(2012) 04 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : LPA No. 84 of 2007 Alongwith LPA No. 48 of 2008

Ranbir Singh APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 2 ShimLC 756 : (2012) 2 ShimLC 1198

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Ajay Sharma, for the Appellant; Vivek Thakur, Learned Additional Advocate General and Mr. Ramesh Thakur learned Assistant Advocate General, for the Respondents No. 1 to 3, Mr. N.K. Thakur with Mr. Ramesh Sharma, Advocate, for the Respondent No. 4, Mr. Ajay Sharma, Advocate, for the Respondent No. 1 and Mr. N.K. Thakur with Mr. Ramesh Sharma, Advocate, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—Both these appeals are being disposed of by a common judgment since both the appeals arise out of a judgment of the learned Single Judge of this Court dated 17th July, 2007 whereby he allowed the writ petition being CWP No. 1543 of 2002 filed by the present respondent No. 4 and setaside the orders passed by the learned Authorities. Briefly stated the facts of the case are that the respondent No. 4, Kuldip Singh is an heir of late Sh. Joginder Singh. It is not disputed that some land belonging to Joginder Singh was declared surplus under the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (her-in-after referred to as the Act). Joginder Singh did not exercise his option to declare the land surplus and he failed to fill-in Form C-V. The Act envisages that if the land owner himself declares the land surplus, he can show the land which he wants to vest in the State. Since, Joginder Singh did not exercise his option, the Collector vide his order dated 13.12.1974, declared the land measuring 9 Kanals 2 Maria surplus and further worked out various khasra Numbers which were treated to be surplus and were to vest in the State.

2. Joginder Singh filed an appeal being Appeal No. 246 of 1975 before the Divisional Commissioner and raised two points, firstly, that no land be declared to be surplus and secondly that he had not been given reasonable opportunity to choose the land of his choice to be declared surplus. This appeal was dismissed by the then Divisional Commissioner on 30.12.75. The matter did not end here and the petitioner filed a revision before the Financial Commissioner, Shimla H.P. who recorded the following contentions:

The only point raised before me by the learned Counsel for the petitioner was that for one reason or the other, the petitioner had not exercised his option to select permissible area and that he being in possession of only 9 Kanals and one marla of surplus land, he may be permitted to re-exercise his right of selecting the permissible area and allowed to surrender an equivalent area of land out of the area at present determined as his permissible area.

3. The Financial Commissioner rejected the prayer of the petitioner and dismissed the petition. Thereafter, the petitioner filed an application to the Collector saying that he is willing to handover some other 9 Kanals and 2 Marias of land and since he had developed tubewell on the portion which had been declared surplus by the Authority and he may be permitted to retain this land. The Collector allowed this application vide his order dated 27.7.1977 read with the statement dated 4.4.1977. It is apparent that this order was passed on the application filed by Joginder Singh dated 15.11.1976. This application was filed after the revision petition filed by the petitioner before the Financial Commissioner was rejected. The petitioner did not make any reference to the decision of the Divisional Commissioner or the Financial Commissioner in the application for allotment of the land filed by him.

4. We are of the considered view that the Collector had no jurisdiction to entertain this application after the higher revenue authorities i.e. the Divisional Commissioner and the Financial Commissioner had rejected the case of Joginder Singh. It has been urged before us that there is no power of review vested in the authority under the Ceiling Act. We are not deciding this question but even assuming that power of review was there such power of review cannot be exercised by the lower authority after the higher authority has put its seal of approval on the judgment /order of the lower authority. Thereafter, the lower authority ceases to have any jurisdiction to exercise any such powers.

5. Unfortunately, we find that it was not brought to the notice of the learned Single Judge that the Financial Commissioner had specifically considered this very point and rejected the same. Once a party has taken legal proceedings and the proceedings attained finality then the said party cannot in collateral proceedings try to get out of the order passed in the original legal proceedings. The Order may be right or wrong but once it had attained finality, then it cannot be re-opened except by higher authorities. If the petitioner Joginder Singh was aggrieved by the order of the Financial Commissioner he should have filed a writ petition or a civil suit if maintainable but could not by means of an application

filed before the Assistant Collector get an order reviewed after the said order had been affirmed by the Divisional Commissioner and Financial Commissioner. Therefore, the revenue authorities were absolutely justified in recalling the order passed by the Collector permitting Joginder Singh to change the land which was declared surplus. We, therefore, allow the appeal and setaside the judgment of the learned Single Judge. No costs.