
(1993) 04 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 19 of 1984

Hira Singh

APPELLANT

Vs

Financial Commissioner and Others

RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

Constitution of India, 1950 — Article 111, 226
Himachal Pradesh Nautor Land Rules, 1968 — Rule 16, 18, 19, 29, 30

Citation : (1993) 2 ShimLC 196

Hon'ble Judges : Lokeshwar Singh Panta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Anand Sharma, for Chhabil Dass, for the Appellant; G.D. Verma, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—In this writ petition under Article 226 read with Article 111 of the Constitution of India, the Petitioner has sought direction for quashing orders Annexure-PB dated 22nd July, 1983 and Annexure-PC dated 24th December, 1983, passed by Financial Commissioner (Appeals), Himachal Pradesh.

2. Under the Himachal Pradesh Nautor Land Rules, 1965, an application was made by the Petitioner for grant of 71 Bighas 10 Biswas of land, comprised in Khasra No. 438, situate in Village Rukhla, Tehsil Kotkhai, District Shimla. The Deputy Commissioner, of the then Mahasu District, on 10th April, 1967 dismissed the said application. The Petitioner's appeal was dismissed by the Divisional Commissioner on 29th June, 1967. On further appeal to the Financial Commissioner, an order was made on 26th March, 1969 by Financial Commissioner, Himachal Pradesh, granting 18 Bighas 15 Biswas of land by way of Nautor On 3rd September, 1969 "Patta" was issued in his favour and he was put in possession of the land. Feeling aggrieved some of the estate right holders preferred a review petition before (be Financial Commissioner. On 31st October, 1972, while allowing the review petition, the grant made in Petitioner's favour

was set aside and "Paita" was cancelled. The ground for allowing the review petition of the objector and setting aside the order of grant was that Petitioner was already in possession of 20 Bighas of land and nautor land, if allowed, would adversely affect the bridle path located in the area granted.

3. The Petitioner challenged this order passed by the Financial Commissioner by filing Civil Writ Petition No. 155 of 1972 in this Court. The Division Bench of this Court on 6th December, 1978 allowed the Petitioner's writ petition and set aside the order passed by the Financial Commissioner. This decision was rendered after the Court followed the judgment in *Percy Chauhan v. State of Himachal Pradesh and Anr.* ILR 1979 H.P. 35 holding that if review or revisional power are exercised suo motu by the Financial Commissioner and if in the meanwhile PATTA was granted under Rule 18 of the H.P. Nautor Land Rules, 1968 then that Patta could be set aside only through the process of arbitration, as contemplated by Clause (9) of the PATTA, which is granted in the case of horticultural purposes. Consequently, the Court observed that if in the opinion of the Government any dispute exists between the parties on the question whether the order of grant was proper or not the matter can be referred only to arbitration as per Clause (9) of the PATTA and cannot be challenged in appeal, review or revision.

4. In view of the decision of the Division Bench dated 6th December, 1978 in the writ petition filed by the Petitioner (Copy Annexure-PA), the matter was under consideration of the Government on the question for cancellation of the grant, for which purpose, as per the direction of this Court the matter had to be referred to arbitration. In the meanwhile, the decision in *Percy Chauhan's case (supra)* was reversed by Full Bench case in *Mangheru etc. v. The State of H.P. and Ors. etc.* AIR 4982 H.P. 1.

5. Pursuant to the directions of this Court the Petitioner's case was sent to the Secretary (Law) for the purpose of arbitration but in view of the decision of the Full Bench in *Mangheru's case (supra)* the file was sent back to the Financial Commissioner (Appeals), Himachal Pradesh, with the observations that in view of the reversal of the judgment in *Percy Chauhan's case (supra)* it was within the competence of the Financial Commissioner now to pass suitable order in the matter and consequently the case came up before the Financial Commissioner (Appeal), Himachal Pradesh, who through his order Annexure-PB over ruled the Petitioner's objection about the jurisdiction to hear and decide the case afresh and ultimately Through order Annexure-PC proceeded to cancel the grant, holding that the Petitioner held more than 20 Bighas of land and he could not be allowed any grant under the Nautor Rules. It is this order which is under challenge in this writ petition.

6. The primary and sole ground for challenging the impugned order is that the judgment dated 6th December, 1978 rendered in C.W.P. No. 155 of 1972 had become final and conclusive and the State Government was bound to comply with the same by referring the dispute to Arbitration; Financial Commissioner has no jurisdiction to make any order of cancellation. The order having been passed

by the Financial Commissioner having no jurisdiction and no orders had been passed appointing an Arbitrator, the grant in favour of the Petitioner still subsists.

7. The Respondents have contested the writ petition. It is contended that the judgment of this Court in C.W.P. No. 155 of 1972 was based on Percy Chauhan's case (supra), which had been over ruled by Full Bench in Mangheru's case (supra) before the matter could be decided through arbitration. Consequently the Financial Commissioner proceeded to take decision in the case in view of the law laid down by the Full Bench in Mangheru's case, which in fact is binding on the parties.

8. The estate right holders have filed reply on the affidavit of Jit Ram, who while supporting the stand of State have contested the writ petition on merits also, by contending that the Petitioner had more than 20 Bighas of land and he was not eligible for seeking any further award. Before the Financial Commissioner, there was sufficient material adduced to the extent that the Petitioner's holding was 21 Bighas 16 Biswas and in addition he was also in occupation of 2 Bighas 18 Biswas of land as on the date of grant. The Financial Commissioner, as a matter of fact, found that the Petitioner had concealed material facts and obtained the award by false representation and as such there was no equity in Petitioner's favour.

9. We have heard learned Counsel for the Petitioner and Shri G.D. Verma, learned Additional Advocate General, appearing for Respondents No. 1 and 2.

10. It has been contended by Shri Anand Sharma that decision of this Court dated 6th December, 1978 operates as res judicata between the parties and the Financial Commissioner was bound by the same. Even if a decision is erroneous in fact or in law, the same is binding unless the same is got set aside and the Financial Commissioner was bound to follow the direction of this Court made on 6th December, 1978 and he could not go behind the decision. In support of his submissions he has placed reliance upon *Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Halder*, *S.M. Narayana Ayyangar v. S.P.R. vi. Subramanian Chettiar and Ors.* AIR 1937 Mad 254, *Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others*, *Sadhu Charan Mohanty and Another Vs. H. Naik, Official Liquidator, Puri Bank Ltd., and State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others*, .

11. There is no doubt and the proposition of law is not capable of dispute that even a wrong decision by Court has as much binding force between the parties as a right one and the same can be superseded or over ruled only by having resort to appeals to higher authorities either by way of appeal, revision or review. The question whether the decision is correct or erroneous has no bearing on the question whether or not it does operate as res judicata, otherwise, every decision would be impugned as erroneous and there would be no finality.

12. It is also equally true that the matter in issue, if it is one purely of fact, decided in the earlier proceedings by a competent Court, must in a subsequent

litigation between the same parties, be regarded as finally decided and cannot be reopened or reagitated. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reasons, be questioned in the subsequent proceedings between the same parties. Even a decision on a question of law given in a previous execution case between the parties would be binding on them, even if it was erroneous. (See: Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others,

13. The position, however, would be different when the question is one purely of law and it relates to the jurisdiction of the Court. In Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, the Court held that where on a question of law when it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of *res judicata* a party affected by the decision will not be precluded from challenging the validity of that order under the rule of *res judicata*.

14. This proposition of law in Mathura Prasad Sarjoo Jaiswal's case (*supra*) was propounded on the principle that rule or procedure cannot supersede the law of the land. The decision of Mathura Prasad Sarjoo Jaiswal's case (*supra*) was followed in Jaisingh Jairam Tyagi and Others Vs. Mamanchand Ratilal Agarwal and Others, and following proposition in Mathura Prasad Sarjoo Jaiswal's case (*supra*) was followed:

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as *res judicata*. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as *res judicata* between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

15. In the instant case, the Division Bench decided Petitioner's writ petition on 6th December, 1978, through order Annexure-PA by following the ratio in Percy Chauhan's case (*supra*) holding that if review or revisional powers are exercised *sua motu* and if in the meanwhile the PATTA is granted, the same could be set aside only through the process of arbitration. The Court did not proceed further on merits except by sending the case to the Government, in order to have resort to the arbitration proceedings, since as per Percy Chauhan's case arbitration was the only mode by which order of grant could be cancelled. Before the arbitration proceedings could be commenced or any decision could be taken, Percy Chauhan's case (*supra*) stood overruled by the decision of the Full Bench in Mangheru's case (*supra*). The Full Bench in para 30 of its report held:

We do not, therefore, agree with the Division Bench that condition No. 7 of the PATTA "is wide enough to cover even those cases where, in exercise of *suo motu* powers of revision and review, the grant is terminated or is proposed to be

terminated on the ground that the order passed by the Revenue Assistant under Rule 16 was bad " We also do not agree the with Division Bench that after the order of grant has been set aside in exercise of the suo motu powers conferred by Rules 29 and 30 and if the Government thereafter was to resume the land then the only remedy with the Government is to revoke the arbitration Clause and get the decision of the Arbitrator. This indeed would be making the Arbitrator sit on the judgment passed by the competent authorities under the Rules. Neither there is any express provision in the Rules nor do we find any intendment in condition No. 7 of the Patta that the Arbitrator is clothed with the powers of sitting on judgment or orders passed by the authorities under Rules 29 and 30. As, already discussed, the conditions of the Patta have to be subject to the provisions of the Rules (Rule 19).

16. This decision of the Full Bench is a decision purely of law relating to jurisdiction of the authorities under the Nautor Land Rules. The question was whether the grant and the Patta could be cancelled and set; aside by the authorities by having resort to the provisions of the Rules in appeal, revision or review or only by reference to the Arbitration, The Full Bench held that the exercise of suo motu power of review and revision after grant of patta was not subject to condition in patta providing for reference of dispute to arbitration.

17. This law propounded by Full Bench will be deemed to be the law existing on the day when matter came to be decided by the Financial Commissioner In view of the ratio in Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, the Financial Commissioner was not precluded from following the Full Bench decision on the question of his jurisdiction to consider the legality or the validity of grant. In Mathura Prasad Sarjoo Jaiswal's case it was clearly laid down that the rule or procedure cannot supersede the law of the land and since the decision in Mangheru's case (supra) was the law of land the Financial Commissioner was bound to follow the same.

18. In this view of the matter, we do not find any force in the submissions made by the learned Counsel for the Petitioner.

19. On merits of the case also we find the Petitioner was found to be having more than 20 Bighas of land in possession when he made an application for grant. He was not entitled to any grant. Thus there is no merit in his case for being allowed to retain the said piece of land granted to him. No other point was urged or agitated.

20. Consequently, we dismiss the writ petition leaving the parties to bear their respective costs.

21. Interim stay is vacated.