(1963) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 90 of 1962

Maqbool Ali and Others — APPELLANT

Vs

The Financial Commr. Jammu and Kashmir State and Others — RESPONDENT

Date of Decision : 27-08-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (1963) 08 J&K CK 0001

Hon'ble Judges : J.N. Wazir, C.J;S. Murtaza Fazl Ali, J

Bench : Division Bench

Advocate : Advocate General and D.N. Gadoo, S.K. Chaku, for the Appellant; D.N. Gadoo, for the Respondent

Judgement

S. Murtaza Fazl Ali, J.—This is an application for quashing an order of the Financial Commissioner dated 13-11-1961 by an appropriate

writ.

2. The circumstances giving rise to the petition may be mentioned as follows:

Some time in the year 1999 Samyat Ramzan. Ali and Mohamad Ali deceased and Respondent Nos. 2 to 5 submitted an application to the revenue

authorities for adding their names in Khewat No. 12 of village Rampur in respect of 10 Kanals as being inherited by them (Respondents Nos. 2 to

5) from the last proprietor Nund Ali. On 12th Chet 2001 sanction for the addition of the name, which, term is known as Izadi-nam, was given but

mutation was not registered. Thereafter the Petitioners submitted various applications and representations for adding their names to the higher

authorities. The efforts of the Petitioners culminated in Government Order No. 12 dated 1-6-1952 by which sanction for mutation of the names of the Petitioners was accorded. In pursuance of this Government Order the Naib Tehsildar ordered mutation No. III in favour of the Petitioners on

14-11- 2009. Thereafter, the Respondent Nos. 2 to 5, and Ramzan Ali and Mohamad Ali deceased filed a revision against the order of the Naib

Tehsildar to the Government along with, a review application for cancelling the previous order of the Government referred to above. In the mean

time Land Revenue Act was amended and the powers of revision exercised by the Minister were conferred on the Financial Commissioner. Alter

the amendment the revision as also the review was heard by the Financial Commissioner, who by his order dated 21-7-1956 set aside the

mutation of the Petitioners as also Government Order No. 12 dated 1-6-1952 on the basis of which the mutations were made. He, however,

remanded the case to the Tehsildar to attest the mutation in compliance with the provision of Clause 100 Sub-clause 4 of Standing Order No. 23-

A.

By an order dated 3-12-1956, the Tahsildar cancelled the mutation and refused to give effect to the original mutation registered. The Petitioners

then filed an appeal against this order before the. Deputy Commissioner who by his order dated 4-4-1958 allowed the appeal and set aside the

order of the Tehsildar holding that the order of the Financial Commissioner was a nullity. Against this order, the Respondents filed an appeal before

the Revenue Commissioner who allowed the appeal and restored the order of the Financial Commissioner on the revision petition filed by the

Respondents but held that the Financial Commissioner had no jurisdiction to review an order of the Government. This order having gone against

the Petitioners they filed a revision before the Financial Commissioner who has dismissed the revision by his order dated 13-11-1961, hence the

present petition.

3. It appears from the order of the Financial Commissioner that he was faced with two judgments of this Court, which appeared to him to be

contradictory to each other, but which on proper analysis do not appear to us to be of much assistance to the Petitioners. The point canvassed

before the Financial Commissioner was that in view of the decision of this Court in Mohd. Jawand Lone v. Financial Commr. Writ Petn. No. 59 of

1959, D/- 12-7-1960 (J and K), the appeal being a vested right which accrued to the litigant the moment proceedings started could not be taken

away by the amendment unless the language of such an amendment was specifically retrospective. The, argument was that the principles which

govern the case of an appeal applied equally to the case of a revision. The Financial Commissioner, however, relied on a previous judgment of a

Division Bench of this Court in Writ Petn. No. 60, D/- 20-4-1959 (J and K), where it was held that if the revisional Court was itself abolished, the

right of revision also goes with it and any amendment which changes the forum of revision would have a retrospective effect. In this connection,

Nair, J., who delivered the leading judgment observed as follows:

The Revenue Minister, was divested of his powers by Act XIII of 1956 which amended the Land Revenue Act in that respect. The result of the

amendment was that the authority called the Revenue Minister ceased to exist for the purpose of the revision under the provisions of the Land

Revenue Act. It was as if an existing tribunal which had revisional jurisdiction was permanently abolished.

In the latter decision of this Court in Writ Petn. No. 59 of 1959, D/- 12-7-1960 (J and K), the Court was not considering the provisions of the

Land Revenue Act at all but the provisions of a different Act namely the Tenancy Act. Furthermore, their Lordships were considering the case of

an appeal. The distinction between an appeal and a revision is too well defined to need any detailed discussion. Whereas an appeal confers

statutory vested right on a litigant which accrues the moment the proceedings in question are instituted, the right of revision is merely a discretionary

power to be exercised by the revisional Court according to the circumstances of the case or exigencies of the situation. A person cannot as a

matter of right claim the proceedings to be revised. The later decision of this Court proceeded on the assumption that an appeal being a vested

right could not be taken away by an amendment unless there was express or implied intendment to take away the right of appeal, fin the case

before their Lordships, their Lordships held that the language of the section did not warrant any such intendment. The same, however, could not be

said of a revision which stands on a different footing. We are supported in our view by a decision of the Punjab High Court reported in Chautala

Workers Co-operative Transport Society Ltd. and Another Vs. State of Punjab and

Others, , where their Lordships after considering the scope

and ambit of the supervisory or revisional power observed as follows:

Supervisory or revisional power (the term used does not seem to be very material) is also, normally speaking considered to be a power vesting in

the higher or superior tribunal to satisfy itself about the soundness or correctness of the order of the inferior tribunal. One usually accepted

difference between the two powers (appellate and supervisory) appears to me to be that an appeal confers a right, on the aggrieved party to

complain, in the prescribed manner to the higher forum, whereas the supervisory or revisional power has for its object the right and responsibility of

the higher forum to keep the subordinate tribunals within the bounds of law. The latter power, therefore, can always be exercised suo motu in

order to see that the subordinate tribunals do not transgress the limits of law and keep themselves within the powers conferred on them.

4. In these circumstances, therefore, it seems to us that there was no real divergence between the two decisions of this Court referred to by the

Financial Commissioner in his order. We, however, need not go into this question at length because for the reasons we shall give we are clearly of

the opinion that the petition should be dismissed, even assuming that the order of the Financial Commissioner was without jurisdiction.

5. The argument put forward by the learned Counsel for the Petitioners in a nut-shell was that- since the previous order was passed by the

Government, even if the Financial Commissioner had powers of revision, he could not sit in appeal over the order of the Government to which the

Financial Commissioner was a subordinate, authority. There is some force in this contention. But eyen assuming that the Financial Commissioner

was not justified in setting aside the order of the Government, there, are ample materials on the record to show that, substantial justice has been

done by the order of the Financial Commissioner in directing the (sic)tion to be made according to the statutory provisions of law. In this

connection our attention has been drawn by the Advocate-General to Sub-clause (4) of Clause 100 of the Standing Order No. 23-A sanctioned

by His Highness which, runs as follows:

(4) Izadi-Nam Hissadar viz., addition of the name of any other Hissadar (Sharer) whoso name 'Bias been omitted by mistake provided the

Hissadar (sharer) is rightly entitled to the share.

It is manifest from a perusal of this sub-clause that before addition of names could be allowed, it must be proved that the Hissadar is untitled to the

share and that his name was omitted by a mistake. It is not disputed that this order has a statutory force and has been made a part of the Land

Revenue Act. The Financial Commissioner found as a fact that the previous Government Order directing mutation to be made did not consider the

question as to whether or not the Petitioners were entitled to the share, because the Respondent had all along been proved to be in possession of

the land in question and the right of tin: Petitioners were lost by adverse possession. The, Financial Commissioner further pointed out that as the gift

in favour of the Petitioners was merely an oral one. and not as required by the Transfer of Property Act it could not be given effect to in view of the

provisions of the Transfer of Property Act as applicable to the State. The Financial Commissioner further held that before Izadi-nam could be

ordered, the existence of an error had to be proved. The Government Order, therefore, was in express disobedience to the statutory provisions of

law and the Financial Commissioner rightly set aside that order.

This position is not disputed by the learned Counsel for the Petitioners before us. In these circumstances, therefore, the serious question for us to

consider is whether we should exercise our extraordinary jurisdiction to direct mutation to be made against the statutory provisions of law. It is

manifest that this Court exercising jurisdiction u/s 103 of the Constitution is not bound to interfere even if the order of the subordinate tribunal is

wrong or without jurisdiction unless there is a miscarriage of justice. In the instant case, we do not find any miscarriage of justice at all. On I the

other hand, we find that by virtue of the Government order a serious wrong had been perpetrated and the names of the Petitioners had been

ordered to be added against the mandatory provisions of the Standing Order referred to above. This manifest wrong appears to have been cured

by the order of the Financial Commissioner which is being impugned in this case. It will be, in our opinion, serious travesty of justice to quash the

order of the Financial Commissioner in these circumstances. There are ample authorities for the proposition that the High Court would not interfere

where substantial justice has been done even if the order impugned is wrong or without jurisdiction. We are fortified in our view by a decision of

the Supreme Court reported in A.M. Allison Vs. B.L. Sen, , where their Lordships observed as follows:

Proceedings' by way of certiorari are ""not of (sic) ""Laws of Englands"", Hailsham edition, Vol. 9 Paras 1480 and 1481 pp. 877, 878). The High

Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice and in these appeals which are directed

against the orders of the High Court in applications under Article 226, we could refuse to interfere unless we are satisfied that the justice of the

case requires it.

6. To the same effect is a decision of the Supreme Court reported in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, where the '

following observations have been made by their Lordships:

That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not and should not act as

Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be

exercised along recognized lines, and not arbitrarily; and one of the limitations imposed by the Courts on thesmelves is that they will not exercise

jurisdiction in this class of case unless substantial injustice has ensued or is likely to ensue.

Moreover, there is a Full Bench decision of this Court reported in Dina Nath Kaul v. Election Tribunal, J. and K. AIR 1960 J & K 25 where the

following observations have been made relying on the Supreme Court cases referred to above,

The issue of a writ of certiorari is discretionary with the Court. The Court is not bound to issue such a writ even if there be some error of law or

defect of jurisdiction in a given case, unless it is satisfied that the interests of justice demand the granting of it.

Having regard to the circumstances of the case, we are clearly of the opinon that justice does not require that we should interfere with the order of'

the Financial Commissioner.

7. The application is accordingly dismissed but in the circumstances, of the case, we make no order as to costs.

J.N. WAZIR, C.J.

8. I agree.

