

(1968) 02 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1006 of 1964

Mehal Singh and another	Vs	APPELLANT
Financial Commissioner, Punjab and others		RESPONDENT

Date of Decision : 07-02-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 02 P&H CK 0016

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : H.L. Sarin with Sarvshri Balraj Bahal, Bhal Singh Malik and H.S. Awasthy, for the Appellant; M.K. Mahajan, for Respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—This is a petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ or direction quashing the order of the Financial Commissioner dated 26th of March, 1964 (Annexure E) on the ground that it was entirely without jurisdiction.

2. The facts of this case are that the petitioners are two brothers, sons of Labh Singh. Respondents 2, 3 and 4 are the three widows left by Labh Singh who died during communal disturbances of 1947 in West Punjab. The petitioners are sons of Kartar Kaur, respondent No. 4. Respondents 2 and 3 are their step-mothers, Labh Singh, deceased, owned land in district Lahore and in lieu thereof, land was allotted in village Dodewala, Tehsil Fazilka, District Ferozepore and his two sons, the petitioners, entered into possession of the land. It is stated in the petition that the petitioners have been in continuous possession of the land ever since its allotment. On 30th of July, 1959, the roving Revenue Assistant, Ferozepore, who had the powers of Assistant Collector, First Grade, sanctioned mutation of inheritance as per Mutation No. 1084 in favour of respondents 2 and 3 to the extent of two third share of the land which had been allotted in the name of Labh

Singh and to the extent of one third share of the land in favour of the petitioners. The petitioners successfully challenged this order on appeal to the Collector who by his order dated 4th of September, 1959, remanded the case to the Assistant Collector for determining the amount of maintenance payable to the two step mothers. He did not accept the contention of respondents 2 and 3 as to their being entitled to the land. The respondents 2 and 3 dissatisfied by the order, filed an appeal to the Commissioner but were unsuccessful. They then filed a revision before the Financial Commissioner, respondent No. 1. He, by his order dated 33th of October, 1960, rejected the revision petition but directed the Assistant Collector to fix the amount of maintenance to be given to respondents 2 and 3, vide Annexure A.

3. The Assistant Collector fixed the amount of maintenance to be given to each of the two stepmothers at Rs. 710 per annum. He also directed that this amount of maintenance could be had from 6 bighas of nehri land and 22 bigaas of barani land, vide Annexure B. Both parties challenged the order of the Assistant Collector and filed cross-appeals to the Collector which were dismissed. The Additional Commissioner, Jullundur Division, dismissed the cross-revisions from the order of the Collector filed by the parties. Dissatisfied from the order of the Additional Commissioner, respondents 2 and 3 filed a petition of revision before the Financial Commissioner. This revision petition was allowed on 26th of March, 1964, vide Annexure E. He found that the income from the entire land amounted to Rs. 4660 per annum and each of the step-mothers was entitled to one third share. The sum of Rs. 710 which had been allowed, was inadequate. The Financial Commissioner ordered that the amount of maintenance should be Rs. 1200 per annum for each of the step-mothers which should be paid on first of every month without fail. He also ordered that the arrears should be cleared within six months at that rate and in the event of any default in the payment of the maintenance or the arrears, then each of the widows would have a right to possession of one third share of the land. The petitioners felt aggrieved from this order and they have impugned the same in the writ petition.

4. The point that has been urged in this Court is that neither the Financial Commissioner nor the Commissioner, Collector or Revenue Officer, while sanctioning mutation, have jurisdiction to determine the liability to pay maintenance or impose a condition upon the petitioners that in case the amount of maintenance as determined is not paid within a certain period, then the parties who are entitled to maintenance would have the right to enter into possession of one third share of the land each. The power in respect of mutation proceedings is exercisable under the Punjab Land Revenue Act and the procedure is laid down in sections 34 to 38 of the Act. On the acquisition of a right by inheritance or purchase etc. the matter has to be reported to the Patwari of the estate who is required to make entry in the Register of Mutations u/s 36, it is provided that if a dispute arises, the Revenue Officer, may, of his own motion or on the application of any party interested, determine the entry to be made as to that matter. Sub-section (2) to section 36 provides that if in any such dispute,

the Revenue Officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain by his summary enquiry who is the person best entitled to the property, and shall by order direct that that person be put in possession thereof and that an entry in accordance with that order be made in the record or register. Such a direction of a Revenue Officer shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction. Beyond making of entry as to possession or beyond adjudication of dispute within the frame work of section 36, it is not open to the Revenue Officer to dispose of other civil rights of the parties for which exclusive jurisdiction vests in the civil Court. In this case, the Financial Commissioner and even the other Revenue Officers acted beyond the scope of their jurisdiction in determining the amount of maintenance payable or in imposing conditions of payment and of the consequences to follow in the event of default.

5. On behalf of the petitioners, reliance was placed upon a reported decision of the Financial Commissioner in *Tara Singh and others v. Mst. Iso and others* 1929 L.L.T. 48. The order of Mr. Townsend, Financial Commissioner, which is brief, is reported in extenso:

I cannot uphold the Commissioner's order giving Rs. 15 per menses "maintenance" to Mst. Guro respondent even though the applicants counsel appear to have given some such agreement in the Collector's court. It is not the function of revenue courts to give maintenance to the unsuccessful party in mutation cases; that is the function of civil courts. So I accept the application, in so far that I order the expunging from the mutation order of so much of it as orders the payment of maintenance by applicants to respondent. Parties may pay their own costs.

6. It was argued on behalf of the respondents that the petitioners had submitted without objection to the jurisdiction of the Revenue Officers in so far as it was agreed that they would pay the amount of Rs. 710 by way of maintenance per annum to each of the step-mothers. It is well settled proposition of law that a party by submission cannot confer jurisdiction upon a Court upon which the law has conferred no such jurisdiction.

7. From the above, it is clear that the Revenue Officers from the Assistant Collector upwards to the Financial Commissioner had no jurisdiction whatsoever either to determine the amount of maintenance or to impose any conditions with regard to it. The Financial Commissioner acted without jurisdiction in passing the impugned order. The question of maintenance is a matter within the jurisdiction of the civil Courts and does not fall within the purview of Revenue Officers.

8. In this case, the petitioners have impugned, orders of the Assistant Collector dated 16th December, 1960 (Annexure B), of the Collector dated 16th June, 1961 (Annexure C) of the Additional Commissioner dated 11th April, 1963 (Annexure D) and of the Financial Commissioner dated 26th March, 1964

(Annexure E) in so far as these fixed amount of maintenance, related to arrears thereof or gave directions for their payment or otherwise, entitling respondents 2 and 3 to take possession of the land in default of payment. To this extent, the impugned orders referred to above deserve to be set aside.

9. For reasons stated above, the petition is allowed. A writ of certiorari to that effect stall issue. In the circumstances, there will be no order as to costs.