(2015) 01 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11671 of 1993

Dhanwant Singh APPELLANT

Vs

The Financial Commissioner (Appeals) Punjab and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Land Reforms Act, 1972 — Section 18, 3, 5, 7 (4) (i), 7(4)(i)
Punjab Tenancy Act, 1887 — Section 80, 81, 82, 82 (1) (a), 83

Citation : (2015) 01 P&H CK 0112

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : C.M. Munjal, for the Appellant; Gurinderjit Singh, DAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.—Through the present petition, the petitioner knocks the door of this Court to challenge orders dated 22.06.1976 (Annexure P-2), 02.06.1993 (Annexure P-5) and 08.09.1993 (Annexure P-6) passed by the Collector (Agrarian), Muktsar; Commissioner, Ferozepur Division, Ferozepur and Financial Commissioner(Appeals), Punjab, Chandigarh respectively.

2. The facts, in brief, leading to the filing of the present wit are that the father of the petitioner namely Sohan Singh was owner in possession of 360 kanals 19 marlas of land in Village Malout, Tehsil Muktsar. On his death, as per the Will executed by him, the above land devolved on the petitioner and thus, on the death of Sohan Singh, the petitioner became owner in possession of the entire above said property of his father. On his demise, Sohan Singh also left behind his widow - Sant Kaur and two married daughters namely Shamsher Kaur and Sukhwinder Kaur. Through a decree of the Civil Court dated 13.01.1972, out of the total of the above said 360 kanals 19 marlas land, the petitioner transferred 129 kanals 06 marlas, in favour of his mother Sant Kaur. On coming into force of

the Punjab Land Reforms Act, 1972 (hereinafter referred to as - the 1972 Act), which came into operation w.e.f. 02.04.1973, the petitioner filed a declaration under Section 5 of the Act in Form ''A''. The Circle Revenue Officer, on 01.06.1976, reported that the petitioner as well as his mother Sant Kaur were entitled to retain 07 hectares of first quality land each and thus, taken together they were entitled to retain 14 hectares and as the total land was less than 14 hectares, no land was required to be declared surplus. However, when the matter came up for adjudication before the Collector (Agrarian), Muktsar, he considered only the petitioner to be the head of his family and finding him to be the only person to have filed a declaration under Section 5 of the Act, the petitioner was allowed by the Collector to retain the permissible 07 hectares of first quality land and resultantly, 2.94 hectares of land, out of the total of 9.94 hectares, was declared surplus.

3. The petitioner as well as his mother - Sant Kaur challenged the order of the Collector before the Commissioner, Ferozepur Division, Ferozepur. The Commissioner primarily relying upon the report dated 01.06.1976 of the Circle Revenue Officer, wherein it had been stated that both the petitioner and his mother were entitled to retain 07 hectares of first quality land each, allowed both the appeals filed by the petitioner and his mother. The above order was not challenged by the State, but in the year 1983, the Financial Commissioner (Revenue), Punjab, on a reference by the Commissioner, Ferozepur Division, Ferozepur, ordered for re-opening of the case by making the following note:--

"9. That in the year 1983 in a general inspection the Financial commissioner (Revenue) Punjab - Shri R.C. Kapila, I.A.S., while inspecting the appeal file of the petitioner decided by the Commissioner, Ferozepur Division, made the Note on the file dated 23.6.1983 as follows:

"No. JA-457 - Dhanwant Singh and Others

VERSUS

State of Punjab;

The Collector(Agrarian), Muktsar, vide his order dated 22.6.1976, declared 2.94 hect. of first quality land as surplus with Shri Dhanwant Singh after allowing him 7 hectares of first quality land as permissible area. Aggrieved by the order of the Collector(Agrarian), Shri Dhanwant Singh and Sant Kaur filed two separate appeals before the Commissioner, Ferozepur Division, Ferozepur, on the plea that the appellants were son and widow respectively of the deceased landowner Shri Sohan Singh and as such were entitled to two separate Units of 7 hectares each. The Commissioner, accepted the plea of the appellants and filed the surplus area case of this landowner. The reliance placed by the Commissioner Ferozepur Division, regarding the age of Shri Dhanwant Singh has having his own children does not appear to be proper. He should have obtained some documentary evidence either from the Educational Institutions or Health Department in proof of the age of this appellant on the appointed day before allowing him a separate

Unit of permissible area under the New Act. This case needs to be opened up under Section 84 of the Punjab Tenancy Act, 1887."

4. In view of the above note, the entire matter was re-opened by the Commissioner, Ferozepur Division, Ferozepur. In the integrum, two important facts had taken place. One was that the mother of the petitioner namely Sant Kaur had died on 02.05.1990 and secondly, about seven years before her death, the land, which had been transferred to her by the petitioner through a Civil Court decree dated 13.01.1972, was transferred by her through another Civil Court decree dated 07.06.1983 in favour of her grandson Bhupinder Singh - son of the petitioner.

5. As noticed above, on the note given by the Financial Commissioner, the entire matter was re-opened and in pursuance thereto, the Commissioner issued notice to all the concerned parties. After hearing counsel for the parties and perusing the record, the Commissioner, through his order dated 02.06.1993, held as under:--

"6. After careful consideration of the arguments advanced by the learned counsel for the appellants as well as the representative of the State and after thorough perusal of the record, I am of the view that the order dated 23.1.1980 passed by my learned predecessor does not stand scrutiny of law and merits to be reversed. In this case, Dhanwant Singh and Smt. Sant Kaur are not entitled for two separate units of permissible area, as has been allowed by the learned Commissioner in his order dated 23.1.1980; because, the declaration in Form ''A'' has been filed by Shri Dhanwant Singh as a person in this case, which will include his family, then being the head of the family he is entitled for one unit of permissible area measuring 7 hectares of first quality, as he has clearly stated that on the appointed day, he did not have any major son and an area owned by him, over and above that, will have to declared surplus. Smt. Sant Kaur being mother and not being a member of the family of Dhanwant Singh will not be entitled for any separate unit of permissible area and even the judgment and decree dated 13.1.1972 suffered by Shri Dhanwant Singh, transferring land measuring 129 Kanals 6 Marlas to Smt. Sant Kaur has to be ignored, in view of the provisions contained under Section 7(4)(i) of the Punjab Land Reforms Act, 1972. which adjoins, that, for the purpose of determining the surplus area of any person, any judgment decree or order of a court or other authority obtained on or after the appointed day and having the effect of diminishing the surplus area of such a person; shall be ignored. The Civil Court decree dated 13.1.1972 in this case has been suffered by Shri Dhanwant Singh after the appointed day and has the effect of diminishing the surplus area of Shri Dhanwant Singh. The ruling quoted by the learned counsel for the appellants is not attracted in this case; as, in a case reported in the said ruling, the declaratory decree did not have the effect of diminishing the surplus area of a concerned person, which is otherwise in this case. As Smt. Sant Kaur is not a big landowner and has not filed any declaration in Form ''A'', so she is neither claiming a unit for her family nor can claim a separate unit for her alleged major son, Dhanwant Singh, but the then Commissioner blatantly allowed a separate unit of permissible area each to her as well as her son, in stark violation of the explicit provisions of law, on account of which the order dated 23.1.1980 has become a bad one, in law. Strangely enough, the Commissioner has referred to a so called report recorded by the Circle Revenue Officer dated 1.6.1976 which is highly misleading. The perusal of this report shows, that, the Circle Revenue Officer is either ignorant about the provisions of the Punjab Land Reforms Act or he has intentionally recorded this misleading note, with a view to hoodwink the authorities that may be, with a view to give undue benefit to Shri Dhanwant Singh and his mother Smt. Sant Kaur. In his order, the then Commissioner, laid much emphasis on this misleading note which needs to be ignored, under no circumstances, Smt. Sant Kaur is entitled for a separate unit of permissible area. On this account also, the Commissioner''s order dated 23.1.1980 is bad in law.

Further, if it is presumed which I think will be hypothetical, that declaration in Form ''A'' has been filed by Shri Dhanwant Singh as the eldest surviving child in the family, because his mother Sant Kaur who was supposed to file the declaration, has not filed the same, then by the definition of ''family'' under section 3 of the Act ibid, Dhanwant Singh is to be taken as minor and in that case, he will not be entitled for a separate unit of permissible area and only Smt. Sant Kaur will be entitled for one unit only, as not having any major son on appointed day. Although, there is no conclusive evidence beyond doubt, placed on record to prove that Shri Dhanwant Singh was major on 24.1.71, because the various documents placed on record to prove the majority of Dhanwant Singh on the said day are questionable; yet, I feel that in this case, it will not make such difference, whether Dhanwant Singh is treated as major or minor on the appointed day, because in this case, if Dhanwant Singh has filed declaration in Form ''A'' as a person, he will get a unit of permissible area; and if presumably, Shri Dhanwant Singh has filed declaration in form ''A'' as the eldest surviving child in the family, then only Smt. Sant Kaur will get one unit of permissible area and Dhanwant Singh being her minor son will not get any unit and an area more than 7 hectares of first quality land, will be declared surplus.

I must observe that in this case, the civil court decree suffered by Shri Dhanwant Singh is a staged and dramatized one, with a view to save the land owned by Shri Dhanwant Singh, in excess of the permissible area, from being declared as surplus; as, after getting the land through a civil court decree from his son Dhanwant Singh on 13.1.1972, she further passed on this land through a civil court decree dated 7.6.1983 in favour of her grandson Bhupinder Singh son of Shri Dhanwant Singh and she did not retain any land with her from out of the land measuring 129 Kanals and 6 marlas and entirely passed it on to her grandson, although she is stated to have died on 2.5.1990. I must say this mode of saving land from being declared as surplus, seems to have been suggested by figment of some fertile but foggy brain. In view of the above, I am of the view that we need not labour on this issue; whether Dhanwant Singh was adult on the appointed day or not; and presuming him to be adult on the appointed day the declaration filed by him in Form ''A'' needs to be processed and has rightly been proceeded by the Collector Agrarian, Muktsar, and has passed his order dated 22.6.1976, by declaring land measuring 2.94 hectares of first quality owned by Shri Dhanwant Singh as surplus, after allowing 7 hectares of first quality as his permissible area. The impugned order dated 23.1.1980 having failed the scrutiny of law, in the light of the discussion made above, is hereby reversed; the appeals filed by Shri Dhanwant Singh and Smt. Sant Kaur are hereby rejected and the order dated 22.6.1976 passed by the Collector Agrarian, Muktsar, is hereby upheld. The Collector Agrarian, Malout, is directed to retrieve the area declared surplus and utilize the same in accordance with the provisions of law, urgently."

6. A perusal of the above quoted portion of the order shows that the Commissioner was clearly of the view that both the petitioner and his mother were not entitled to two separate units of permissible area, as had been allowed by his predecessor through order dated 23.01.1980 because the declaration in Form ''A'' under Section 5 of the Act had been made only by the petitioner. According to the Commissioner, once the petitioner was the only person, who had made the declaration in Form ''A'', then it was only he, who would be considered as the head of the family and resultantly, he and his family would be entitled to retain 07 hectares of first quality land. According to the Commissioner, Sant Kaur, being mother of the petitioner, was not to be considered a member of the family of the petitioner, and thus, she was not entitled for any separate unit of permissible area. So far as the decree dated 13.01.1972 transferring 129 kanals 06 marlas to Sant Kaur was concerned, the Commissioner was of the opinion that the same was liable to be ignored in view of the specific provisions contained under Section 7 (4) (i) of the 1972 Act, which very clearly provided that any judgment or decree obtained on or after the appointed day and having the effect of diminishing the surplus area of such a person, shall have to be ignored, while determining the surplus area. The Civil Court decree dated 13.01.1972, being after the appointed day i.e. 24.01.1971 was, thus, required to be ignored. The Commissioner further held that Sant Kaur was not a big land owner and had not made any declaration in Form ''A'', hence, she was held neither entitled to claim any unit for her family nor for her alleged major son - the petitioner. The report of the Circle Revenue Officer dated 01.06.1976 was found to be misleading by the Commissioner. So far as the issue whether the petitioner was a major or minor on the appointed day was concerned, no conclusive finding was returned as according to the Commissioner, that would make no difference to the facts of the case. The Commissioner further observed that the petitioner Dhanwant Singh, in order to minimize his holdings, had, after the appointed date, transferred 129 kanals 06 marlas of land in the name of his mother and the mala fides on the part of the petitioner were clear, when through another Civil Court decree dated 07.06.1983, this very land was transferred back by his mother in favour of Bhupinder Singh - her grandson and son of the petitioner.

7. On the basis of the above facts, the earlier order dated 23.01.1980 was reviewed and the appeals filed by the petitioner and his mother were rejected. Consequently, the order of the Collector dated 22.06.1976 declaring 2.94 hectares of land of the petitioner to be surplus was restored.

8. The petitioner, being aggrieved by the above order dated 02.06.1993, passed by the Commissioner, challenged the same by filing a revision petition before the Financial Commissioner (Appeals), Punjab. The Financial Commissioner, after hearing counsel for the parties and going through the record, agreed with the findings recorded by the Commissioner in his order dated 02.06.1993 and dismissed the revision petition, while holding as under:--

"I have given a thoughtful consideration to the facts and the law applicable to the present case, and have also studied the impugned order and the record In this case, the petitioner Dhanwant Singh, being the owner of the land, filed the declaration form and after giving him due hearing, the Collector decided his surplus area vide order dated 22.6.1976, Smt. Sant Kaur, mother of the petitioner, did not own any land as on 24.1.1971, and as such she did not file any return. The petitioner through a ''Will'' got the entire holding of his father Sohan Singh prior to the coming into force of the Punjab Land Reforms Act, so, as per provisions of the Law for the purpose of determination of the surplus area, the land holding of the petitioner as it existed on 24.1.1971, is to be taken into account by the Collector, Agrarian. The Collector, while deciding the case, observed that he possessed 9.94 hectares of land and had no adult son; as such, as per the provisions of the law, the petitioner was entitled to 7 hectares of land. He, therefore, declared the remaining 2.94 hectares as surplus. A dubious method was adopted by the petitioner to bye-pass the provisions of the law, by securing a collusive civil court decree dated 13.1.1972, through which he transferred 129 Kanals 6 Marlas land in favour of his mother. It is also worth mentioning that Smt. Sant Kaur never challenged the ''Will'' executed by her husband in favour of Dhanwant Singh. It implies that she willingly surrendered her right in the property in favour of her son, who is none else but the petitioner Dhanwant Singh. To go even further, the same Sant Kaur later transferred this area in favour of the son of the petitioner (i.e. her grandson) through a civil court decree dated 7.6.1983. In short, the area transferred by Dhanwant Singh to his mother has remained part and parcel of the family of Dhanwant Singh throughout, and this area, for all intent and purposes, is to be clubbed with the holding of the petitioner for the purpose of determination of his surplus area. The petitioner''s counsel singularly failed to pin-point any illegality committed by the Commissioner or even by the Collector while determining the surplus area. The factua1 position has been appreciated at length by both the Collector and the Commissioner, and at the revisional stage, this court is meant to interfere only in such matters where, prima facie, any illegality was committed by the subordinate courts. Since no such illegality has been pointed out as such, as per decision of the High Court reported in 1968 PLJ (Vol. IXX) Page 118, holding that "the revisional jurisdiction of the Financial Commissioner is limited and he cannot reappraise evidence", I see no reason to interfere. Accordingly, this revision petition is dismissed in limine.

Announced."

9. A perusal of the above quoted portion of the order passed by the Financial Commissioner shows that the revision petition filed by the petitioner was dismissed after the Financial Commissioner had recorded a categoric finding holding the petitioner guilty of adopting dubious methods to minimize his holdings so that none of his land be declared surplus. On the dismissal of the above revision petition, the petitioner has preferred the present writ petition before this Court to challenge orders dated 22.06.1976 (Annexure P-2), 02.06.1993 (Annexure P-5) and 08.09.1993 (Annexure P-6) passed by the Collector (Agrarian), Muktsar; Commissioner, Ferozepur Division, Ferozepur and Financial Commissioner(Appeals), Punjab, Chandigarh respectively.

10. I have heard learned counsel for the parties and with their able assistance, have gone through the record of the case.

11. Laying an attack to the impugned orders, learned counsel for the petitioner submitted that the Collector, in the order dated 22.06.1976 (Annexure P-2), misread the report of the Circle Revenue Officer dated 01.06.1976 and on that ground itself, that order was liable to be set aside. Learned counsel would further submit that the note by the Financial Commissioner, on the basis of which the entire case had been re-opened, was only to look into the fact whether the petitioner was major or minor at the relevant time and this was the only issue, which the Commissioner could have gone into. According to the learned counsel, the Commissioner, in his order dated 02.06.1993 (Annexure P-5), went into everything else but the issue, on which the case had been re-opened. It was thus submitted that the impugned orders by the Commissioner dated 02.06.1993 (Annexure P-5) and the Financial Commissioner dated 08.09.1993 (Annexure P-6), being beyond the point of reference, were without jurisdiction and liable to be set aside.

12. It is the admitted position between the parties that Sohan Singh - father of the petitioner owned 360 kanals 19 marlas of land and that he willed his entire land to his son - the petitioner, who, after the demise of Sohan Singh, became the owner in possession of the same. This fact is admitted by the petitioner in paragraphs 2 and 3 of the writ petition, which are reproduced below:--

"2. That the brief facts of the case are that father of the petitioner Shri Sohan Singh of village Malout was having 360 Kanals 19 Marlas of land in total before 24.1.1971 who died before this date leaving behind his widow Smt. Sant Kaur, son Dhanwant Singh (The Petitioner) and two daughters namely Shamsher Kaur and Sukhwinder Kaur who were already married and settled separately.

3. That during his life time Sohan Singh landowner father of the petitioner executed a Will in favour of the petitioner for whole his lands 360 Kanals 19

Marlas and therefore, after the death of Sohan Singh his entire inheritance came to the petitioner and the petitioner became owner in possession of entire lands left by his father by way of Will."

13. In view of the above admission, only the petitioner - being owner in possession of the above said land was the big land owner, who could have made the declaration under Section 5 of the Act in Form ''A'', as he did. He, being the head of his family, was entitled to retain only 07 hectares of first quality land and the remaining of his above said holdings was required to be declared surplus as has rightly been done in the orders impugned by him in the present wit petition. So far as his mother Sant Kaur was concerned, she was not owner of any validly transferred land and was also not part of the family unit of the petitioner. So far as the land transferred to her through Civil Court decree dated 13.01.1972 is concerned, the same is liable to be ignored in view of the specific provisions of Section 7 (4) (i) of the 1972 Act. Even otherwise, this transfer was mala fide and had been made by the petitioner only to minimize his holdings to save his land from being declared as surplus. After the appointed date i.e. 24.01.1971, the petitioner suffered a collusive decree dated 13.01.1972, through which he transferred 129 kanals 06 marlas of land in favour of his mother. This very land was then transferred back to the petitioner through his son by his mother through another collusive decree dated 07.06.1983. Thus, by any length of imagination, the transfer of land in favour of the mother of the petitioner cannot be termed to be bona fide. Further, she admittedly had made no declaration under Section 5 of the Act in Form ''A''. That being so, she was not entitled to retain 07 hectares of first quality land, as prayed for by the petitioner. The position would have been different in case the mother of the petitioner - Sant Kaur was owner in possession of the land in question and had made a declaration under Section 5 of the Act in Form ''A'' and in such declaration, she would have made a reference of her major son - the petitioner. This is not so. Thus, I am clearly of the view that the petitioner was entitled to retain only 07 hectares of first quality land out of his total holding and the remaining 2.94 hectares of first quality land, which he owned and possessed, has rightly been declared to be surplus through the orders impugned by him through the present writ petition.

14. The mala fide attempts on the part of the petitioner to save his land from being declared surplus are clear from the facts mentioned above. After the appointed date i.e. 24.01.1971, he suffered a collusive decree dated 13.01.1972, through which he transferred 129 kanals 06 marlas of land in favour of his mother Sant Kaur. This very land was then routed back to the petitioner through his son when his mother Sant Kaur suffered another collusive decree dated 07.06.1983 transferring the same land in favour of her grandson Bhupinder Singh - son of the petitioner.

15. The submission raised by the counsel for the petitioner, that the impugned orders passed by the Commissioner dated 02.06.1993 (Annexure P-5) and the Financial Commissioner dated 08.09.1993 (Annexure P-6) are liable to be set

aside, as these orders go beyond the note dated 23.06.1983, is required to be considered only to be rejected. A perusal of the record shows that the Commissioner, Ferozepur Division, Ferozepur, on going through the records of the case, considered it proper to re-open the matter and for this, made a reference to the Financial Commissioner seeking his permission. Accepting the reference made by the Commissioner, the Financial Commissioner, Punjab accorded permission to review the earlier order. After receiving the permission from the Financial Commissioner, the Commissioner exercised his powers under Section 18 of the 1972 Act, read with Section 82 of the Punjab Tenancy Act, 1887 (hereinafter referred to as - the 1887 Act) and passed the order dated 02.06.1993. The above referred Sections 18 of the 1972 Act and Section 82 of the 1887 Act are reproduced below for ready reference:--

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

xx xx xx

"82. Review by Revenue Officer - (1) A Revenue Officer, as such, may either of his own motion or own the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office :

Provided as follows :

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;

(b) no application for review of an order shall be entertained unless it is made within ninety days from the passing of the order, or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in office.

(3) An appeal shall not lie from the order refusing to review, or confirming on review, a previous order."

16. The above reproduced Sections clearly give powers to the Commissioner to review his earlier order, which he rightly has. Since the earlier orders, which were sought to be reviewed had been passed by his predecessor, the Commissioner-in-Office rightly sought permission of his superior officer i.e. the Financial Commissioner under the provisions of Section 82 (1) (a) of the 1887 Act and only after the permission was granted by the Financial Commissioner did he review the entire proceedings. There is nothing on record to show that the Commissioner had sought to review the order passed by his predecessor on any particular ground. While granting permission, the Financial Commissioner, in the last three lines of the note, observed as under:--

"...This case needs to be opened up under Section 84 of the Punjab Tenancy Act, 1887."

17. A perusal of the above quoted portion of the note by the Financial Commissioner is clear to the effect that through this note, the Financial Commissioner accorded permission to the Commissioner to review the order passed by his predecessor-in-office, in accordance with the provisions of Section 82 (1) (a) of the 1887 Act.

18. A perusal of the above note further shows that the Financial Commissioner had referred to Section 84 of the 1887 Act for re-opening of the case at the hands of the Commissioner. On going through the relevant provisions of the 1887 Act, I find that when the Commissioner, on its own motion or on application so moved, considers it proper to review an order passed by his predecessor, then the same can be done under Section 82 of the 1887 Act, but only after seeking permission from his superior officer, which, in the case of a Commissioner, would be the Financial Commissioner. The order dated 02.06.1993 (Annexure P-5) passed by the Commissioner reviewing the earlier order dated 23.01.1980 passed by his predecessor further shows that the same has been passed under Section 18 of the 1972 Act read with Section 82 of the 1887 Act. Thus, the reference to Section 84 of the 1887 Act by the Financial Commissioner in the above note was, according to me, a result of typographical error or a wrong mention of the provision, but in my opinion, this would make no difference in any manner to the decision of the case. So far as Section 84 of the 1887 Act is concerned, the same applies only when the Financial Commissioner, on his own, exercises revisionary jurisdiction to decide an issue pending before him or disposed of by any Revenue Officer or Revenue Court subordinate to him. In the case in hand, while according the above note, the Financial Commissioner himself was not deciding the issue and as the record shows, was only granting permission on a reference made by the Commissioner to review the order passed by the Commissioner''s predecessor.

19. A perusal of the record, particularly the impugned order dated 08.09.1993, passed by the Financial Commissioner (Appeals), Punjab (Annexure P-6), shows that the issue with regard to the Commissioner, Ferozepur Division, Ferozepur, having travelled beyond the note of Financial Commissioner, was never raised.

The submissions raised on behalf of the petitioner before the Financial Commissioner have been referred to in paragraph 3 of the order, which is reproduced below:--

"3. Shri C.M. Munjal, Advocate, counsel for the petitioner, assailed the impugned order on the ground that due weightage needed to be given to the civil court decree, dated 13.1.1972, through which the petitioner had transferred 129 Kanals 6 Marlas land in favour of his mother. He alleged that this transfer was basically meant as maintenance for his mother. The learned counsel submitted that the earlier order dated 23.1.1980, passed by the then Commissioner, was in tune and in spirit with the reason due to which the area was transferred in favour of Sant Kaur. The learned counsel further averred that the Commissioner, in his impugned order, had not appreciated this point. He further asserted that Smt. Sant Kaur, mother of Dhanwant Singh, was entitled to a separate unit, since, after the death of her husband, Sohan Singh, she was otherwise to inherit the land by way of natural succession. The learned counsel did not press any other point and requested that the order of the Commissioner as well as that of the Collector be set aside, since no surplus area was left in the hands of the petitioner Dhanwant Singh."

20. A perusal of the above clearly shows that this issue was not raised on behalf of the petitioner before the Financial Commissioner.

21. It may still further be noticed that the note of the Financial Commissioner, ordering the matter to be re-opened, was never challenged by the petitioner at any stage.

22. Learned counsel for the petitioner has placed reliance on a Single Bench judgment of this Court, passed in the case of Jagir Singh Vs. The State of Punjab and Others, AIR 1981 P&H 64 In that case, transfer of land by a father-in-law in favour of his widowed daughter-in-law (in order to maintain/protect her and her children after the death of his son) was held to be bona fide transfer and it was considered that the State was not entitled to take the transferred land into consideration for the purpose of declaration of surplus area, but this is not so in the case in hand.

23. As discussed above, the transfer of land in the case in hand from the petitioner to his mother was clearly mala fide as the transfer was through a collusive court decree after the appointed date, and the same land was transferred back by his mother to her grandson i.e. the petitioner''s son, on a later date. That being so, the judgment cited by the learned counsel for the petitioner is not applicable to the facts of the case in hand.

24. Even otherwise, while exercising powers under Articles 226 and 227 of the Constitution of India, once the above facts have come to my notice, I cannot shut my eyes and allow illegality to be perpetuated and that too, on a hyper-technical plea raised by the petitioner.

25. In view of the above, the present writ petition being devoid of any merit, is dismissed.

26. No costs.

