(1976) 11 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Revision Petition No. 105 of 1976

Om Prakash APPELLANT

Vs

Amarjeet Singh RESPONDENT

Date of Decision : 12-11-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 114(1), 114(2), 114(3), 65, 65(1)
Punjab Tenancy Act, 1887 — Section 84, 84(1), 84(5)

Citation : (1977) ShimLC 223

Hon'ble Judges : P.K. Mattoo, J

Bench : Single Bench

Advocate : R.K. Gupta and Bhupinder Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Mattoo, F.C., J.—This is a revision petition u/s 114(3) of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter called the Act) against the orders of Land Reforms Officer, Hamirpur dated 30-4-1976.

2. Since the case involves exercise of revisional jurisdiction u/s 114(3), I considered it necessary to hear the learned Counsel for the Petitioner before summoning the Respondents.

3. It was contended before me by the learned Counsel for the Petitioner that u/s 114(3) of the Act, the Financial Commissioner had vast powers to call for the records of a case and to revise the proceedings of the Land Reforms Officer, the Collector or the Commissioner. In support of his case, the learned Counsel cited:

Amir Chand v. The Punjab State and Anr. 1971 PLJ 305.

Bhagat Singh v. Additional Director Consolidation of Holdings and Ors. 1966 LLJ 462.

Subhan Ali v. Jahan Khan and Ors. 1933 LLT 59.

Azad Khan v. Mohd. Khan and Ors. 1935 LLT 9.

Abdul Haq v. Umar Din 1925 LLT 4.

Chanan Singh v. Bishan Singh and Ors. 1931 LLT 18.

It has been observed in Amir Chand v. The State of Punjab and Anr. 1971 PLJ 305, that the restrictions on the revisional powers of the High Court to cases in which no appeal lies thereto cannot be imported into Section 84 of the Punjab Tenancy Act. In fact, Sub-section (1) thereof excludes such a limitation as it specifically empowers the Financial Commissioner to call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him. This part of Section 84 of the Punjab Tenancy Act is materially different and in direct contrast with the opining part of Section 115 of the Code of Civil Procedure. The concluding words'' in which no appeal lies thereto'' do not occur in Section 84. Reference to the powers of the High Court in exercise of its revisional jurisdiction made in Sub-section (5) of Section 84 of the Punjab Tenancy Act is only for the purpose of specifying the grounds on which the Financial Commissioner can exercise his revisional jurisdiction, and those are the three grounds stated in Clauses (a), (b) and (c) of Section 115 of the Code of Civil Procedure." Similar views have been expressed about the powers of the Financial Commissioner in other cases cited by the learned Counsel for the Petitioner.

4. Section 114(3) of the Act reads as follows:

114(3) With respect to all matters dealt with under this Chapter, the Financial Commissioner shall have the same power to call for, examine and revise the proceedings of the Land Reforms Officer, or the Collector or the Commissioner as provided in Section 65 of this Act.

Season 65 of the Act reads as follows:

65. (1) 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.

(2) The Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue officer or Revenue Court under his control.

(3) If in any case in which the Commissioner or Collector has called for a record he is of opinion that the proceedings taken or the order or decree made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.

(4) 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 the opinion that it is in expedient to interfere with the proceedings or the order or

decree, he shall pass an order accordingly.

(5) If, after examining the record, the Financial Commissioner is of the opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may, under the law for the time being in force, interfere with the proceedings or an order or decree of a Civil Court, he shall fix a day for hearing the case and may on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.

(6) Except when the Financial Commissioner fixes under Sub-section (5) a day for hearing the case, on party has any right to be heard before the Financial Commissioner when exercising his powers under this section.

Section 65 of the Act is similar in construction to that of Section 84 of the Punjab Tenancy Act. The observations made in Amir Chand v. The State of Punjab and Anr. 1971 PLJ 305, are therefore, squarely applicable to proceedings u/s 114(3) of the Act. The point to be decided, m the present case, however, is not the extent of powers of the Financial Commissioner but the stage at which these powers should be exercised.

5. Sections 114(1) and (2) reads as follows:

114. (1) Any person aggrieved by an order made by the Land Reforms Officer may, within thirty days from the date of the order, prefer an appeal to the Collector, in such from and manner, as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by an order of the Collector may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of sixty days, if he is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

6. The Act provides for an appeal against the orders of the Land Reforms Officer to the Collector. Any person aggrieved by an order of the Collector, has the right to prefer an appeal to the Commissioner.

7. It has been held in Chetu v. Mussadi (Revision No. 57 and 76-A), that the Financial Commissioner, before entertaining a revision petition has to satisfy himself that all other remedies available to the Petitioner have been duly and deligently exhausted by him and that a prima facie case warranting his interference is made out.

8. In the present case the Petitioner has the right to file an appeal before the

Collector against the orders of the Land Reforms Officer and second appeal under the Act lies to the Commissioner. The Petitioner has not exhausted these remedies. A petition in revision is, therefore, not maintainable at this stage.

9. The revision petition is accordingly dismissed.

