

(2015) 05 SHI CK 0130
In the High Court Of Himachal Pradesh
Case No : CWP No. 2813 of 2013

Harish Chander and Others	Vs	APPELLANT
Financial Commissioner and Others		RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 217(2)(a), 226, 227
Industrial Disputes Act, 1947 — Section 7(3)(d)
Limitation Act, 1963 — Section 5
Registration Act, 1908 — Section 17

Citation : (2015) 05 SHI CK 0130

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Digvijay Singh, for the Appellant; V.K. Verma, Rupinder Singh, Additional Advocate Generals and Parul Negi, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—By medium of this writ petition, the petitioners have called in question the order passed by the Financial Commissioner (Appeals), whereby he accepted the appeal preferred by the private respondents and rejected the claim of the petitioners seeking correction of entries in revenue records.

The facts in brief may be noticed.

2. The predecessor-in-interest of the petitioners filed an application before the Assistant Collector IInd Grade, Sundernagar on 13.12.1987 stating that he was in possession of Khasra No. 441 and 442, kita 2 measuring 1116.0 Sq. meters situate in village Ropa since 1980 and therefore, his possession be recorded in the revenue record. The Assistant Collector IInd Grade vide his order dated 29.2.1988, ordered the correction of the revenue records w.e.f. Rabi Girdwari on

1988. This order was challenged by the private respondents before the Sub Divisional Commissioner, who upheld the same. In further challenge, even the Divisional Commissioner upheld this order, constraining the private respondents to approach the Financial Commissioner, who finally allowed the petition and quashed the orders passed by all the authorities below.

3. The petitioners have challenged this order as being based on assumptions and presumptions, conjectures and surmises. They have further averred that once the consideration amount of Rs. 10,000/- had been received by the predecessor-in-interest of the respondents and possession delivered to their predecessor-in-interest, then there was nothing wrong with the orders passed by the revenue authorities in ordering the entry of possession in favour of the petitioners in the revenue records.

4. The private respondents 2 to 6, who are the successors of Lal Man, have in their reply averred that in the year 1980 when an amount of Rs. 10,000/- is alleged to have been paid to their predecessor Lal Man by the predecessor-in-interest of the petitioners, then oral sales were not permissible and whereas under Section 17 of the Registration Act, the sale deed was compulsorily required to be registered since the value of the sale consideration was more than Rs. 100/-. It is also submitted that Lal Man at the relevant time had no right, title and interest or authority to sell the land as he was neither its owner nor in possession and the same at that time belonged to the Bhakra Beas Management Board. It is also contended that the A.C. IInd Grade had no power to record the statements of the parties and further had no jurisdiction to change the revenue entries on the basis of the impermissible oral sale.

5. I have heard the learned counsel for the parties and gone through the records of the case.

6. It would be seen from the records that the possession of the petitioners had been ordered to be recorded only on the basis of a statement alleged to have been made by Sh. Lal Man before the Assistant Collector IInd Grade on 19.2.1988 when the proceedings were infact pending before it. It is recorded therein that he had received Rs. 10,000/- from Sadhu, father of Mangat Ram as sale consideration and he therefore, had no objection in case the possession of Mangat Ram is recorded over the land in dispute.

7. Interestingly, this statement bears a thumb impression, whereas it has been proved on record that Sh. Lal Man was literate and therefore, there was no occasion for him to have put his thumb impression on the statement. The relevant portion of the statement reads thus:--

"That khata khatauni min 68/183, Khasra No. 441, 452, area 1116 sq. mt. has been given in "Bhai Bandi" to Shri Sadhu S/o. Sidhu, who are growing vegetables, they are not paying me any rent but they have given me Rs. 10,000/- in the shape of a sale, I owe them back the said money and at this juncture I do not possess the money to return them."

8. Apparently, this statement is absolutely vague and by no standards can be construed to be an agreement of sale. Above all, where was the necessity of recording such statement particularly when the predecessor-in-interest of the petitioners is alleged to have paid the entire sale consideration. Why he did not choose to file a suit for specific performance for having the agreement enforced? Why did he approach the revenue authorities instead of the Civil Court, is not forthcoming. After all any person who had paid the entire sale consideration would be more interested in getting the agreement enforced and claim title, rather than just seeking a mere paper entry regarding possession in the revenue record.

9. That apart, it has come on record that the land at the time when the statement was recorded was in fact vested with the BBMB and therefore, the statement of Sh. Lal Man was otherwise of no consequence.

10. Above all, what surprise me is the fact that though the order dated 29.2.1988 was itself under challenge initially before the Sub Divisional Collector and thereafter before the Divisional Commissioner himself, yet an officer that too of the rank of the Divisional Commissioner would still choose to rely upon the revenue entries which in turn were admittedly based upon the impugned orders itself that too by attaching presumption of truth to it in accordance with Section 45 of the H.P. Land Revenue Act, 1954 (for short "Act"). The relevant observation is extracted below:--

"I have considered the arguments put forth by the parties and have also gone through the record and law. It transpires from the record that as per statement of Sh. Lalman, predecessor-in-interest of the petitioners recorded by the AC IInd grade Sunder Nagar on 19.02.1988 has categorically stated that he had received Rs. 10,000/- from the predecessor in interest of the present respondents in the shape of sale of land and has admitted that the land under dispute is possessed by the present respondents. Record further shows that on this statement, the AC IInd Grade Sunder Nagar has passed the order on 29.02.1988 for correction of revenue entries on the patent facts prevailing on the spot for which he is competent to do. It is also on the record that after attestation of the mutation of correction it had been implemented in the subsequent Jamabandi of Muhal Ropa prepared in year 1988-89, 1993-94, 1998-99 and 2003-04. These entries incorporated in the above Jamabandis, have got presumption of truth in accordance with Section 45 of the H.P. Land Revenue Act, 1954. The petitioners could not establish their claim raised by them in the present revision. There is no illegalities or irregularities in the orders passed by both the courts below. Hence, the revision fails."

11. The aforesaid passage reflects complete ignorance and lack of legal knowledge of the Divisional Commissioner or else there was no occasion for him to have invoked the provisions of Section 45 of the Act when the order passed by the A.C. IInd Grade on 29.02.1988 on the sole basis of which the revenue entries had admittedly been ordered to be corrected was itself under challenge before

him.

12. It is in similar circumstances that a coordinate Bench of this Court (Justice Rajiv Sharma) in CMPMO No. 421 of 2014 titled Tara Chand and others versus Virender Singh and another, decided on 19.03.2015, was constrained to make the following observations:

"13 This Court is of the considered view that the Assistant Collector or Collector, Commissioner and Financial Commissioner (Appeals), must have the requisite legal background to adjudicate the matters under the H.P. Land Revenue Act, 1953. They determine the valuable rights of the parties. The quasi judicial authorities are also required to take notice of the facts and thereafter to apply the law. The adjudication by the revenue authorities has certain trappings of the Court as well.

14. Their lordships of the Hon"ble Supreme Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, AIR 1967 SC 1494 : (1967) CriLJ 1380(1) : (1967) 3 SCR 163 , have held that the Assistant Registrar discharging functions of Registrar under S. 48 read with S. 6 (2) of Bihar and Orissa Co-operative Societies Act is a Court. Their lordships have held as under:

"11. It will be noted from the above that the jurisdiction of the ordinary civil and revenue courts of the land is ousted under s. 57 L4 Sup. CI/67-12 of the Act in case of disputes which fell under S. 48. A Registrar exercising powers under S. 48 must therefore be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue courts of the land. The Registrar has not merely the trappings of a court but in many respects he is given the same powers as are given to ordinary civil courts of the land by the Code of Civil Procedure including the power to summon and; examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own, order and even exercise the inherent jurisdiction of courts mentioned in s. 151 of the Code of Civil Procedure. In such -a case, there is no difficulty in holding that in adjudicating upon a dispute referred under s. 48 of the Act, the Registrar is to all intents and purposes a court discharging the same functions and, duties in the same manner as a court of law is expected to do.

20. It was sought to be argued that a reference of a dispute had to be filed before the Registrar and under sub-s. 2(b) of s. 48 the Registrar transferred it for disposal to the Assistant Registrar and therefore his position was the same as that of a nominee under the Bombay Cooperative Societies Act. We do not think that contention is sound merely because sub-s. (2)(c) of s. 48 authorises the Registrar to refer a dispute for disposal of an arbitrator or arbitrators. This procedure was however not adopted in this case and we need not pause to consider what would have been the effect if the matter had been so transferred. The Assistant Registrar had all the powers of a Registrar in this case as noted in the delegation and he was competent to dispose of it in the same manner as the

Registrar would have done. It is interesting to note that under r. 68 sub-r. (10) of the Bihar and Orissa Cooperative Societies Rules, 1959 :

"In proceedings before the Registrar or arbitrator a party may be represented by a legal practitioner."

In conclusion, therefore, we must hold that the Assistant Registrar was functioning as a court in deciding the dispute between the bank and the appellant and Jagannath Jha."

15. Their lordships of the Hon''ble Supreme Court in the case of Union of India (UOI) Vs. R. Gandhi, President, Madras Bar Association, (2010) 2 CompLJ 577 : (2010) 3 CTC 517 : (2010) 5 JT 553(1) : (2010) 5 SCALE 514 : (2010) 100 SCL 142 : (2010) 6 UJ 2945 : (2010) AIRSCW 6077 : (2010) 7 Supreme 226 , have held that so far as technical members are concerned, mere experience in civil service, is not enough and to be technical members of tribunals, persons concerned should be persons with expertise in the area of law concerned or allied subjects and mere experience in civil service cannot be treated as technical expertise in the area of law concerned. Their lordships have further held that the rule of law can be meaningful only if there is an independent and impartial judiciary to render justice. An independent judiciary can exist only when persons with competence, ability and independence with impeccable character man the judicial institutions. Their lordships have held as under:

"106. We may summarize the position as follows:

(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for "Tribunals", there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.

(d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For

example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive.

108. The Legislature is presumed not to legislate contrary to rule of law and therefore know that where disputes are to be adjudicated by a Judicial Body other than Courts, its standards should approximately be the same as to what is expected of main stream Judiciary. Rule of law can be meaningful only if there is an independent and impartial judiciary to render justice. An independent judiciary can exist only when persons with competence, ability and independence with impeccable character man the judicial institutions. When the legislature proposes to substitute a Tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the Judicial Members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which are apart from a basic degree in law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as Technical members."

16. In the case of State of Gujarat and Another Vs. Gujarat Revenue Tribunal Bar Association and Another, AIR 2013 SC 107 : (2013) 288 ELT 3 : (2012) 10 JT 422 : (2012) 10 SCALE 285 : (2012) 10 SCC 353 : (2013) 1 SCC(L&S) 56 , their lordships of the Hon"ble Supreme Court have held that where there is a lis between the two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act; (b) the order of such authority would adversely affect the subject; and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the such authority is a quasi judicial decision. Their lordships have held as under:

"18. Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialized adjudication alongside the courts. Therefore, a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic

administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a "court", but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.

21. The present case is also required to be examined in the context of Article 227 of the Constitution of India, with specific reference to the 42nd Constitutional Amendment Act 1976, where the expression "court" stood by itself, and not in juxtaposition with the other expression used therein, namely, "Tribunal". The power of the High Court of judicial superintendence over the Tribunals, under the amended Article 227 stood obliterated. By way of the amendment in the sub article, the words, "and Tribunals" stood deleted and the words "subject to its appellate jurisdiction" have been substituted after the words, "all courts". In other words, this amendment purports to take away the High Court's power of superintendence over Tribunals. Moreover, the High Court's power has been restricted to have judicial superintendence only over judgments of inferior courts, i.e. judgments in cases where against the same, appeal or revision lies with the High Court. A question does arise as regards whether the expression "courts" as it appears in the amended Article 227, is confined only to the regular civil or criminal courts that have been constituted under the hierarchy of courts and whether all Tribunals have in fact been excluded from the purview of the High Court's superintendence. Undoubtedly, all courts are Tribunals but all Tribunals are not courts.

22. The High Court's power of judicial superintendence, even under the amended provisions of Article 227 is applicable, provided that two conditions are fulfilled; firstly, such Tribunal, body or authority must perform judicial functions of rendering definitive judgments having finality, which bind the parties in respect of their rights, in the exercise of the sovereign judicial power transferred to it by the State, and secondly such Tribunal, body or authority should be the subject to the High Court's appellate or revisional jurisdiction.

23. In *S.P. Sampath Kumar and Others (II) Vs. Union of India (UOI) and Others*, (1987) 54 FLR 310 : (1987) 2 JT 626 : (1987) 1 SCC 734 Supp : (1987) SCC 734 Supp , this Court held that, in the Central Administrative Tribunal (hereinafter referred to as the "CAT"), the presence of a judicial member was in fact a requirement of fair procedure of law, and that the administrative Tribunal must be presided over in such a manner, so as to inspire confidence in the minds

of the people, to the effect that it is highly competent and an expert body, with judicial approach and objectivity and, thus, this Court held that the persons who preside over the CAT, which is intended to supplant the High Court must have adequate legal training and experience. This Court further observed that it was desirable that a high- powered committee, headed by a sitting Judge of the Supreme Court who has been nominated by the Chief Justice of India to be its Chairman, should select the persons who preside over the CAT, to ensure the selection of proper and competent people to the office of trust and help to build up its reputation and accountability. The Tribunal should consist of one Judicial Member and one Administrative Member on any Bench.

24. In *L. Chandra Kumar Vs. Union of India and others*, AIR 1997 SC 1125 : (1997) 83 CLT 815 : (1997) 92 ELT 318 : (1997) 228 ITR 725 : (1997) 3 JT 589 : (1997) 3 SCALE 40 : (1997) 3 SCC 261 : (1997) SCC(L&S) 577 : (1997) 2 SCR 1186 : (1997) 105 STC 618 : (1997) AIRSCW 1345 : (1997) 3 Supreme 147 , this Court held that the power of judicial review of the High Court under Article 226 of the Constitution of India, being a basic feature of the Constitution cannot be excluded. In this context, the Court held:

"88....It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself....."

The Court further observed that the creation of this Tribunal is founded on the premise that, specialised bodies comprising of both, well trained administrative members and those with judicial experience, would by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. The contention that the said Tribunal should consist only of a judicial member was rejected, and it was held that such a direction would attack the primary grounds of the theory, pursuant to which such Tribunals were constituted.

25. In *V.K. Majotra Vs. Union of India (UOI) and Another*, AIR 2003 SC 3909 : (2003) 2 JT 137 Supp : (2003) 7 SCALE 297 : (2003) 8 SCC 40 : (2003) SCC(L&S) 1202 : (2003) 3 SCR 483 Supp : (2003) 2 UJ 1473 : (2003) AIRSCW 4504 : (2003) 6 Supreme 943 , this Court reversed the judgment of the Allahabad High Court wherein, direction had been issued that the Vice Chairman of the CAT could be only a retired Judge of the High Court, i.e., a Judicial Member and that such a post could not be held by a Member of the Administrative Service, observing that such a direction had put at naught/obliterated from the statute book, certain provisions without striking them down.

26. A Constitution Bench of this Court in *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, AIR 1968 SC 1495 : (1969) 18 FLR 100 : (1968) LabIC 1525 : (1968) 3 SCR 614 , examined the provisions of Sections 7(3)(d) and g(1) of the Industrial Disputes Act, 1947, which contain the expression "judicial office", and held that a person holds "judicial office" if he is performing judicial functions. The scheme of Chapters V and VI of the Constitution deal with judicial office and

judicial service. Judicial service means a separation of the judiciary from the executive in public services. The functions of the labour court are of great public importance and are quasi-judicial in nature, therefore, a man having experience of the civil side of the law is more suitable to preside over it, as compared to a person working on the criminal side. Persons employed performing multifarious duties and, in addition, performing some judicial functions, may not truly fulfil the requirement of the statute. Judicial office thus means, a fixed position for the performance of duties, which are primarily judicial in nature.

27. In *Shri Kumar Padma Prasad Vs. Union of India and others*, AIR 1992 SC 1213 : (1992) 2 JT 247 : (1993) 2 LLJ 972 : (1992) 1 SCALE 581 : (1992) 2 SCC 428 : (1992) 2 SCR 109 : (1992) 2 SLJ 115 : (1992) 1 UJ 639 , this Court held that the expression, "judicial office" in the generic sense, may include a wide variety of offices which are connected with the administration of justice in one way or another. The holder of a judicial office under Article 217(2)(a), means a person who exercises only judicial functions, determines cases inter- se parties and renders decisions in purely judicial capacity. He must belong to the judicial services which is a class in itself, is free from executive control, and is disciplined to hold the dignity, integrity and independence of the judiciary. The Court held that "judicial office" means a subsisting office with a substantive position, which has an existence independence from its holder.

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33. During the course of arguments before the High Court, learned Additional Advocate General had conceded that the judgments and orders passed by the Tribunal can be challenged under Article 227 of the Constitution. Thus, it has been conceded before the High Court that the High Court has supervisory control over the Tribunal, to the extent that it can revise and correct the judgments and orders passed by it. In such a fact-situation, the consultation/concurrence of the High Court, in the matter of making the appointment of the President of the Tribunal is required.

34. The object of consultation is to render the consultation meaningful to serve the intended purpose. It requires the meeting of minds between the parties involved in the process of consultation on the basis of material facts and points, to evolve a correct or at least satisfactory solution. If the power can be exercised only after consultation, consultation must be conscious, effective, meaningful and purposeful. It means that the party must disclose all the facts to other party for due deliberation. The consultee must express his opinion after full consideration of the matter upon the relevant facts and quintessence."

17. In the case of *Satya Pal Anand Vs. State of M.P. and Another*, AIR 2014 SC 2361 : (2014) AIRSCW 3032 : (2014) 8 JT 154 : (2014) 6 SCALE 761 : (2014) 7 SCC 244 , their lordships of the Hon"ble Supreme Court have held that the Registrars, Joint Registrars of the Co-operative Societies and other officials discharging quasi-judicial functions are supposed to be conscious of competing

rights and decide issues justly, fairly and by legally sustainable orders. The State Government was directed to appoint suitable persons as Registrars, Joint Registrars, etc. commensurate with the functions exercised under scheme of State Cooperative Societies Act. Their lordships have held as under:

"20. Having determined the question raised, we would like to emphasize the need for appointment of suitable persons not only as Registrar, Joint Registrar etc. but as Chairman and members of the tribunal as well. While discharging quasi-judicial functions Registrar, Joint Registrars etc. have to keep in mind that they have to be independent in their functioning. They are also expected to acquire necessary expertise to effectively deal with the disputes coming before them. They are supposed to be conscious of competing rights in order to decide the case justly and fairly and to pass the orders which are legally sustainable.

21. In this behalf, we would like to refer to judgment dated 3.9.2013 passed in the Review Petition (C) No. 2309/2012 (Namt Sharma case). In that case, one unfortunate feature that was noted was that experience over the years has shown that the orders passed by Information Commissions have, at times, gone beyond the provisions of the Right to Information Act and that Information Commissions have not been able to harmonise the conflicting interests indicated in the preamble and other provisions of the Act. The reasons for this experience about the functioning of the Information Commissions could be either that the persons who do not answer the criteria mentioned in Sections 12(5) and 15(5) have been appointed as Chief Information Commissioner or that the persons appointed even when they answer the aforesaid criteria, they do not have the required mind to balance the interests indicated in the Act. It was therefore insisted that experienced suitable persons should be appointed who are able to perform their functions efficiently and effectively. In this behalf certain directions were given and one of the directions was that while making recommendation for appointment of CIC and Information Commissioners the Selection Committee must mention against name of each candidate recommended the facts to indicate his eminence in public life (which is the requirement of the provision of that Act), his knowledge and experience in the particular field and these facts must be accessible to the citizens as part of their right to information under that Act, after the appointment is made.

22. Taking clue from the aforesaid directions, and having gone through the similar dismal state of affairs expressed by the petitioner in the instant petition about the functioning of the cooperative societies, we direct that the State Government shall, keeping in mind the objective of the Act, the functions which the Registrar, Joint Registrar etc. are required to perform and commensurate with those, appointment of suitable persons shall be made. Likewise, having regard to the fact that the Chairman of the Tribunal is to be a judicial person, namely, Former Judge of the High Court or the District Judge, we are of the opinion that for appointment of the Chairman and the Members of the Tribunal, the respondent- State is duty bound to keep in mind and follow the mandate of

the Constitution Bench judgment of this Court in *R. Gandhi (supra)*. Thus, for appointment of the Chairman and Members of the Tribunal, the selection to these posts should preferably be made by the Public Service Commission in consultation with the High Court."

18. In the case of *Mamuda Khateen and Others Vs. Beniyan Bibi and Others*, AIR 1976 Cal 415 : 81 CWN 111, the Full Bench has held that where an appeal is barred by limitation and an application is made under Section 5 of the Limitation Act for condonation of delay alongwith the memorandum of appeal, until the application under Section 5 of the Limitation Act is allowed, the appeal cannot be finally allowed or admitted. It has been held as follows:

"7. It seems to us that when an appeal is barred by limitation and an application is made under Section 5 of the Limitation Act for condonation of the delay along with the memorandum of appeal, until the application under Section 5 is allowed the appeal cannot be filed or admitted at all. In other words, till a favourable order is made on the application under Section 5 the appeal is non est. In that event, the question of rejecting a memorandum of appeal does not arise at all at this stage."

22. It is reiterated that the functions discharged by the revenue authorities under the H.P. Land Revenue Act, 1953 are quasi-judicial in nature. They determine the lis between the parties. Their decision is binding upon the parties subject to appeal. The orders passed by the appellate authority are open to supervision under Article 226 and 227 of the Constitution of India. Under the scheme of the H.P. Land Revenue Act, 1953, in certain contingencies the revenue authorities can convert themselves into Courts and their orders are to be treated as decrees."

13. The very object of Constitution of Revenue Courts in the scheme of administration of justice was to provide an additional and speedy forum. It is, therefore, of uttermost importance to ensure that the revenue authorities work in a proper, effective and efficacious manner while exercising their power to hear and dispose of quasi-judicial matters of appeal, revision etc. which require some basic knowledge of law. While making decisions, the Revenue Courts must not lack judicious approach.

14. The Revenue Courts make decisions about fundamental issues which affect the rights of the parties and are treated as final unless challenged. It is, therefore, very critical that the Revenue Courts make fair decisions and must possess some basic knowledge of law as they have a sacrosanct duty to administer justice.

15. The Revenue Courts are conferred with the discretion to adjudicate upon quasi-judicial matters and such discretion is governed by the maxim "*discretio est discernere per legem quid sit justum* (discretion consists in knowing what is just in law). Discretion in general is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to

judge critically of what is correct and proper united with caution, to discern between falsity and truth, between shadow and substance, between equity and colourable glosses and pretences and not to do according to the will and private affections or ill-will. It has to be done according to the rules of reasons and justice, not according to private opinion. It has to be done according to law and not humour. It is not to be arbitrary vague and fanciful but legal and regular.

16. Reverting back to the facts, the Financial Commissioner has rightly concluded that the basic question regarding borrowing of Rs. 10,000/- and putting the predecessor-in-interest of the petitioners in possession over the land temporarily, even if taken to be correct, cannot be equated with acquiring of right or interest, which otherwise was required to be established before a competent Court, that too after leading evidence to this effect.

17. In view of the aforesaid discussion, I find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs.