

(2010) 04 SHI CK 0133
In the High Court Of Himachal Pradesh

Saraswati Devi

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 SHI CK 0133

Hon'ble Judges : Kurian Joseph, C.J.;R.B. Misra, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Writ Petitioner filed the petition aggrieved by the order of the Financial Commissioner (Appeals) dated 30.1.2003. The writ petition was dismissed, hence the appeal. Short facts.

2. Late Raunki Ram, husband of the petitioner was allotted 0.14.69 hectares under the ?Nautor Scheme? on 15.4.1978. Thereafter, the Sub Divisional Officer (Civil) by an order dated 21.2.1980, apparently looking into certain complaints regarding the alleged irregular allotment of the land under the Scheme, cancelled the allotment. Raunki Ram preferred Revision before the Additional Deputy Commissioner and that was rejected by an order dated 27.1.1981. It appears that the matter was pursued in second Revision before the Commissioner, Mandi on 31.12.1998, by the present petitioner who is wife of late Raunki Ram. It appears somewhere between 1981-1998, said Raunki Ram passed away. The delay was condoned and the matter was referred by the Commissioner, Mandi to the Financial Commissioner (Appeals) and that second Revision was rejected by the Financial Commissioner (Appeals) by an order dated 31.1.2003 on the ground that he lacked jurisdiction to entertain the matter. One of the main grounds of challenge is that the Sub Divisional Officer (Civil), lacked jurisdiction to pass the order dated 21.2.1980, cancelling the grant of the land by the Tehsildar on 15.4.1978. It is submitted that after the grant, the only provision under which the grant can be looked into is by exercise of suo motu power under para 9(A) of the Scheme, by the Commissioner. There appears to be no dispute on that position. The position under law is also settled that the power of review,

unless conferred on statutory bodies, cannot be exercised by the original Authority. The Scheme referred to above, does not confer any such power on the original Authority. The only power is revision of the order by way of suo motu revision by the Commissioner under paragraph 9(A) of the Scheme. It is submitted and that is not in dispute also that the Commissioner, Mandi, is the competent authority to exercise that power under paragraph 9(A).

3. True, the petitioner has serious contentions as well regarding the merits of the case, particularly with regard to the assessment of income and land holding at the relevant time by late Raunki Ram. We do not think that this Court should go into those contentions since we are reserving liberty to the Commissioner, if so required, to exercise that power. The petitioner submits that Raunki Ram had constructed a house in the property and the family is residing in the property after making many improvements. All these are matters which should weigh with the Commissioner while exercising his jurisdiction, if so required and if so advised. Therefore, we set aside the judgment of learned Single Judge, disposing the writ petition, quashing the impugned orders but without prejudice to the liberty to the Commissioner, if so required and if so advised to exercise his powers under paragraph 9(A) of the Scheme.

4. Needless to say that in case any such action is proposed, the petitioner shall be issued notice and she shall also be afforded an opportunity to participate in the proceedings.