**(2003) 07 SHI CK 0014**

**In the High Court Of Himachal Pradesh**

**Case No :** Civil Writ Petition No. 1707 of 1996

Dharam Chand APPELLANT

Vs

State of H.P. and Others RESPONDENT

**Date of Decision :** 25-07-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115
Himachal Pradesh Land Revenue Act, 1954 — Section 14, 17
Punjab Land Revenue Act, 1887 — Section 16
Punjab Land Revenue Rules, 1909 — Rule 15, 16, 30A
Punjab Security of Land Tenures Act, 1953 — Section 24
Punjab Tenancy Act, 1887 — Section 80, 81, 82, 83, 84

**Citation :** (2003) 3 ShimLC 239

**Hon'ble Judges :** R.L. Khurana, J

**Bench :** Single Bench

**Advocate :** Shrawan Dogra, for the Appellant; M.S. Chandel, General, Ashutosh Burathoki, A.A.G. for Respondents No. 1 and 2 and Rajiv Jiwan for Respondent No. 3., for the Respondent

**Final Decision :** Allowed

## Judgement

R.L. Khurana, J.—The bone of contention between the Petitioner Dharam Chand and Respondent No. 3, Nokhu Ram, is the office of Village Headman (Lambardar) of Phati Gojra, Kothi Jagatsukh, in Tehsil and District Kullu.

2. One Chene Ram was the Lambardar of Phati Gojra, he died in the year 1978 leaving behind no legal heir. Consequent upon his death, proceedings were initiated by the Collector, Kullu, under Rule 15 of the Punjab Land Revenue Rules, as applicable to the State of Himachal Pradesh, (hereinafter referred to as the Rules) for appointment of Lambardar by inviting applications therefor. The Petitioner along with Respondent No. 3 and four other persons were contenders for such office. All such contenders were summoned so that their respective claims and credentials for the office may be ascertained. One of the contenders, namely, Jindu Ram withdrew his candidature in favour of Respondent No. 3. The

Collector, Kullu, on the basis of the relative merits of the candidates vide his order dated 26.11.1980 appointed Respondent No. 3. Nokhu Ram, as the Lambardar.

3. It appears that subsequently the Petitioner approached the Collector seeking review of the order dated 26.11.1980 apponting Respondent No. 3 as the Lambardar. In such review application, it was pleaded by the Petitioner that Respondent No. 3 had misrepresented that he was free from indebtedness. In fact, Respondent No. 3 had taken a loan from Gojra Sehkari Samiti and had not repaid the loan. He was thus under a debt as on the relevant date and as such not eligible for appointment to the office of Lambardar. The Collector, after holding an enquiry, found that Respondent No. 3 was actually under debt and, therefore, was not eligible for being appointed to the office of Lambardar. He accordingly, on 23.4.1981 recalled his order dated 26.11.1980 and after setting aside the appointment of Respondent No. 3, appointed the Petitioner as Lambardar.

4. Respondent No. 3, aggrieved by the order dated 23.4.1981 went up in appeal before the Divisional Commissioner, who vide order dated 16.9.1982 allowed such appeal and after setting the order dated 23.4.1981 passed on review by the Collector, restored the original order dated 26.11.1980 of the Collector, appointing Respondent No. 3 to the office of Lambardar.

5. The order dated 16.9.1982 of the Divisional Commissioner was assailed by the Petitioner by way of an appeal u/s 14 of the H.P. Land Revenue Act, 1954. The Financial Commissioner (Appeals) on 1.1.1985 allowed the appeal of the Petitioner and after setting aside the order of the Divisional Commissioner, remanded the case to the Collector for reconsidering the respective merits of the candidates and selecting a candidate who is most suitable for appointment as Lambardar of Phati Gojra, Kothi Jagatsukh.

6. Respondent No. 3 assailed the order dated 1.1.1985 passed by the Financial Commissioner (Appeals) by way of a writ petition before this Court, being CWP No. 474 of 1985. A Division Bench of this Court dismissed writ petition on 23.3.1993 and upheld the order dated 1.1.1985 remanding the case to the Collector. The Division Bench further observed:

Needless to add that the Collector, District Kullu, shall now proceed to make appointment in the light of the order passed by Respondent No. 2, after hearing the Petitioner and Respondent No. 3.

7. On reconsideration of the case and after hearing the parties, namely, the Petitioner and Respondent No. 3, the Collector on 30.9.1993 vide order, copy of which is Annexure P3, appointed the Petitioner to the office of Lambardar. The Collector was of the opinion that considering the merits of both the candidates, the Petitioner was a better candidate.

8. Respondent No. 3, feeling aggrieved by the order dated 30.9.1993 (Annexure

 

P3) went up in appeal before the Divisional Commissioner, Mandi. Such appeal was dismissed on 17.6.1994 vide order as at Annexure P4. The Divisional Commissioner thus upheld the order dated 30.9.1993 (Annexure P3) of the Collector appointing the Petitioner to the office of Lambardar.

9. Still aggrieved, Respondent No. 3 went up before the Financial Commissioner (Appeals) by way of a revision petition u/s 17 of the H.P. Land Revenue Act, 1954. The Financial Commissioner vide order dated 6.1.1996 (Annexure P-5) allowed the revision petition and after setting aside the order of the Divisional Commissioner (Annexure P-4) and that of the Collector (Annexure P-3) ordered the appointment of Respondent No. 3 to the office of Lambardar. Hence the present writ petition by the Petitioner assailing the order of the Financial Commissioner (Annexure P5) inter alia, claiming the folowing reliefs :

(i) the impugned order dated 6.1.1996 of the Financial Commissioner (Annexure P5) be quashed and set aside, and the Petitioner may be held entitled to the post of Lambardar in terms of orders dated 30.9.1993 (Annexure P-3) and dated 17.6.1994 (Annexure P-4);

(ii) Respondent No. 2 Collector, District Kullu, be directed to handover the charge of Lambardar immediately to the Petitioner; and

(iii) Respondent No. 3 be directed to give accounts of the income derived by him during the period he continued as Lambardar under the interim orders passed by various authorities and by this Court in the previous writ proceedings and further directions to Respondent No. 3 to pay such amount to the Petitioner along with interest @ 18% per annum till the date of realisation of the amount.

10. There is no dispute between the parties as to the facts of tne case leading to the filing of the present petition.

11. In assailing the order dated 6.1.1996 of the Financial Commissioner (Annexure P5) two contentions have been raised by the learned Counsel for the Petitioners, namely:

(a) The Financial Commissioner in exercise of his revisioonal powers could not have re-appreciated and reassess the evidence as a Court of appeal. The powers of revision are limited and akin to the powers of the High Court u/s 115, Code of Civil Procedure; and

(b) The Financial Commissioner in reversing the orders of the Collector and the Divisional had travelled beyond the scope of Rule 15 read with Rule 30-A of the Rules by taking into consideration such factors which could not have been taken into consideration.

12. The learned Advocate General for Respondent Nos. 1 and 2 as well as the learned Counsel for Respondent No. 3 while supporting the impugned order (Annexure P5) have contended that the powers of revision vested in the Financial Commissioner are very wide and in exercise of such powers he can re-assess and

 

re-appreciate the evidence. Such powers are not akin to the powers of the High Court u/s 115, Code of Civil Procedure. It was further contended that all the relevent factors under Rule 15 of the Rules were duly considered and that the Financial Commissioner had not travelled beyond the scope of the said rule.

13. I have heard the learned Counsel for the parties and have also gone through the record of the case.

Contention (a).

14. Section 17 of the H.P. Land Revenue Act, 1954 as in force at the relevant time, reads :

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

(2). ....

(3). ....

(4) The Financial Commissioner may in any case called for by himself under Sub-section (1) or reported to him under Sub-section (3) pass such order as he thinks fit :

Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

15. It was contended on behalf of the Petitioner that the powers and jurisdiction of revision vested in the Financial Commissioner u/s 17 of the H.P. Land Revenue Act, 1954 are analogous to the powers of revision vested in the High Court u/s 115, Code of Civil Procedure, and, therefore, can be exercised only on three grounds, namely:

(a) if it appears to him that the subordinate Revenue Officer has exercised the jurisdiction not vested in it under the law; or

(b) such subordinate Revenue Officer has failed to exercise a jurisdiction so vested; or

(c) such subordinate Revenue Officer has acted in the exercise of his jurisdiction illegally or with material irregularity.

16. It was further contended that the Financial Commissioner, in the present case, has travelled beyond the power and jurisdiction of revision by re-assessing and reappreciating the evidence as a Court of Appeal. In support of his contention, the learned Counsel for the Petitioner placed reliance on the decision of a Full Bench of the Punjab and Haryana High Court in Dhaunkal v. Man Kauri and Anr. 1970 PLJ 402.

 

17. In Dhaunkal v. Man Kauri (supra) the Full Bench was dealing with the scope and ambit of revisional jurisdiction and power of the Financial Commissioner u/s 84 of the Punjab Tenancy Act, 1887 and u/s 24, Punjab Security of Land Tenures Act, 1953.

18. Section 84 of the Punjab Tenancy Act, 1887 in so far as it is relevant for the purpose of present case, reads :

(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). ....

(3). ....

(4) If, after examining a record called for by himself under Sub-section (1), or submitted to him under Sub-section (3), the Financial Commissioner is of opnion that it is inexpedient to interfere with the proceedings or the order or decree, he shall pass an order accordingly.

(5) If, after examining the record, the Financial Commissioner is of opnion 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 proceedings or an order or decree of a Civil Court, he shall fix a day of 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.

(6) Except when the Financial Commissioner fixes under Sub-section (5) a day for hearing the case, no party has any right to be heard before the Financial Commissioner when exercising his powers under this section.

19. Section 24, Punjab Security of Land Tenures Act, 1953, provides that the provisions in regard to appeal, review and revision under this Act, so far as may be, be the same as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887.

20. Noticing the provisions contained in the above referred to two provisions, the Full Bench held that the jurisdiction and power of revision vested in the Financial Commissioner is limited one and confined to three matters : (a) that the order made by the subordinate authority/Court is within its jurisdiction; (b) that the case is one in which the subordinate authority/Court ought to have exercised its jurisdiction; and (c) that in the exercise of its jurisdiction the subordinate authority/Court has not acted illegally, that is, in breach of some provision of law or with material irregulrity, that is, by committing some error of procedure in the course of the trial of the case which is material in that it may have affected the ultimate decision. Therefore, if an erroneous decision of a subordinate authority/ Court resulted in its exercising jurisdiction not vested in it by law or failing to

 

exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction, a case for exercise of jurisdiction/power of revision by the Financial Commissioner would be made out. If, however, a subordinate authority/Court has the jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of Procedure which is material and may have affected the ultimate decision, then the Financial Commissioner has no power to interfere.

21. The learned Counsel for the Respondents, on the other hand, have contended that Section 17 of the H.P. Land Revenue Act, 1954, quoted above confers plenary power on the Financial Commissioner and does not envisage any such restrictions embodied in Section 151 Code of Civil Procedure. It was further contended that the decision of the Full Bench, relied upon by the Petitioner is not applicable to the present case since in the said case the Full Bench was dealing with the scope and ambit of revisional jurisdiction/power vested in the Financial Commissioner u/s 84 of the Punjab Tenancy Act, 1887 and Section 24 of the Punjab Security of Land Tenures Act, 1953. The nature, scope and ambit of revisional powers u/s 17, H.P. Land Revenue Act, 1954 are much wider than the one u/s 84, Punjab Tenancy Act, 1887 or u/s 24, Punjab Security of Land Tenures Act, 1953.

22. Dealing with Section 16 of the Punjab Land Revenue Act, 1887, (which provisions are analogous to the provisions contained in Section 17 of the H.P. Land Revenue Act, 1954), a learned Single Judge of the Punjab and Haryana High Court in Hari Singh v. Financial Commissioner, Revenue, Haryana and Ors. 1982 PLJ 320, has held that a bare perusal of the provisions of Section 16, Punjab Land Revenue Act, 1887 would show that it confers plenary power on the Financial Commissioner and does not envisage any restrictions.

23. The above view taken by the learned Single Judge was approved by a Division Bench of the Punjab and Haryana High Court in Girwar v. Financial Commissioner, Haryana and Ors. 1996 PLJ 672. Distinguishing the ratio laid down by the Full Bench in Dhaunkal v. Man Kauri (supra), it was held by the Division Bench as under :?

As regards the contention of counsel for the Petitioner that the Financial Commissioner was not justified in interfering with the order of the Collector in revisional jurisdiction suffice it to say, the powers of the Financial Commissioner to call for, examine and revise the proceedings of Revenue Officers u/s 16 of 1887 Act are very wide. The judgment in Dhaunkal?s case (supra) cited by Petitioner?s counsel is with regard to the revisional powers of the Financial Commissioner under the Punjab Tenancy Act wherein the powers given to the Financial Commissioner are limited and akin to the powers of the High Court u/s 115 of the Code of Civil Procedure. However, there is no such constraint in exercise of revisional powers of the Financial Commissioner provided for u/s 16 of the 1887 Act. In Hari Singh v. Financial Commissioner, Revenue, Haryana and Ors. 1982 PLJ 320, a learned Judge of this Court has held that Section 16 of the

 

1887 Act confers plenary powers on the Financial Commissioner and while exercising such powers the Financial Commissioner is competent to go into question of fact and form his opinion on facts. Thus, this contention is devoid of any merit.

24. I am in respectful agreement with the ratio laid down by the learned Single Judge and the Division Bench of the Punjab and Haryana High Court in the above referred to cases.

25. Since the provisions contained in Section 17, H.P. Land Revenue Act, 1954 and Section 16, Punjab Land Revenue Act, 1887 are analogous, following the ratio laid down in Hari Singh v. Financial Commissioner (Revenue), Haryana (supra) and in Girwar v. Financial Commissioner, Haryana (supra), it is held that Section 17 of the H.P. Land Revenue Act, 1954, confers plenary powers on the Financial Commissioner and while exercising such powers the Financial Commissioner can and is competent to go into question of fact and form his opinion on facts.

26. The contention raised on behalf of the Petitioner is, therefore, devoid of force and accordingly rejected.

Contention (b)

27. There is no dispute that the Punjab Land Revenue Rules per taining to appointment, dismissal, removal etc. of the village Headman (Lambardar) are applicable to the State of Himachal Pradesh. Rule 15, which deals with the appointment of village Headman, provides:

In the first appointent of headman, regard shall be had, among other matters, to:

(a) his hereditary claims;

(b) extent of property in the estate possessed by the candidate;

(c) service rendered to the State by himself or by his family;

(d) his personal influence, character, ability and freedom from indebtedness;

(e) the strength and importance of the community from which selection of headman is to be made;

(f) service rendered by himself or by his family in the national movements to secure freedom of India.

28. In the case of ex-headman of an estate or sub-division thereof in the territory now comprising the State of Punjab, who had resigned or was dismissed on account of his participation in the National movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of Rule 16 and the ex-headman would be appointed in his place, if he has not rendered himself unfit for appointment for any reasons given in Rule 16 except imprisonment for a political

 

offence before 15th August, 1947. In case, the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headman if the resignation or dismisal had not intervened, would be appointed a headman. But where no such person exists, there would be no need to remove the existing Lambardar.

29. Rule 30-A further provides that in the case of Lambardars of ''Phatis'' in Kullu District the foregoing rules shall be read subject to modification that in their appointment, the considerations shall be those prescribed in clauses (b), (c) and (d) of Rule 15. In other words, the considerations prescribed in clauses (a), (e) and (f) shall not be applicable in respect of appointment of a Lambadar of a ''Phati'' in District Kullu.

30. Admittedly, the present case pertains to appointment of Lambardar of a ''Phati'', that is, Phati Gojra, Kothi Jagatsukh in Tehsil and District Kullu.

31. The Financial Commissioner in passing the impugned order dated 6.1.1996 (Annexure P5) and while setting aside the order dated 30.9.1993 (Annexure P3) of the Collector and the order dated 17.6.1994 (Annexure P4) of the Divisional Commissioner, has failed to notice and take into account the provisions contained in Rule 30-A of the Punjab Land Revenue Rules as applicable to the State of Himachal Pradesh.

32. The comparative suitability of the candidates was required to be adjudged only on the basis of consideration laid down in clauses (b), (c) and (d) of Rule 15 as per the provisions contained in Rule 30-A. Therefore, on the face of it the impugned order of the Financial Commissioner to the extent it is based on the considerations contained in Clause (e) of Rule 15 is concerned is bad and cannot be sustained.

33. One of the consideration as per Clause (b) of Rule 15 is the ''extent of property in the estate possessed by the candidate.''

34. The main intention and object of the consideration of extent of property owned/possession by a candidate is only to secure the land revenue.

It is not the intention and object that the person owning the largest chunk of land should be appointed.

35. It is in the order dated 30.9.1993 (Annexure P3) of the Collector that Respondent No. 3 Nokhu Ram owns 10 bighas of land in the estate, while the Petitioner Dharam Chand owns 8 bighas of land. It is in the order of the Collector that the petitioenr had acquired more land after the making of application by him for appointment as Lambardar. However, such additional land acquired by the Petitioner was not taken into account by the Collector while adjudging the comparative suitability of the Respondent No. 3 and the Petitioner. Since there was a very small difference the extent of property owned by the Petitioner and Respondent No. 3, this factor was not taken into account by the Collector while appointing the Petitioner as Lambardar. The Divisional Commissioner in his order

 

dated 17.6.1994 (Annexure P4) while agreeing with the Collector, has observed that the extent of property owned by both the candidates is almost equal, and that the landed property owned by the parties was sufficient to cover as security for land revenue. It was further observed that so long as the area of the land owned provides adequate security, the relative difference need not bother the appointing authority if all other considerations go in favour of a candidate.

36. Dealing with the same question, the Financial Commissioner in the impugned order (Annexure P5) has observed:

The contentions made on behalf of the Petitioner with regard to the extent of property tends to go in favour of the Petitioner though marginally. The extent of land owned by Shri Nokhu Ram is admittedly more than the Respondent No. 2, though the difference is not too much so as to call for any differentiation to be made on the sole ground of extent of property but taking into consideration the totality of relative merits of the contesting candidates as will be elucidated as the discussion proceeds further, the benefit or larger holding owned by Shri Nokhu Ram entitles him to the benefit of preference under this criteria.

37. After so observing the Financial Commissioner held the Respondent No. 3 Nokhu Ram to be a better and preferential candidate for the following reasons:

(a) he belongs to Rajput community which comprises 90% of the total population of the village. He, therfore, holds considerable influence across his relations and brotherhood within the community members. Whereas the Petitioner belongs to Brahmin community, which community alongwith schedule caste community comprises of only 10% of the total population of the village;

(b) The Petitioner had made false allegations against Respondent No. 3 during the proceedings regarding Respondent No. 3 being under debt. Such wrong allegations/statements manifestly show that the character of the Petitioner was not above board and, therefore, he was an irresponsible and untrustworthy person; and

(c) Respondent No. 3 is younger in age by about 10 years and therefore, capable of dischrging the duties of the Lambardar more efficiently, diligently and for a longer period.

38. The consideration with regard to the Respondent No. 3 belonging to a community consisting of 90% of the total population is concerned, the same falls under Clause (e) of Rule 15, which in view of the provisions contained in Rule 30-A could not have been taken into account for assessing the relative merits of the rival candidates.

39. The Financial Commissioner has erred in holding that the Petitioner was guilty of making false allegations/statements regarding the indebtedness of Respondent No. 3 and as such, he is an irresponsible and untrustworthy person. It is on record that Respondent No. 3 was indebted to Gojra Sehkari Samiti inasmuch as he had taken a loan therefrom and such loan had not been repaid

 

as on the date of the making of the application by him for appointment as a Lambardar. Such loan appears to have been repaid subsequently.

40. Insofar as personal influence is concerned, it is on the record as reflected in the orders of the Collector and the Divisional Commissioner that the Petitioner besides having remained as Vice-Chairman of Gojra Panchayat for a period of five years, he remained an elected member of the said Panchayat for about 10 years. In view of the positions held by him, the Petitioner was definitely holding much and greater personal influence in the village as compared to Respondent No. 3.

41. The Petitioner is having higher academic qualifications as compared to the Respondent No. 3. While the Respondent No. 3 has studied only upto Middle class, Petitioner is Rattan in Hindi and Paragya in Sanskrit. This aspect has been completely ignored by the Financial Commissioner.

42. For the foregoing reasons, the impugned order (Annexure P5) of the Financial Commissioner cannot be sustained and the same is liable to be set aside.

43. Resultantly, the present writ petition is allowed. The impugned order dated 6.1.1996 (Annexure P5) is set aside and the order dated 30.9.1993 (Annexure P3) of the Collector, Kullu, appointing the Petitioner as Lambardar is restored. Respondent No. 2 is directed to handover the charge of Lambardar to the Petitioner immediately. Respondent No. 2 shall further take full accounts of income derived by Respondent No. 3 while acting as Lambardar and to handover such accounts to the Petitioner. The outstanding amount, if any, shall be recovered from Respondent No. 3 by Respondent No. 2.

Parties are, however, left to bear their own costs.