

Janki Nath Khanna v. The State of Punjab, etc. (Sandhawalia, J.)

in rule 18 of Order VI and as required by the provisions of the Court-fees Act.”

It appears that the aforesaid provision was not brought to the notice of the trial Court nor was it aware of the same. It was duty bound to call upon the plaintiffs giving them an opportunity to select the cause of action with which they wanted to proceed. The Court was to fix the time by which the plaintiffs could amend their plaint by striking out the remaining cause or causes of action. It is not open to a Court to throw out the entire suit because there has been a misjoinder of the cases of action. I, therefore, holding that the court-fee was not payable under section 7(iv)(c) of the Act and that the form of the suit was in order, direct that the trial Court should proceed with the suit by giving an option to the plaintiffs as required under rule 8 mentioned above.

(9) The revision petitions are accordingly allowed with no order as to costs, and the parties are directed to appear before the trial Court on 20th April, 1970.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

JANKI NATH KHANNA,—Appellant.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Letters Patent Appeal No. 349 of 1965

March 9, 1970.

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Sections 7, 9 and 10(1) and (2)—Valuation list under section 7—Power of suo motu revision of—Whether to be exercised within reasonable time—Such time—Whether limited to the currency of the valuation list.

Held, that the revisional power under section 10(2) of the Punjab Urban Immovable Property Tax Act, 1940, must conform to the limitation of its being exercised within a reasonable time which may well be determined by the peculiar facts of the case including the nature of the order which falls for revision. Section 10(2) and section 7 of the Act may well be read together to determine the limitation and the reasonableness within which the revisional power may be exercised. Section 7 prescribes a period of five years for the currency of the valuation list made

thereunder subject to the power of the State Government to reduce the same by six months or one year. Reading sections 7 and 10(2) together it appears that the reasonable time within which the power under section 10(2) is to be exercised would be patently limited to the currency of the valuation list. After the valuation list has lapsed, there is no power in the authority to vary such list under section 10 of the Act.

(Para 7)

Letters Patent Appeal under Clause X of the Letter Patent against the judgment of Hon'ble Mr. Justice R. S. Narula dated 29th November, 1965 in Civil Writ No. 935 of 1965.

KESHO RAM MAHAJAN AND R. K. AGGARWAL, ADVOCATES, for the appellants.

B. S. JAWANDA, ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT.

The judgment of this Court was delivered by:—

S. S. SANDHAWALIA, J.—The duration within which the revisional power under section 10(2) of the Punjab Urban Immovable Property Tax Act, 1940, can be exercised *suo motu* by the authority thereunder for revising a valuation list prepared under section 7 of the Act is the sole question which has been canvassed and falls for determination in this appeal under clause 10 of the Letter Patent.

(2) The facts which deserve notice to appreciate the legal contention raised are in a narrow compass. The appellant is the owner of Deepak Theatre at Dhuri used for exhibition of cinematograph films to the public. For the period 1958 to 1963—the precise period being from the 1st of October, 1958 to the 31st of March, 1963,—the Assessing Authority, Sangrur, fixed the gross annual rental value of the abovesaid immovable property at Rs. 2,840 per annum. The manner in which this figure was arrived at is not relevant for the purposes of this appeal. This valuation was shown in the valuation list prepared under the provisions of section 7 of the Punjab Urban Immovable Property Tax Act, 1940 (hereinafter referred to as the Act). After the expiration of the period for which the list was prepared and had remained in force, a notice under section 10(2) of the Act for proposed *suo motu* revision of the order of the Assessing Authority dated the 5th November, 1958, whereby the valuation had been so fixed was issued to the appellant. This was done in November, 1963, that is, nearly 8 months after the expiry of the valuation

list under section 7 of the Act. After hearing the appellant, an order dated the 28th March, 1964 (which was impugned in the writ petition), raising the gross annual rental valuation of the property in question from Rs. 2,840 to Rs. 6,000 was passed by the Assistant Excise and Taxation Commissioner, Punjab. The appellant then moved a writ petition in this Court and before the learned Single Judge two contentions were raised. Firstly, it was contended that valuation list under section 7 having expired on the 31st of March, 1963, the power of the authority under section 10(2) could not be exercised in respect of that period after that date. The second contention was that the impugned order was devoid of any legal basis. Both these contentions were repelled and the writ petition was consequently dismissed. Hence the present appeal.

(3) Mr. Kesho Ram Mahajan on behalf of the appellant has forcefully urged before us that the *suo motu* exercise of the revisional power under section 10(2) cannot possibly be unlimited in the point of time. Specifically in the appellant's case it is urged that at least in the context of the valuation list under section 7, the power of the revisional authority to vary the same cannot possibly extend beyond the period for which the list is current. It was plausibly argued that the power to amend and vary the list must necessarily lapse with the lapsing of the list.

(4) To appreciate the rival contentions, the relevant portion of the statute may be set down *in extenso*:—

*10(1) * * * *

(2) The Commissioner or such other officer as the State Government may by notification in the Official Gazette, appoint in this behalf may of his own motion or on application made, call for the record of any proceeding or order of any authority for the purpose of satisfying himself as to the legality of propriety of such proceeding or order; and may pass such order in reference thereto as he may think fit.

Provided that no application under this sub-section shall be entertained unless it is made within a period of one hundred and eighty days of the taking of the proceedings or of the passing of the order as the case may be.

At the very outset it deserves notice that in the present case we are concerned with the ambit and scope of the revisional power in the

context of the variation of the valuation list only. For this aspect, the setting in which section 10(2) occurs is also relevant for its construction. Section 7 of the Act provides for the making and the operation of the valuation list by the prescribed authority in accordance with the rules framed under the Act. The said list is to come into force either on the 1st day of April or the first day of October and the next succeeding valuation list shall come into force after a period of five years. Power is, however, given to the State Government to extend or reduce by six months or one year the interval which would otherwise elapse between the coming into force of any two successive valuation lists for the relevant rating area. Subject to the above-said provisions it is provided by sub-section (2) of section 7 that after the final approval of the assessing authority, the valuation list will remain in force until it is superseded by a new valuation list. Section 8 provides for the preparation of the draft valuation lists and the filing of objections thereto by any person aggrieved by the insertion or commission therefrom of any relevant matter. Section 9 empowers the assessing authority at any time to make such amendments in the valuation list as appear necessary in order to bring it in accord with existing circumstances and the significant fact is that such amendment is to be made within the period in which the valuation list is current. We have referred to the provisions of sections 7, 8 and 9 as they do tend to give an inkling of the limitation within which the revisional power under section 10 of the Act may well be circumscribed.

(5) What deserves pointed attention, however, is that section 10(2) of the Act does not specifically prescribe a period of limitation for the *suo motu* exercise of power under it. It is, however, equally significant that this provision does not use the words 'at any time' which have been used in many other statutes where the revisional power is left unfettered without any limitation of time whatsoever. The words 'at any time' are words of the widest amplitude, but even in construing those statutes, judicial opinion has tended to impose a limitation of reasonableness on such a power. Where, however, as in the present case the legislature has not used such wide language, the intent obviously is to circumscribe powers within the limitation of its exercise in a reasonable time. As the learned Single Judge himself noticed, the policy of the law is that finality must attach to quasi-judicial proceedings at some stage or the other. Chaotic

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conditions would prevail if decided cases would be allowed to be reopened after any number of years and without even considering the necessity of interference with a final order after the elapsing of a long time. Their Lordships of the Supreme Court have had occasion in recent case—*State of Gujrat v. Patel Raghav Natha and others* (1), of construing the provisions of sections 65 and 211 of the Bombay Land Revenue Code, wherein also no limitation of time is prescribed for the exercise of the revisional power. In this context it was observed as follows:—

“The question arises whether the Commissioner can revise an order made under section 65 at any time. It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

and further

In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e., more than a year after the order, and it seems to us that this order was passed too late.”

(6) In a division Bench judgement of this Court in *Karam Chand Thakar Dass v. Union of India and another* (2), the provisions of section 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, fell for construction and it was observed as follows after an exhaustive discussion of the case law on the point:—

“Coming back, however, to the question of the meaning of the expression ‘at any time’ in section 24(1) of the Act I am firmly of the view that the phrase does not authorise the Chief Settlement Commissioner to interfere with a completed deal after any length of time implying absolute indefiniteness.”

(7) The learned Single Judge had placed reliance on *Laxman Purshottam Pimputkar v. The State of Bombay and others* (3) for

(1) A.I.R. 1969 S.C. 1297.

(2) A.I.R. 1967 Punjab 85.

(3) A.I.R. 1964 S.C. 436.

repelling the contentions raised on behalf of the appellant. In this context it deserves notice that in a Full Bench case of this Court reported as *Bhikan and others v. The Punjab State and others* (4), the phrase 'at any time' as used in section 36 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act had fallen for construction. Tek Chand, J., speaking for the majority held that the phrase, at any time in the context could not be construed as unlimited in point of duration, unregulated in point of intermittency, and unguided in point of frequency. The correctness of this view was doubted in the light of the observation made in *Luxman Purshotam Pimputkar's case* (3) and the matter was hence placed before a larger Bench of five Judges in *Chahat Khan and others v. The State of Punjab and others* (5). The learned Judges after considering *Luxman Purshotam Pimputkar's case* (3), however, reaffirmed the earlier view in *Bhikan and others' case* (4) and Dua, J. observed as under :—

“I have accordingly thought fit again to consider the matter afresh and have devoted serious attention to the arguments addressed. But I regret to observe that I have not been persuaded to hold that the expression 'at any time', as used in section 36 of the Act, gives a completely unrestricted power in respect of duration of time, to the authority confirming the scheme or to the State Government acting under this section, to vary or revoke the scheme. I still feel that absolute indefiniteness in point of time for exercising this power could not reasonably have been intended by the Legislature to be available to the Administrative authorities created and functioning for the purpose of merely consolidating and fragmented holdings, under the Act.”

In view of the above enunciation of the law, we are of the view that the revisional power under section 10(2) of the Act must conform to the limitation of its being exercised within a reasonable time which may well be determined by the peculiar facts of the case including the nature of the order which falls for revision. As already noticed, in the present case we are concerned with the exercise of this power in connection with the variation of the valuation list, under section 7 of the Act. It is significant that in such a situation section 10(2) and

(4) 1963 P.L.R. 368.

(5) 1966 P.L.R. 239.

section 7 of the Act may well be read together to determine the limitation and the reasonableness within which the revisional power may be exercised. Section 7 prescribes a period of five years for the currency of the valuation list made thereunder subject to the power of the State Government to reduce the same by six months or one year. Reading the two provisions together it would appear that the reasonable time within which the power under section 10 (2) is to be exercised would be patently limited, to the currency of the valuation list. After the relevant valuation list has lapsed, we are unable to persuade ourselves that a power to vary such a lapsed list may still continue with the authority under section 10 of the Act.

(8) A reference to section 9 of the Act also shows that amendments to the valuation list can be made only during its currency. Section 9 provides for the correction of any clerical or arithmetical error or erroneous insertions or omissions and further for making any such addition or correction to the list as appear to the authority to be necessary for the reasons specified under sub-section (c) of section 9. This power of the assessing authority to amend is, however, limited to the period of time during which the valuation list remains current. A further indication of the limitation of the revisional power appears from the fact that here such power is exercised on the application of a party or another person, the statute provides that such application must be entertained within a period of 180 days. Even though no express period of limitation is prescribed for the exercise of *suo motu* power, the limitation imposed on the exercise of power upon application is itself an indication that such a power is not to be exercised without any limitation of time. Mr. B. S. Jawanda, the learned Advocate-General on behalf of the State has raised a pertinent question. It is submitted that it would be possible to visualise a case in which notice for revising a valuation list under section 7 of the Act is issued during the currency of the list, but before the final order can be passed, the list may lapse. It was hence plausibly contended that an inflexible rule that no variation can be made after the lapsing of the list in such a case, would work hardship and inequity. We are inclined to accept this contention. Where action has been commenced during the period for which the list is valid, an order of variation even though passed subsequent to the date when the list expires would not lose its validity. This is so because an unscrupulous assessee may sometimes by dilatory tactics obstruct the passing of the final order till the list lapses. In such a case the authority would not be denuded of the

jurisdiction to exercise its power under section 10(2) even after the lapsing of the list.

(9) Admittedly, however, no such situation as visualised by the learned Advocate-General arises here. In the present case, what particularly deserves notice is that the list had lapsed on the 31st of March, 1963, and even the initiation of the proceedings for the amendment and variation in the list were begun as late as eight months after the date of expiration of the list. As noticed earlier, the show cause notice for enhancement was given in November, 1963. It is thus patent that both the initiation of the proceedings, and the passing of the final orders was done long after the expiry of the list. In this context we are clearly of the view that the assessing authority travelled beyond its jurisdiction in *suo motu* exercising its power to enhance the valuation of the appellant's property after a period of nearly six years of its original assessment.

(10) This appeal, therefore, must succeed and is allowed but we would make no order as to costs.

N. K. S.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and R. S. Narula, J.

BUTA SINGH,—Appellant.

Versus.

CHAND *alis* CHANDA SINGH,—Respondent.

Civil Miscellaneous No. 1978-C of 1969

in

Regular First Appeal No. 401 of 1969

March 10, 1970.

Limitation Act (XXXVI of 1963)—Sections 5 and 14—Appeal filed beyond the period of limitation—Application for condonation of delay under section 5—Determination of—Principles behind section 14—How far applicable—Punjab High Court Rules and Orders, Volume V, Chapter 1-A—Rules 2(a) and 5—Appeal filed in the High Court without complying with the Rules—Such appeal returned by the Deputy Registrar for compliance within a specified period—Appeal not filed within that period—Whether becomes barred by time—Delay in filing the appeal—Whether can be condoned without sufficient cause for each day of the delay.