

(1971) 03 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 438 of 1969

Amir Chand

APPELLANT

Vs

The Punjab State etc.

RESPONDENT

Date of Decision : 08-03-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Punjab Security of Land Tenures Act, 1953 — Section 24
Punjab Tenancy Act, 1887 — Section 80, 81, 82, 83, 84

Citation : (1973) 2 ILR (P&H) 156

Hon'ble Judges : Harbans Singh, C.J.; Gurdev Singh, J

Bench : Division Bench

Advocate : Ram Lal Aggarwal, for the Appellant; Satya Parkash Goyal, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—This appeal under Clause (x) of the Letters Patent is directed against the order of a learned Single Judge of this Court whereby rejecting the Appellant's petition under Article 226 of the Constitution, he refused to interfere with the order of the Financial Commissioner, dated 23rd January, 1964, passed in exercise of his powers u/s 24 of the Punjab Security of Land Tenures Act (Act X of 1953). The main question raised before us is whether an order against which an appeal lies can be revised by the Financial Commissioner under this provision.

2. By his order, dated 23rd March, 1961, the Collector, Ferozepur, declared an area of 26-8 1/4 S.A. of agricultural land held by the Appellant Amir Chand in village Dharampura, district Ferozepur; as surplus area. The entire land held by the Appellant was subject to a charge in favour of the Appellant's wife under the decree of a civil Court by which she had been awarded Rs. 43. per mensem as maintenance. Taking advantage of it; the Appellant urged before the Additional Commissioner, Jullundur, that no area should have been declared as surplus.

Holding that 10 S.A. of. land would suffice to satisfy the claim of the Appellant's wife for maintenance, the learned Additional Commissioner modifying the order of the Collector, partly accepted the appeal and reduced the surplus area to 16-8 1/4 S.A. Being still dissatisfied; the Appellant preferred a further appeal to the Financial Commissioner who while holding that the appeal was not competent, on sue mote exercise of his revisional powers not only found that the Appellant's claim had no merits, but further held that the Additional Commissioner had acted without jurisdiction indirecting the exclusion of 10-8 1/4 S.A. of land from the Appellant's surplus area to meet the charge held by the Appellant's Wife for maintenance.

3. This order of the learned Financial Commissioner, dated 23rd January, 1964, was assailed before the learned Single Judge on the grounds:

(1) that he erred in holding that no further appeal against the order of the Additional Commissioner lay:

(2) that the order of the Additional Commissioner being appealable, and no appeal having been preferred by the State against the reduction in the surplus area the Financial Commissioner was not competent to interfere with it in exercise of his revisional jurisdiction.

4. Though the first contention prevailed with the learned Single Judge, he, however, refused to interfere holding that the Additional Commissioner had illegally interfered with the order of the Collector, and the Financial Commissioner having corrected that error, no injustice had been done to the Petitioner.

5. As has been observed earlier, and this fact was never in dispute, under the decree obtained by the Appellant's wife from the civil Court, the entire area of 56-8 1/4 S.A., held by the Appellant was under a charge in favour of the Appellant's wife for payment of maintenance. Admittedly under the Punjab Security of Land Tenures Act the Collector or the Additional Commissioner had no power to modify the decree so as to confine the charge to a part of that land or to direct that the charge would be confined to the surplus area or a part of it. Obviously the order passed by the Additional Commissioner directing the exclusion of 10-8 1/4 S.A. from the surplus area to satisfy the claim of the Appellant's wife for maintenance was without jurisdiction, and if the Financial Commissioner, had the authority to revise such an order, he acted quite rightly in setting aside that order and restoring that of the Collector.

6. The Appellant's learned Counsel, Mr. Ram Lal Aggarwal, has, however, contended that the Financial Commissioner had no authority to revise the order, and that too suo motu, as an appeal lay against the order of the Additional Commissioner. In this connection, he points out that the powers of revision vesting in the Financial Commissioner are the same as vest in the High Court u/s 115 of the Code of Civil Procedure. On careful consideration of the relevant provisions, we are unable to agree with him and have no hesitation in saying that the view taken by the learned Single Judge is correct.

7. Section 24 of the Punjab Security of Land Tenures Act, 1953, under which the impugned order was passed by the Financial Commissioner, provides:

The provision in regard to appeal, review and revision under this Act shall, so far as may be, be the same as provided in Section 80, 81, 82, 83 and 84 of the Punjab Tenancy Act; 1887 (Act XVI of 1887).

Under Section 80 of the Punjab Tenancy Act, which provides for appeal, it is laid down that appeal shall lie "to the Financial Commissioner when the order or decree is made by a Commissioner." This is, however, subject to the proviso (2) which reads:

When an original order or decree is confirmed on first appeal, a further appeal shall not lie.

8. Mr. Aggarwal argues that the order of the Additional Commissioner against which the second appeal was taken by the Appellant to the Financial Commissioner, being an order of modification, could be appealed against and the Financial Commissioner, was in error in holding that the appeal was not competent. This contention has been accepted by the learned Single Judge who has held that though the order of the Additional Commissioner was in the Appellant's favour, all the same it did not confirm the Collector's order but modified it and thus was appealable. Taking advantage of this finding, Mr. Ram Lal contends that since the order was appealable and the State against whom the order had been made by the Additional Commissioner had not appealed, the Financial Commissioner could not interfere with the order to the Appellant's detriment.

9. For the revisional jurisdiction of the Financial Commissioner, we have to turn to Section 84 of the Punjab Tenancy Act, the relevant portion of which runs as follows:

84(1). The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by any Revenue-officer or Revenue Court subordinate to him

(2) to (4)....

(5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a Civil Court, he shall fix a day for hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.

10. Mr. Aggarwal argues that since the Financial Commissioner can revise an order only on any ground on which the High Court in exercise of its revisional jurisdiction can interfere, no order which is appealable can be revised by him. In

this connection, he points out that u/s 115 of the CPC the High Court can exercise its revisional jurisdiction only in a case in which no appeal lies thereto. This provision recently came up for consideration, before a Full Bench of this Court in *Dhaunkal v. Man Kaur and Anr.* ILR 1970 (2) P&H 220 : 1970 P.L.J. 402, where Mehar Singh, C.J. speaking for the Court, observed as follows:

The power and jurisdiction for revision in Punjab Act 10 of 1953 is provided in Section 24, which is the same as in Section 84 of Punjab Act 16 of 1887. Sub-section (1) of Section 84 of the last-mentioned Act says that the Financial Commissioner may at any time call for the record of any Case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him, and according to Sub-section (5) of the same section, the Financial Commissioner can only interfere, in such a case, if he is of the opinion that it is expedient to do so with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may, under the law for the time being in force, interfere with proceeding or an order or decree of a civil Court. Such power of the High Court is given in Section 115 of the Code of Civil Procedure, according to which section the High Court has power and jurisdiction to interfere on revision in a case decided by a Court subordinate to it on three grounds, if such a Court appears to it (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity. These then are the only three grounds on the basis of which the Financial Commissioner can interfere with the proceedings or the order or decree of any Revenue Officer or Revenue Court subordinate to him, and it is on the basis of these three grounds alone that the learned Financial Commissioner could, in this case, interfere with the order of the Commissioner....

11. In this authority, the Full Bench was called upon to consider the grounds on which the Financial Commissioner can interfere in exercise of his revisional jurisdiction u/s 24 of Punjab Act X of 1953 read with Section 84 of the Punjab Tenancy Act. While laying down that it is only in three types of cases mentioned in Section 115 of the CPC that the Financial Commissioner has jurisdiction to interfere, their Lordships nowhere said that such power can be exercised by the Financial Commissioner only in cases in which no appeal lies. The restriction of the revisional powers of the High Court to cases in which no appeal lies thereto cannot be imported into Section 84 of the Punjab Tenancy Act. In fact, Sub-section (1) thereof excludes such a limitation as it specifically empowers the Financial Commissioner to call for the record of any case pending before, or disposed of by, any revenue officer or revenue Court subordinate to him. This part of Section 84 of the Punjab Tenancy Act is materially different and in direct contrast with the opening part of Section 115 of the Code of Civil Procedure, which is in these words:

The High Court may call for the record of any case which has been decided by any Court Subordinate to such High Court and in which no appeal lies thereto.

12. The concluding words "in which no appeal lies thereto" do not occur in Section 84. Reference to the powers of the High Court in exercise of its revisional jurisdiction made in Sub-section (5) of Section 84 of the Tenancy Act is only for the purpose of specifying the grounds on which the Financial Commissioner can exercise his revisional jurisdiction, and as held by the Full Bench in Dhaunkal's case ILR 1970 (2) P&H 220 : 1970 P.L.J. 402, those are the three grounds stated in Clauses (a), (b) and (c) of Section 115 of the Code of Civil Procedure. The words used in Sub-section (1) of Section 84 of the Punjab Tenancy Act are unambiguous and of wide amplitude, and it will be against the established canons of interpretation to restrict the scope of the revisional powers of the Financial Commissioner by reference to the opening part of Section 115 of the Code of Civil Procedure.

13. As found earlier, the Additional Commissioner has obviously exceeded his jurisdiction, and once this came to the notice of the learned Financial Commissioner, who had the power to revise a wrong order, he acted quite properly in passing the impugned order.

The appeal has thus no merit and is dismissed leaving the parties to bear their own costs.