(1996) 05 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : C.M.P. (M) No. 181 of 1993

Hira Singh Thakur APPELLANT

Vs

Bali Ram and Others RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 115
Constitution of India, 1950 — Article 227
Himachal Pradesh Land Revenue Act, 1954 — Section 17
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104

Citation : (1996) 2 ShimLC 299

Hon'ble Judges : A.L. Vaidya, J

Bench : Single Bench

Advocate : Gian Chand Gupta, for the Appellant; K.D. Sood, for Respondents No. 1 and 2 and Shyama Dogra, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.L. Vaidya, J.—Through the present petition under Article 227 of the Constitution of India, the Petitioner has prayed for quashing of the order dated 6th April, 1993 passed by the Financial Commissioner (Revenue and Appeals) Himachal Pradesh, Shimla. The said order runs as under:

6-4-1993. In this case Settlement Officer Shimla District is directed to inspect the spot personally in the presence of the parties and-to send his report to this Court before 29th June, 1993 that who is in actual cultivating possession of land Khasra No. 232/ 210 (old) area measuring 5.13 Bighas. Case to come up for hearing on 29th June, 1993.

2. The facts giving rise to the present proceedings are that the proprietary rights of the land under reference were granted in favour of the Petitioner and Respondent No. 4 u/s 104 of the H.P. Tenancy and Land Reforms Act, and in this behalf mutation was sanctioned in the year 1988 (Annexure P-I). Present Respondents 1 and 2 preferred an appeal against the said order of mutation

before the Collector, who, after hearing the parties, dismissed the appeal vide order dated 21st February, 1989 (Annexure P-3). Annexure P-2 is the grounds of appeal taken before the Collector. It was pleaded in the grounds of appeal that the Respondents (Petitioner and Respondent No. 4 in the present petition) were neither in possession nor they were tenants of the land in question. It was also averred that the Respondent and their father had admitted in the civil suit filed by him that they were out of possession of the land. That civil suit was numbered as 95 of 60 and was withdrawn with a liberty for filing a fresh suit for possession against the present Respondents 1 and 2.

3. The aforesaid order of the Collector was assailed in a revision petition before the Divisional Commissioner who, after hearing the parties, dismissed the petition on 4th November, 1991. Thereafter, Respondents preferred second revision petition 237 of 1989 before the Financial Commissioner, who passed the order under reference.

4. The aforesaid order passed by the Financial Commissioner which has been assailed in the present proceedings, pertained to have an inquiry conducted through Settlement Officer, Shimla, regarding the possession of the land in dispute.

5. Learned Counsel for the parties have been heard and various documents filed in the present proceedings have also been perused.

6. Learned Counsel for the Petitioner has submitted two fold arguments, in order to assail the order under reference passed by the Financial Commissioner. First being, that the order being without reasons is to be ignored and, secondly, within the revisional jurisdiction the Financial Commissioner has no authority to collect some evidence by way of an inquiry inasmuch as under the law only legality of the order under reference has to be seen and, therefore, order under reference passed by the Financial Commissioner is not sustainable in law.

7. On the other hand, it has been very forcefully contended on behalf of the contesting Respondents 1 and 2 that it is not so simple a matter as has been tried to be submitted by the learned Counsel for the Petitioner. However, the reply-affidavit of Respondents 1 and 2, which is accompanied by documents referred therein, clearly reflected the actual position of the case.

8. On the basis of the record put up before this Court the case has a long history. Land under reference was purchased by Respondents No. 1 and 2 who became the owner of the same. The present Petitioner is stated to be the Revenue Officer and, according to the Respondents, he has with the help of his colleagues procured the aforesaid mutation granting proprietary rights in his favour especially when the land under reference was in actual occupation of the Respondents 1 and 2, and entry of tenancy in favour of present Petitioner and Respondent No. 4 was a proper entry and they have nothing to do with the land in question.

9. It has come on record that Respondents No. 1 and 2 purchased the land under reference through a registered sale deed dated 21st July, 1967 (R-l). According to the Respondents, after being put in possession they broke up the land. It has been further case of the Respondents that there was a wrong entry in the column of possession in the revenue record in favour of one Nandu and Mehar Singh, predecessors of Petitioner and Respondent No. 4. Sh. Mehar Singh was the father of the Petitioner and Respondent No. 4 Sh. Nandu was the real paternal uncle of the Petitioner who expired issueless. It has also come on record that the present Respondents when came to know about the wrong entry, they preferred a petition before the Revenue Officer for correction of Khasra Girdawari entry. It was so done in the year 1968. It is also reflected from the record that father of the Petitioner Sh. Mehar Singh and Nandu filed civil suit No. 95 of 1968 on 20th August, 1968 in the Court of Senior Sub-Judge, Shimla, seeking injunction against the replying Respondents. According to the Respondents, when that suit was matured for arguments, father of to Petitioner Mehar Singh and Nandu moved an application under Order 23, Rule 1, CPC for withdrawal of the suit of injunction with permission to file suit for possession against the replying Respondents. Copy of that application on record is Annexure R-3. It may be very specifically pointed out that in this copy it was pleaded by the predecessor of the present Petitioner and Respondent No. 4 before the Civil Court that suit has been fixed for final adjudication on 30th June, 1970 and further that Plaintiff-Petitioners have always been considered to be in possession of the said land as tenants under the original owners as also Under the subsequent vendees and never intended to surrender the possession nor actually surrendered the same to the Defendants as they had also been cultivating the said land as tenants throughout till the date of filing of the present suit, though the Defendants have illegally entering upon the land in dispute in their absence and consequently asserting their possession thereupon. It was also pleaded in the application that Plaintiffs have inadvertently forgotten to make the prayer in the alternative for possession in case they are found to have been dispossessed and on the aforesaid ground withdrawal of the suit was sought with permission to file fresh suit.

10. It may be pointed out here that there is nothing on record to suggest that the present Petitioner and Respondent No. 4 who were the successors of the Plaintiffs, who filed earlier suit, preferred any suit subsequently, permission for which was asked for and allowed in their favour.

11. It has been brought to the notice of this Court that application for correction of Khasra Girdawari entry though filed in the year 1968, has not been disposed of finally.

12. It is in the background of the aforesaid circumstances that validity of the order assailed in the present proceedings has to be taken note of.

13. Needless to say, the power under Article 227 of the Constitution of India, involves a duty on the High Court to keep the inferior courts and tribunals within

the bunds of their authority and to see that they do what their duty requires and they do it in a legal manner. There is no dispute to the proposition that this power be restricted to the cases of grave dereliction of duty, flagrant abuse of fundamental principles of law or justice.

14. In the present case, the aggrieved party had filed a revision petition before the Financial Commissioner u/s 17 of H.P. Land Revenue Act (hereinafter to be called as ''the Act''), who during the pendency of that petition passed the order under reference. It has been very specifically provided u/s 17 of the Act that 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. Powers of revision vested in the Financial Commissioner are qnite wide and he has been empowered to revise an order which may even be appealable and yet not appealed against. The revision pending before the Financial Commissioner has to be disposed of within the powers conferred upon Financial Commissioner u/s 17 of the Act and in the background of the facts of the present case. The revisional powers of the Civil Court u/s 115, CPC have to be exercised with some limitations provided in the section itself. There are no such limitations provided u/s 17 of the Act, wherein the revisional powers vested in the Financial Commissioner are wider one.

It has been amply brought on record that the tenancy rights alleged to have been incorporated in the revenue record have been disputed by the Respondents, who claimed themselves to be the owners in possession of the said land. Since beginning when the dispute arose between the parties Respondents'' case has been very simple that the revenue entry in favour of the Petitioner and Respondent No. 4 was a paper entry and actually at the spot Respondents were in occupation as owners of the suit land.

This Court need not refer the allegations and the counter allegations made by the parties pertaining to their conduct, but the fact remains that the order passed by the Financial Commissioner on 6th April, 1993, which is under reference, has been so passed in order to ascertain the actual occupation of the land under reference whether it was with the Petitioner and Respondent No. 4 or with the Respondents 1 and 2. In order to dispose of the revision petition finally the Financial Commissioner has come to the conclusion about the possession of the land under reference and for that purpose he has acted within the scope of his revisional powers in passing such order.

15. It has been contended that the order is without reasons. In order to appreciate the validity of the order the background of a particular case has to be taken note of and it was not essential to refer that background in this order itself.

16. Last but not the least, it has been pointed out on behalf of the Petitioner that in case the contesting Respondents had appropriate remedy with them by filing a civil suit at appropriate time and in these proceedings which are summary in nature, the entries in the record of right had to prevail. It may not be out of

place to mention here that in the present case parties are under litigation since long. It is really strange to note that application preferred by the Respondents for correction of entries has not been finally disposed of and now it is being said that on the basis of the mutation order there was no necessity of disposing that application. The Respondents no doubt did not file any civil suit but the fact remains that the civil suit filed by the predecessor of the Petitioner and Respondent No. 4 was withdrawn, as referred to above, otherwise matter could have been settled there. The Respondents at the earliest took steps to get the entries corrected in their favour and in the mutation proceedings also which no doubt are of summary nature, that will not mean that point raised by a party which goes to the root of the mutation order has not to be determined by the Revenue Officer.

17. In view of the foregoing reasons, I do not find any merit in the present petition which is accordingly dismissed. Learned Financial Commissioner is directed to dispose of the revision petition without any undue delay. A copy of this order be sent to the Financial Commissioner.

C.M.P No. 28 of 1993:

In view of the aforesaid order, this petition does not survive and the stay granted by this Court vide order dated May 14, 1993 shall stand vacated. Petition stands disposed of accordingly.

