(2009) 11 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Harpal Singh (Dead) through his L.Rs. Sumit Singh and Ravel Singh and Others — APPELLANT

Vs

Financial Commisioner (Appeals) and Others — RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:
Punjab Tenancy Act, 1887 — Section 82

Citation : (2010) 157 PLR 289 : (2010) 1 RCR(Civil) 396

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—The matrix of the facts culminating in the commencement, relevant for disposal, of present writ petition and emanating from the record of the case is that the surplus area case of big landowners Harpal Singh and Harjit Kaur (deceased) was originally determined by the Collector on 29.1.1960 (Annexure PI). The surplus area was allotted by the then Collector Agrarian vide order dated 14.8.1974 (Annexure P3). Thereafter, by an order dated 4.5.1977, the Collector recommended to the Commissioner, Jalandhar Division, for permitting him to review the allotment order dated 14.8.1974 (Annexure P3), so that the khasra numbers already purchased by the tenants and included in the tenants'' permissible area were allowed to be retained by the tenants. Reference was declined by the Commissioner vide order dated 31.8.1977.

2. However, the revision petition filed by Harpal Singh and Ors. was accepted by the Financial Commissioner and the matter was remanded back to the Commissioner for thorough examination before passing the fresh order vide order dated 5.4.1983 (Annexure P4), but the Commissioner again declined the reference vide order dated 13.8.1984 (Annexure P6).

3. Petitioners again filed revision petition against the order (Annexure P6) before the Financial Commissioner, but the same was dismissed on the ground that it was not maintainable vide impugned order dated 8.8.1990 (Annexure P7), the

operative part of which is in the following manner:

I have heard the ld. Counsels for the parties and perused the record. The ld. Commissioner, Jalandhar, by his order dated 13.8.1984, has refused to give permission to the Collector to review the orders of his predecessor. u/s 82 of the Punjab Tenancy Act, 1887 it has been specifically provided that no appeal shall lie from an order refusing to review or confirming on review a previous order. In view of this the revision petition is not maintainable and is dismissed on this short ground.

4. The review petition (Annexure P8) filed by the petitioners was also dismissed by the Financial Commissioner vide impugned order dated 5.11.1990 (Annexure P9).

5. The petitioners did not feel satisfied with the impugned orders (Annexures P7 and P9) and filed the present writ petition. That is how I am seized of the matter.

6. At the very out set, it will not be out of place to mention here that the objection of maintainability of the revision petition was also raised in the earlier revision petition between the parties decided vide order (Annexure P4), which was repelled by the Financial Commissioner in the following manner:

As regard the contention of learned Counsel for respondent No. 7 that the revision is not competent against an order refusing to grant permission, this plea is not based on any provision of law. Section 82(3) of the Punjab Tenancy Act, 1887, which is applicable to the Punjab Land Reforms Act, 1972 by virtue of Section 18 of the latter Act provides that an appeal shall not lie from the order refusing to review, or confirming on review, a previous order. However, Section 84 of the Punjab Tenancy Act, 1887 which is also read with Section 18 of the Act, 1972 provides that the Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer or Revenue Court subordinate to him and shall pass an appropriate order. Thus it is clear that an appeal is of course not maintainable against an order refusing to review, or confirming on review, a previous order; but the Financial Commissioner cannot be said to be not competent to revise such an order.

In view of the above discussion, I accept the revision petition, set-aside the order dated 31.8.1977 of the Commissioner, Jullundur Divn. and remand the case to him for thorough examination before passing a fresh order. As regards the contentions of the Naib Tehsildar Agrarian, the Commissioner shall take all the submissions made by him on behalf of the State into consideration and shall also consider in detail, all other points to be raised by the parties before him.

7. Having heard the learned Counsel for the parties, having gone through the record of the case with their valuable help and after considering the matter deeply, to me, as the impugned orders (Annexures P7 and P9) cannot legally be maintained, therefore, the present writ petition deserves to be accepted, for the reasons mentioned here-in-below.

8. As indicated earlier, the Financial Commissioner vide impugned order (Annexure P7) has dismissed the revision petition mainly on the ground that "no appeal shall lie from an order refusing to review or confirming on review-a previous order. In view of this the revision petition is not maintainable and is dismissed on this short ground."

9. Here, to my mind, the Financial Commissioner fell in grave error in this respect. Because according to Section 18 of the Punjab Land Reforms Act, 1972 (hereinafter to be referred as "the Reforms Act"), the provisions 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 arid 84 of the Punjab Tenancy Act, 1887 (hereinafter to be referred as "the Tenancy Act"). Section 80 deals with the appeals. Likewise, Section 82 postulates that "a Revenue Officer, as such, may either of own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by Himself or by any of predecessors in office, subject to the limitation contained in proviso to this Section." According to Section 82 (3), an appeal shall not lie from an order refusing to review, or confirming on review, a previous order.

10. Sequelly, Section 84 of the Tenancy Act posits that "the Financial Commissioner may at any time call for the record of any case pending before or, disposed of by any Revenue Officer or Revenue Court subordinate to him and 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 opinion that it is expedient to interfere with the proceedings or the order or decree, it shall pass an order accordingly."

11. Meaning thereby, Section 82 authorizes any Revenue Officer to review his or any order passed by his predecessors in office. No doubt, according to Sub-section (3) of this section, an appeal shall not lie from an order refusing to review, or confirming on review, a previous order by Revenue Officer. Be that as it may, but that does not preclude the Financial Commissioner in any manner to exercise his revisional power as contemplated u/s 84 of the Tenancy Act. Such revisional powers of the Financial Commissioner conferred by Section 84 of the Tenancy Act are entirely distinct, independent, not subject to and cannot legally be curtailed in view of power of review by any Revenue Officer u/s 82 (3) of the Tenancy Act. As stated above, a similar objection was raised in earlier revision petition between the parties decided by the Financial Commissioner vide order (Annexure P4), which was repelled with the observation that an appeal is of course not maintainable against an order refusing to review, or confirming on review, a previous order but the Financial Commissioner cannot be said to be not competent to revise such order" and the revision petition was accepted.

12. In this view of the matter and legal position under sections 82 and 84 of the Tenancy Act, it cannot possibly be saith that the Financial Commissioner did not have the jurisdiction to entertain the revision petition as has been held by him in the impugned order (Annexure P7). Consequently, it is held that the revision

petition against the impugned order dated 13.8.1984 (Annexure P6) was very much maintainable before the Financial Commissioner as envisaged u/s 84 of the Tenancy Act. Once it is so held, then impugned order of review (Annexure P9) cannot also be maintained in this manner on the same analogy as discussed here-in-above.

13. In this view of the matter and for the reasons recorded above, the present writ petition is accepted and the impugned orders (Annexures P7 and P9) are hereby set aside. The matter is remitted back to the Financial Commissioner for deciding the revision petition on merits afresh in accordance with law within six months positively.

14. The parties through their counsel are directed to appear before the concerned Financial Commissioner on 22.12.2009.