms Act, 1950. For a ready reference, the Paragraph 14 of the said judgment is extracted hereinbelow,

> ***"14.*** *Entry 24 of Appendix III prescribes a period of six months for moving an application raising objection against any irregular allotment of land and three years for suo motu action by the Collector for setting aside the allotment of land. Therefore, the limitation for initiation of proceedings for cancellation of allotment by the Collector on suo motu action is three years whereas notice for such purpose can be issued within 5 years as provided under Section 198(6) of the Act. Thus, the legislator clearly intend to provide limitation even for suo motu action and the submission that the limitation has no application for initiation of suo motu action for cancellation of allotment of land/lease is baseless and is to be rejected."*

35. Needless to say that the U.P. Revenue Code, 2006 is a comprehensive and self-contained Code and it has been enacted with

the objective to consolidate and amend the law relating to land tenures and land revenue in the State of Uttar Pradesh. It goes without saying that unlike the limitation period for issuing notice as provided under section 198(6) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, read with Entry 24 of Appendix III under Rule 338 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952; the provisions of Section 128 of the U.P. Revenue Code, 2006 read with Appendix-I appended to Rule 191 of the U.P. Revenue Code Rules, 2016, prescribe limitation only for an application to be moved by an aggrieved person, but no limitation is expressly prescribed for the initiation of *suo moto* action by the collector, for the cancellation of allotment and lease. Thus, the limitation to proceed under sub-section (1) of section 128 of the U.P. Revenue Code, 2006 is confined to the limitation period as provided under sub-section (1-A) of the same and as such, it is crystal clear that the aforesaid Section 128 is silent in respect of an inquiry to be initiated by the Collector, on his own motion.

36. In view of the above, the above quoted judgments that are relied upon by the learned counsels, specifically deals with the limitation as provided under the section 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, which has now been repealed, and as such they are not applicable in the present case where the proceeding has been initiated under section 128 of the U.P. Revenue Code, 2006.

37. The issue of no express prescription of the time limit being provided with regard to the exercise of a statutory jurisdiction by an authority has been considered by the Hon'ble Supreme Court in the case of **State of Punjab and others** versus **Bhatinda District Cooperative Milk Producers Union**, reported in **(2007) 11 SCC 363** wherein the Hon'ble Apex Court has been pleased to make the

following observation. The extract of Paragraph 18 of the said judgment is reproduced as under,

> *"18. It is trite that no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

38. The aforesaid principle has also been reiterated by the Hon'ble Apex Court in the case of **Securities and Exchange Board of India** versus **Sunil Krishna Khaitan and Others**, reported **in (2023) 2 SCC 643.**

39. The Hon'ble Supreme Court in the case of **Jagdish** versus **State of Karnataka**, reported in **(2021) 12 SCC 812,** has been pleased to observe that where the concerned statute does not prescribe a limitation, the rights conferred therein must be exercised within a "reasonable time" (*emphasis supplied*).

40. Recently, the Hon'ble Supreme Court in the case of **M/s North Eastern Chemicals Industries (P) Ltd. and another** versus **M/S Ashok Paper Mill (Assam) Ltd and another, Civil Appeal No. 2669 of 2013,** decided on **11.12.2023** condensed the view which the Courts should take when it is seized of a situation where no limitation is specially provided for an act to be done under a statute. The Hon'ble Apex Court held that a Court in such a situation, should consider the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question. For a ready reference, Paragraph 25 of the same is extracted hereinbelow,

> *"25. In light of above discussion, it is clear that when a Court is seized of a situation where no limitation stands provided either by specific applicability of the Limitation Act or the special statute governing the dispute, the Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay causing prejudice to a party. When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature' s wisdom by its own*

> *and provide a limitation, more so in accordance with what it believes to be the appropriate period. A court should, in such a situation consider in the facts and circumstances of the case at hand, the conduct of the parties, the nature of the proceeding, the length of delay, the possibility of prejudice being caused, and the scheme of the statute in question. It may be underscored here that when a party to a dispute raises a plea of delay despite no specific period being prescribed in the statute, such a party also bears the burden of demonstrating how the delay in itself would cause the party additional prejudice or loss as opposed to, the claim subject matter of dispute, being raised at an earlier point in time."*

41. In the case at hand, the allottee, Naresh Singh was granted *patta* along with 150 other persons through the Resolution passed by the Land Management Committee in its meeting held on 19.05.1979. The said Naresh Singh transferred the allotted plots in question in favour of the petitioner and after acquiring the possession over the same, her name was recorded in the revenue records. From the *Khatauni* annexed as Annexure No. 1 to the instant writ petition, it is evident that her name is recorded as 'bhumidhar with transferable rights'.

42. Further, after a lapse of around 39 years from the date of the aforesaid allotment, on an application moved by the respondent no. 5 on 21.09.2017, the learned Collector (respondent no. 3) got an_inquiry conducted in pursuance of Section 128 of the U.P. Revenue Code, 2006 and on the basis of an inquiry report dated 08.12.2017 submitted by the Sub-Divisional Officer, the learned Collector (respondent no. 3) passed the order dated 14.09.2018 holding therein that although, the said proceeding is 'barred by time' (कालबाधित है) but on the ground that the lessee was not a resident of the concerned Gram Sabha, held the allotment in question as 'proved illegal' (अवैधानिक साबित है). Though, the Collector (respondent no. 3) found the proceeding to be barred by time but taking the shelter of a judgment passed by this Court in the case of **Jairam** versus **State of U.P. and others**, reported in **2013 (119) RD 567** decided to proceed for the cancellation of allotment and lease under section 128 of the U.P. Revenue Code, 2006

on his own motion. It is most unfortunate that the learned Collector (respondent no. 3) vide order 14.09.2018 took the decision to proceed for cancellation of an allotment made way back in the year 1979, on the strength of an annulled judgment that was already reviewed and set aside by this Court itself vide Order dated 12.08.2013 passed in **Review Application No. 316024 of 2012** in **Writ-C No. 15989 of 2007**. For a ready reference, the extract of the said Order dated 12.08.2013 is reproduced hereinbelow:

> *"The Writ petition arose out of proceedings for cancellation of patta, which had been granted to the petitioner applicant in 1975-76. Initially, the application for cancellation of patta filed by respondent No.4 on 05.08.1985 was rejected on 30.06.1986, however review filed after about 19 years (on 31.05.2005) was allowed on 06.07.2006 by Collector, Jhansi, order dated 30.06.1986 was set aside and the case for cancellation of patta was restored. The said order was challenged through the writ petition. Through the judgment and order dated 18.09.2012, I dismissed the writ petition, directed the Collector/ Additional Collector to decide the matter expeditiously and further directed that in case patta was cancelled, damages at the rate of Rs.5000/- per hectare per year should also be recovered from the petitioner.*
>
> *This review petition has been filed for setting aside the order dated 18.09.2012.*
>
> *The main ground on which I dismissed the writ petition was that at two occasions land had been allotted to the petitioner; at one occasion four acres and after about a year on the second occasion about 4.5 acres. After filing of the review application, pursuant to the judgment dated 18.09.2012 (sought to be reviewed), Collector decided the matter on 30.03.2013. Copy of the said order has been filed along with affidavit filed in the review petition by respondent No.4. The Collector categorically held that petitioner was not allotted land twice and the earlier proposal dated 28.02.1975 proposing to allot 4 acres of land was not finalized. Learned standing counsel as well as learned counsel for respondent No.4 admitted this position that pursuant to resolution dated 28.02.1975, no effective allotment was made. Accordingly, the main basis of my judgment has vanished. The other points like previous residence in another state etc. taken in the cancellation application by respondent No.4 were not so serious, which could warrant review after 19 years ignoring the limitation at both the occasions; in filing cancellation application and thereafter in filing the review. At the earlier occasion, the application was rejected on the ground that it had been filed after 10.11.1982 hence by virtue of Section 198(4) of U.P.Z.A. & L.R. Act, it was barred by time.*

> *Accordingly, review petition is allowed. Judgment and order dated 18.09.2012 is set aside. Writ Petition is allowed. Order dated 06.07.2006 through which Collector allowed the review petition of respondent No.4 is set aside. Consequent order of the Collector dated 30.03.2013 automatically stands recalled. Revision filed against the order dated 30.03.2013 may be dismissed as infructuous."*

43. That apart, the impugned order dated 14.09.2018 passed by the Collector (respondent no. 3) deciding to proceed *suo moto* for cancellation of the allotment and lease is based on a report dated 08.12.2017 submitted by the Sub Divisional Officer concerned whereby the allottee was reported to be the non-resident of the concerned Gram Sabha at the time of the allotment that took place in the year 1979 and on this ground alone, the Collector (respondent no. 3) held the *patta* to be 'proved illegal' (अवैधानिक साबित है). As such, this finding recorded by the Collector (respondent no. 3) is not only arbitrary and without application of mind, but also inconsistent with the report dated 08.12.2017 submitted by the tehsil authority as contained in Annexure No. 5 to the writ petition. From the perusal of the said report, it is evident that the allotment in favour of Naresh Singh was made through the Resolution of the Land Management Committee duly approved by the Sub Divisional Officer, Mainpuri on 03.07.1979 and there is nothing on record to show that the said order of approval and resolution have been challenged before any competent forum. For ready reference, the relevant part of the said report is extracted hereinbelow:

> *"रा० का० कार्यालय में उ०प्र०स० करीमगंज की बैठक दिनांक 29.05.79 का 57 ख उपलब्ध है इसके क्रमांक 78 पर नरेश सिंह पुत्र मुन्शी लाल नि० शाह आलमपुर के नाम गाटा संख्या 360/1335, 363/1.10, 60/0.45 3 किता/2.8 एकड़ का आवंटन अंकित है। पट्टा एस०डी०ओ० मैनपुरी द्वारा दिनांक 3.7.79 को स्वीकृत किया गया है। अन्य सेवा में प्रेषित है।"*

44. Further, the Collector (respondent no.3) vide order dated 14.09.2018 dismissed the claim of the respondent no. 5 for

cancellation of the allotment and lease in question as ‘barred by time’ (कालबाधित है) and dropped the said proceeding but without indicating any plausible reason to justify the laches in not initiating the said proceeding earlier, during the period of about 39 years i.e. since 1979 when the resolution for *patta* was approved and granted; abruptly switched over to the other mode of cancellation by picking up the same exercise from that very stage and on the basis of the same material, under a different complexion of *suo moto* proceeding. As narrated above, Section 128 of the U.P. Revenue Code, 2006 contemplates two situations where the Collector (1) of his own motion and (2) on the application of any person aggrieved can proceed for cancellation of allotment and lease, the said modes are altogether independent and not substitute or supplement to each other. The calamitous way in which Collector (respondent no.3) shifted from one mode to the other by deciding to proceed *suo moto*, reflects his premeditated decision to accomplish the very task that could not have succeeded due to the legal impediment of ‘time bar’ and is also against the well-known principle that ‘what may not be done directly cannot be allowed to be done indirectly’.

45. In any case, the long period of 39 years to initiate *suo moto* proceeding for cancellation of allotment and lease, without any genuine reason; cannot by any stretch of imagination be considered as a ‘reasonable period’. Furthermore, the proceedings in question for the cancellation of allotment and lease cast an adverse impact directly on the valuable rights of the petitioner, who has been admitted as ‘bhumidhar with transferable right’. As such, the impugned *suo moto* proceeding initiated under Section 128 of the U.P. Revenue Code, 2006, adversely effecting the valuable rights of the petitioner who is recorded as ‘bhumidhar with transferable right’ is unwarranted and unsustainable.

46. That apart, the impugned proceedings for cancellation of the allotment and lease is solely based on the allegation that the allottee was not a resident of the Gram Sabha concerned at the time of allotment which was made way back in the year 1979, the said alleged ineligibility is admittedly neither a fraud nor a charge of such a magnitude that warrants *suo moto* cognizance under section 128 of U.P. Revenue Code, 2006 after a lapse of about 39 years, that too when the person has attained the legal status of 'bhumidhar with transferable right'. It would not be out of place to note that this Court in the case of **Smt. Shakuntla and others** versus **State of U.P. and others,** reported in **2019 (5) AWC 5007,** has held that leases without observing the prescribed statutory provisions cannot be termed as fraudulent and even if there is an allegation that the lease is obtained through fraud, the recourse for cancellation should be within a **'**reasonable time**'**. For a ready reference, excerpts from Paragraph 22 of the said judgment is extracted hereinbelow,

> *"22. Thus, even the Supreme Court has held that even in cases of fraud, the action should be taken within a reasonable time. In the present case, the action has been taken after a period of 12 years which cannot be termed as reasonable tome and thus, I hold that even in the cases of fraud action has to be taken within the period of limitation. Thus, I summarise the findings in response to the questions framed as under:*
> *…*
> *(C) The leases without observing the statutory provisions prescribed for grant of lease cannot be termed as fraudulent, and*
> *(D) Even if fraud is alleged the recourse for cancellation should be taken within a reasonable time."*

47. At this stage, it is appropriate to flag that even though this Court finds the lapse of about 39 years being not at all a 'reasonable time' to initiate *suo moto* proceeding by the Collector under section 128 of the U.P. Revenue Code, 2006, but at the same time, this Court refrains itself from prescribing time limit for the same, in the light of the observations made by the Hon'ble Supreme Court from time to time.

In the case of **Ajaib Singh** versus **The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Others,** reported in **(1999) 6 SCC 82,** the Hon'ble Supreme Court has been pleased to observe that,

> *"11… It is not the function of the court to prescribe the limitation where the Legislature in its wisdom had though it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature…"*

48. Moreover, the judgment of this Court in the case of **Kishnu and others** versus **Sheesh Pal and others,** reported in **2011(7) ADJ 684**, which has been relied upon by the learned counsels for the respondents is a case wherein this Court on noticing the fact that the Gram Pradhan himself usurped the property by distributing the same to his father, son, nephew etc., categorised it as a classic case of the 'fence eating the crop' and a fraud of highest order and held that the allotment was not only illegal and void but also of a fraud of the highest degree. For brevity the relevant paragraph of the aforesaid judgement is reproduced below:

> *"6. In the instant case the Pradhan who is custodian of Gaon Sabha property has himself usurped the property by distributing the same to his father, son, nephew etc. It is a classical case of the 'fence eating the crop' (a Hindi proverb). It was a fraud of highest order which was played by the Pradhan and petitioners allottees. The allotment was not only irregular and illegal but also void and result of fraud of the highest degree. Section 198 (4) deals with irregularity of the allotment, hence, the limitation will be relevant only when there is some irregularity in the allotment. However, if the allotment is utterly void and fraudulent then even formal proceedings under Section 198 (4) are not required. In case of stark usurpation of Gaon Sabha property Collector is entitled to take corrective measures. Proceedings may be justified under Section 33/39 of U. P. Land Revenue Act also. Under somewhat similar circumstances (expiry of period of assami lease) it was so held In Hari Ram v. Collector, Dist. Saharanpur/Additional Collector, MANU/UP/1052/2004 : 2004 (2) RD 360 : 2005 (1) AWC 758. The power to evict in case of void allotment which is tantamount to usurpation of Gaon Shaba property like the present one may also be traced to Section 122B of U.P.Z.A. and L.R. Act. However opportunity of hearing was utmost essential which was fully provided."*

49. From the perusal of the impugned order dated 14.09.2018, it emerges that the *suo moto* proceeding under 128 of the U.P. Revenue Code, 2006, whereby the lease has been sought to be cancelled is based on the alleged ineligibility of the allottee being non-resident of Gram Sabha concerned, at the time of allotment and not of fraud on the part of the allottee, therefore the case of **Kishnu** *(Supra)* as relied upon by the learned counsel for the respondent is also not attracted in the present case.

50. As far as, the contention of the learned counsel for the petitioner that the respondent no. 5 does not qualify the condition of a "aggrieved person" as required under section 128 of the U.P. Revenue Code, 2006 on the ground that no prejudice has been caused to him as he was not entitled/eligible for the grant of lease in question, being a minor at the time of grant of the same, needs no advertence by this Court at this stage, in the teeth of the fact that his claim has already been rejected as "barred by time" vide the impugned order dated 14.09.2018.

51. That apart, the arguments advanced by Sri. Khandelwal that the petitioner being the purchaser of the land acquired bhumidhari rights in the property in question and there being no case of malafide or otherwise against her with regards to the purchase of the property in question, she has been victimised, for no fault on her part, under the garb of the proceeding for cancellation of allotment and lease that was granted 39 year ago in favour of the allottee, whereby justice demands protection to the valuable rights of the petitioner as guaranteed under Article 300A of the Constitution of India. This Court finds substance in the aforesaid contentions as advanced by the learned counsel.

52. In so far as the impugned order 29.05.2023 is concerned, the same is unsustainable in law, for the obvious reason that the learned revisional court of learned Additional Commissioner, Agra

(respondent no. 2) has misconstrued the order dated 14.09.2018 passed by the Collector (respondent no.3) as interlocutory, whereas the same is an order giving finality to the issue of limitation, whereby the Collector (respondent no. 3) decided to *suo moto* proceed for cancellation of the allotment and lease under Section 128 of the U.P. Revenue Code, 2006, by shutting down the legal question of limitation with a categorical finding that issue of time limit in the present case is 'not worth consideration'(काल सीमा का बिन्दु विचारणीय नहीं है) and virtually determined the allotment and lease of the plots in question, as 'proved illegal' (अवैधानिक साबित है). The learned revisional court by holding the impugned order dated 14.09.2018 to be an order of interlocutory nature, has seriously failed to appreciate the trite law that limitation goes to the root of the matter and once limitation expires, it attached finality to the rights of the parties by operation of law. For a ready reference, the relevant portion of the aforesaid order dated 29.05.2023 passed by learned Additional Commissioner, Agra (respondent no. 2) is extracted hereinbelow,

> *"**5.**...तहसील आख्या के आलोक में अवर न्यायालय द्वारा आदेश दिनांक 14.09.2018 से पट्टा निरस्तीकरण की कार्यवाही संचालित करते हुये निगरानीकर्ता को कारण बताओ नोटिस जारी किया गया है, जो एक अन्तरिम प्रकृति का आदेश है तथा तहसील आख्या में अंकित तथ्यों के सम्बन्ध में निगरानीकर्तागण को अभी भी अवर न्यायालय के समक्ष अपना पक्ष प्रस्तुत करने का पर्याप्त अवसर उपलब्ध है।*
>
> *उपरोक्त विवेचना के आधार पर अवर न्यायालय द्वारा पारित आदेश दिनांक 14.09.2018 अन्तरिम प्रकृति का होने के कारण स्थिर रहने योग्य नहीं है, किसी हस्तक्षेप की आवश्यकता नहीं है। निगरानी बलहीन होने के कारण निरस्त किये जाने योग्य है।"*

53. In view of what has been discussed herein above, the impugned order dated 29.05.2023 passed by the learned Additional Commissioner, Agra (respondent no. 2) deserves to be set aside and is hereby set aside.

54. For the reasons and the legal proposition enumerated in the foregoing paragraphs, no useful purpose will be served to remand the

matter to the revisional court of learned Additional Commissioner, Agra (respondent no. 2) to decide afresh the Revision having Case No. 02238 of 2018 wherein the impugned order dated 14.09.2018 was under challenge.

55. Taking into consideration the aforementioned legal preposition as well as factual matrix of the case, this Court is of the considered view that the impugned order dated 14.09.2018 passed by the District Magistrate/Collector, Mainpuri (respondent no.3) in Case No.1858 of 2018, in so far as it relates to the decision to *suo moto* proceed for the cancellation of the allotment and lease in question and the consequential actions, if any, against the petitioner being unwarranted are not at all sustainable in law. The same are liable to be set aside and are hereby set aside.

56. Accordingly, the writ petition succeeds and is **allowed.** No order as to costs.

Order Date :- 28.11.2023

Abhishek Gupta