(2017) 05 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : 8203 of 2011

Chetan Swaroop APPELLANT

Vs

Girdhari Lal & others RESPONDENT

Date of Decision : 03-05-2017

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954, Section 14, Section 17

Citation : (2017) 05 SHI CK 0027

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Ajay Kumar Sood, Anirudh Nadda, Bimal Gupta, Kusum Chaudhary, Vikram Thakur, Puneet Rajta

Final Decision : Allowed

Judgement

1. By way of this writ petition, petitioner has prayed for quashing of impugned order dated 6.9.2011 (Annexure P-6), passed in revision petition No. 116 of 2011 by Financial Commissioner (Appeals), Himachal Pradesh in exercise of powers conferred under Section 17 of the H.P. Land Revenue Act on the ground that the said order has been passed by the Authority concerned without any jurisdiction.

2. Brief facts necessary for the adjudication of the present case are that an order dated 7.9.2009 (Annexure P-3) was passed by District Collector, Kullu in the matter of appointment of Kardar of Devta Markandai Rishi and Devi Bala Durga of Phati Balagad, Kothi Shikari, Tehsil Banjar, District Kullu. By way of this order, which was passed by the District Collector, Kullu in performance of his duties as enshrined under the Wajib Ul Arj, he appointed the present petitioner i.e Chetan Swaroop @ Chuni Lal as Kardar of Devta Markandai Rishi and Devi Bala Durga of Phati Balagad, Kothi Shikari, Tehsil Banjar, District Kullu.

3. Feeling aggrieved by the said order, the present respondent assailed the same by preferring an appeal under Section 14 of the H.P. Land Revenue Act before

Divisional Commissioner, Mandi. Learned Divisional Commissioner, in his wisdom, adjudicated the said appeal on merit and dismissed the appeal so filed by the present respondent, vide order dated 15.5.2010, Annexure P-5. Order passed by learned Divisional Commissioner, Mandi was thereafter assailed by the present respondent by way of revision petition No. 116 of 2011 filed under Section 17 of the H.P. Land Revenue Act before Financial Commissioner (Appeals), Himachal Pradesh. Revision petition so filed by the present respondent was allowed by the Financial Commissioner (Appeals), vide order dated 6.9.2011, which stands assailed by way of present writ petition.

4. Mr. Ajay Kumar Sood, learned senior counsel appearing for the petitioner, while relying upon the judgment passed by this Court in CWP No. 4824 of 2009, titled as Mandir Committee (Adhoc) versus Chain Sukh & others, decided on 24.12.2015, has submitted that the impugned order passed by the revisional authority i.e. Financial Commissioner (Appeals) is not sustainable in the eyes of law, because while passing the said order, the revisional authority failed to appreciate that the impugned original order before it i.e. order passed by District Collector, Kullu was not an order passed by District Collector while exercising his powers conferred under the provisions of H.P. Land Revenue Act, therefore, neither any appeal nor any revision was maintainable against it under the provisions of H.P. Land Revenue Act.

5. Mr. Bimal Gupta, learned senior Advocate, appearing on behalf of the respondents submitted that in the said eventuality, the present respondent cannot be remediless and he may be permitted to assail the original orders passed by the District Collector, Kullu before the appropriate forum.

6. I have heard learned counsel appearing for the parties and gone through the pleadings of the parties.

7. It is not in dispute that the original order dated 7.9.2009, which was passed by the District Collector, Kullu was not passed by him in his capacity as a Revenue Officer defined under the provisions of H.P. Land Revenue Act and under Land Revenue Act, only an order passed by a Revenue Officer can be challenged. Incidentally, Subject matter of present writ petition in fact is no more res-integra. This Court in CWP No. 4824 of 2009, titled as Mandir Committee (Adhoc) versus Chain Sukh & others has categorically held as under:

" 4. Though it is contended by the petitioner that there are more, however, it is not in dispute that at least one of the Hariyans i.e. the followers, made out a grievance of misconduct against the sitting Kardar (respondent No.1) of the temple. As per inquiry report (Annexure P-5), the Sub Divisional Officer (C), Kullu found the allegations of misappropriation of property to be well founded. Resultantly certain recommendations were made for the management of the affairs of the temple. It is not in dispute that the inquiry report stood supplied to the private respondent who also filed response thereto (Annexure P-6) and after hearing the parties/all concerned, the District Collector-cum- Deputy

Commissioner, Kullu, District Kullu vide order dated 24.8.2009 (Annexure P-7) removed him as the Kardar and directed initiation of process for the selection of new Kardar in accordance with the procedure laid down in the Wajib-ul-Arj.

5. Order date 24.8.2009 came to be appealed by the private respondent under Section 14 of the H.P. Land Revenue Act, 1954 (hereinafter referred to as the Act) and the Divisional Commissioner, Mandi Division, Mandi, H.P., vide impugned order dated 30.10.2009 (Annexure P-9), by reversing the order passed by the District Collector, Kullu, remanded the matter back for consideration afresh.

6. The question which needs to be considered is as to whether the Divisional Commissioner had the authority/jurisdiction to decide the appeal filed by the private respondent.

7. Section 14 of the Act reads as under:

"14. Appeals.-Save as otherwise provided by this Act, an appeal shall lie from original or appellate order of a Revenue Officer as follows, namely:-

(a) to the collector when the order is made by an Assistant Collector of either grade;

(b) to the Commissioner when the order is made by a Collector;

(c) To the Financial Commissioner when the order is made by a Commissioner;

(i) When an original order is confirmed on first appeal, a further appeal shall not lie;

(ii) When any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, in any, to him shall be final."

8. What needs to be considered is as to whether the order passed by the District Collector was in the capacity of a Revenue Officer or not.

9. The Act was enacted to amend and declare the Land Revenue Law of the State of Himachal Pradesh.

10. Sub-Section (17) of Section 4 of the Act defines the "Revenue Officer" to mean a person having authority to act under the Act and discharge functions that of a Revenue Officer. Since the Deputy Commissioner had no jurisdiction or authority, nor was he exercising his powers under the Act, no appeal against his order could have lied under the provisions of Section 14 of the Act.

11. The nomenclature, be it Deputy Commissioner or District Collector would not make any difference for the order was certainly not passed under the provisions of the Act.

12. Noticeably, the management of the affairs of the temple are not governed under the provisions of the Act. Hence impugned order, being without any authority or jurisdiction cannot be said to be legal.

13. In this view of the matter, impugned order dated 30.10.2009(Annexure P-9) is quashed and set aside."

8. Therefore, in view of the law laid down by this Court, the present writ petition is allowed and impugned order dated 6.9.2011, Annexure P-6, passed by respondent No. 2 in Revision Petition No. 116 of 2011 is quashed and set aside. However, it is clarified that the respondents shall be at liberty to challenge the order passed by District Collector, Kullu, if so advised, before the appropriate forum. Pending application(s), if any, are also disposed of. No costs.