
(1979) 04 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 696 of 1978

Sukhdarshan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-04-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 32
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 21(4), 41(1), 42
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 32

Citation : AIR 1980 P&H 94 : (1979) 2 ILR (P&H) 247

Hon'ble Judges : S.S. Sandhawalia, C.J.; G.C. Mital, J.; D.S. Tewatia, J

Bench : Full Bench

Judgement

G.C. Mital, J.—The sole point which arises for consideration of the Full Bench in this writ petition is as to whether a revision under S. 32-D(4) of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Act), is competent against an order passed by the Commissioner under S. 32-D (3) of the Act.

2. In this case, the learned Financial Commissioner dismissed the revision filed under S. 32-D(4) of the Act against an order of the Commissioner. passed under S. 32-D(3), as not being legally competent in view of the decisions of this Court in *Kandhara Singh v. Bhajan Singh* 1977 PLJ 113, *Chhota Singh v. State of Punjab* 1968 Pun LJ 38 and *Munshi Singh v. State of Punjab* 1971 Pun LJ 715. The petitioner filed this writ petition under Art. 226 of the Constitution of India and at the preliminary hearing. before the motion Bench challenged the correctness of the aforesaid decisions. The motion Bench admitted the writ petition for decision of the aforesaid point by Full Bench and that is how the present writ petition has been placed before us.

3. The petitioner is a landowner of village Bethali, tahsil Sirhind, district Patiala. According to the facts stated in the petition, he did not hold land in excess of the

permissible limit as most of the land was under tenants since before the commencement of the Act, some land was under mortgage and the mortgagees were in possession of the land, 31 bighas of land was in possession of the Canal Department and in this manner, no part of the land held or owned by him was in excess of the permissible limit under the Act.

4. Against the draft statement issued by the Collector, Agrarian Reforms, under S. 32-D(2) of the Act, the petitioner filed objections saying that there was no surplus area with him after excluding the above-mentioned land with the tenants, mortgagees in possession and the Canal Department. Besides the above, he raised some other objections which need not be referred here because before the Full Bench the only point argued is as to whether a revision before the Financial Commissioner under S. 32-D(4) of the Act was competent or not against an order passed by the Commissioner under S. 32-D(3). The Collector, Agrarian Reforms; vide order dated July 4, 1973, annexure P-1, held that the total area which is to be declared surplus comes to 16.12 standard acres as against 18.91 standard acres stated in the draft statement. The surplus area was reduced by the aforesaid order to the extent of 2:79 standard acres by giving the benefit of that area which was mortgaged and redeemed after the commencement of the Act. Against the aforesaid order; the petitioner took an appeal W the Commissioner, Patiala, under S. 32-D(3) of the Act, The Commissioner, by order dated Jan. 21, 1974, annexure P-2, rejected the appeal finding no merit therein. Against that order of the Commissioner, the petitioner filed a revision before the Financial Commissioner Punjab u/s 32D(4) of the Act. The Financial Commissioner vide order dated Jan. 5, 1978, annexure P-3, dismissed the revision holding that no revision was competent under S. 32-D(4) of the Act, following the decisions referred to above.

5. As already stated, the only point raised before us is about the correctness of the aforesaid three decisions and on the point whether a revision under Sections 32-D(4) of. the Act is competent before the Financial Commissioner against an order of the Commissioner passed on appeal under S. 32-D(3) of the Act. If we hold that a revision is competent, then the case will have to be sent back to the Financial Commissioner for decision on merits and in case we hold that no revision is competent before the Financial Commissioner, then the other points raised in the writ petition will have to be determined by a learned single Judge of this Court. Therefore, we proceed to decide the only paint raised before us.

6. Shri Sarjit Singh, the learned counsel for the petitioner, has argued that if the provisions of various subsections of S. 32-D of the Act are correctly interpreted in the light of the notifications under S. 32-D(3) and Section 50 of the Act, the only-irresistible conclusion would be that a revision is competent before the Financial Commissioner and he was in error in. holding to the contrary and similarly, the aforesaid three decisions do not lay down correct law. For facility of reference; the relevant sub-sections of S. 32-D of the Act are reproduced below:--

"32-D (3). Any person aggrieved by an order of the Collector under sub-section (2) may, within thirty days of the order, prefer an appeal to the State Government or an officer authorised by the State Government in this behalf.

(4) Without prejudice to any action under sub-section (3), the State Government may of its own motion call for any record relating to the draft statement at any time and, after affording the person concerned an opportunity of being heard, pass such order as it may deem fit.

(5) Any order of the State Government under sub-section (3) or sub-section (4), or of the Collector subject to the decision of the State Government under those sub-sections shall be final"

S. 50 of the Act is also reproduced hereunder

"50. The State Government may, by notification in the Official Gazette, direct that the powers exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to the State Government."

The learned counsel for the petitioner contends that under S. 32-D(3) of the Act, the State Government has the power to authorise an officer to hear an appeal and if the State Government issues a notification authorising an officer to hear the appeal under S. 32-D(3), then the hearing of such appeal by the authorised officer is in the capacity of that officer as such and not as State Government. He goes on to argue that the Legislature has purposely made differentiation in the wordings contained in S. 32-D(3) "an officer authorised by the State Government" and the wordings of S. 50, under which the State Govt. has the power to delegate, that is, "the power exercisable by the State Government may be exercisable also by an officer subordinate to the State Government". According to him; under S. 50, the power of the State Government can be delegated to an officer who would be deemed to be acting as State Government or on behalf of the State Government whereas the person authorised under S. 32-D (3) of the Act would be acting as an officer and not as State Government or on behalf of the State Government and that is why the State Government has issued notifications under S. 32-D(3) and S.50 separately, the wordings of which are materially different. These notifications are reproduced below for facility of reference:--

"REVENUE DEPARTMENT

The 18th Sept. 1958.

No. 7353-ARI-(II)-59/6417. In exercise of the powers conferred by sub sec (3) of S.32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No: 13 of 1955), the Governor of Punjab is pleased to authorise the Commissioner, Patiala Division, for the purposes of that sub-section."

"REVENUE DEPARTMENT

The 23rd Dec., 1963.

No. S.O. 22(Pep.A.13/35/S-50/64--In supersession of Revenue Department Notification No. S.O. 283-P. A. 13/55/S-50/62, dated the 11th Oct., 1962, and in exercise of the powers conferred by S. 50 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955), the Governor of Punjab is pleased to direct that the powers of the State Government exercisable under sub-section (4) of S. 32-D of the said Act shall also be exercisable by:--

(1) The Financial Commissioner, in cases where an order has been passed by the Commissioner, under sub-section (3) of S. 32-D; and

(2) the Commissioner, in cases where no appeal has been preferred under sub-section (3) of S. 32-D."

"REVENUE DEPARTMENT

The 1st Oct., 1964.

No. S.O. 347/P.A.3/55/S.50/64: In supersession of Punjab Government Revenue Department Notification No. 31-ARI (II)62/169, dated the 10th Jan., 1962, and in exercise of the powers conferred by sub-section (3) of S. 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. 13 of 1955), the Governor of Punjab is pleased to authorise:--

(i) the Commissioners of Patiala, Ambala and Jullundur Divisions, and

(2) the Additional Commissioner, Ambala Division,

for the purposes of that sub-section, with respect to the areas of the erstwhile State of Pepsu falling within the respective jurisdiction."

7. The learned counsel for the petitioner has contended that we have to place construction on the provisions of sub-sections (3), (4) and (5) of S. 32-D and S.50 of the Act in such a reasonable manner, according in the well-established canons, that all the relevant sub-sections of S. 32-D remain operative and enforceable and not in such a manner that any one of the provisions of these sub-section becomes redundant or inoperative in a given circumstance. He has further submitted that the various sub-sections of S. 32-D would be better understood if they are read in harmony with the aforesaid three notifications thereby giving full effect to the aforesaid three notifications and the only way to do so is to read in S. 32-D (3) that the officer authorised by the State Government exercises his powers of appeal as an officer in his individual capacity as such and not as delegate or representative of the State Government. According to him, in this manner, full effect would be given to the provisions of sub-section (3), sub-section (4) and the aforesaid three notifications. If they are not read in this harmonious way, then if an appeal is taken under S. 32-D(3), the provisions of S. 32-D(4) would become redundant. Moreover, he says that clause (1) of the notification dated December 23, 1963, would also become redundant inasmuch as the Financial Commissioner will not be able to exercise his power

under S. 32-D(4) of the AM where an order has been passed by the Commissioner under sub-section (3) of S. 32-D. Therefore, the learned counsel submits that according to the well-established canons of interpretation of statutes, we should read the provisions of the Act and the notification in such a reasonable way that sub-secs. (3) and (4) of S. 32-D and the aforesaid notifications should remain operative and workable and no part of the same is left unworkable or redundant. Therefore, according to him, the only reasonable way to do so is to hold that when the Commissioner exercises the power of appeal under S. 32-D(3), he does so as an officer having the power to hear the appeal and not as a delegate of the State Government so that further remedy of revision is left open to the aggrieved party and the power of the State Government or its delegate to hear the same under S. 32-D(4) remains intact.

8. According to the learned counsel for the petitioner, the three decisions relied on by the Financial Commissioner do not lay down correct law according to the interpretation which he has put on the various sub-sections of S. 32-D of the Act. As regards *Kandhara Singh v. Bhajen Singh* (supra), he says that not only is the interpretation placed by the Bench wrong, according to the above Interpretation of his, the premises on which the Bench proceeded to decide the case was also erroneous. A reading of the last five lines of para 3 of that judgment would show that the Bench proceeded on the assumption that while hearing an appeal under S. 32-D(3), the Commissioner exercises its power in the capacity of delegate of the Government: There is no notification under S. 50 delegating the power of the State Government under S. 32-D (3) of the Act to the Commissioner, According to the learned counsel, this is the only reasoning on which the judgment has proceeded and in the absence of the notification under S. 50, delegating power under S. 32-D(3) to the Commissioner, the aforesaid decision cannot be held to lay down the correct law. It is true that the aforesaid decision proceeded on the basis as criticised by the learned counsel for the petitioner, but the point that still remains for consideration before us is that where the appeal is heard by the Commissioner under S. 32-D(3), whether he decides it as State Government or with powers of the State Government or not in the absence of a notification under S. 50 delegating the power of the State Government to the Commissioner under S. 32-D(3) of the Act. This we would answer after hearing the learned counsel for both sides.

9. The decision in *Kandhara Singh's* case (supra) has referred to another decision in *Chhota Singh v. State of Punjab* (supra). The learned counsel for the petitioner has challenged the correctness of the decision in *Chhota Singh's* case (supra) on the ground that it proceeded on the basis that the provisions of sub-secs. (3) and (4) of S. 32-D are analogous to the provisions of Ss. 21(4) and 42 of the East Punjab Holdings (Consolidation and prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Consolidation Act), and, therefore, the judgment of the Supreme Court in *Harbhajan Singh Vs. Karam Singh and Others*, was brought in aid that there is no power of review. According to the learned counsel, there is material difference between the two provisions and,

therefore, that parity of reasoning is not correct and, in any case, the point which he has urged before us was not pressed before the learned Judge deciding that case and was not considered therein. Therefore, that case has no bearing and in any case does not lay down correct law, according to the interpretation which he has sought to place on the relevant provisions of the Act and the notifications.

10. As regards *Munshi Singh v. State of Punjab* (supra), it is submitted that it is not applicable as the point raised here was not considered in that case and the main point decided there was about the meaning to be given to the words "at any time" occurring in sub-section (4) of S. 32-D of the Act. In this case, reliance was placed on *Chhota Singh v. State of Punjab* (supra). It is true that the point for consideration in that case was different from the one which we have to decide and that is why, even the counsel for the State did not rely on this judgment in reply to the argument of the learned counsel for the petitioner.

11. Mr. I. S. Tiwana, the learned Additional Advocate General, Punjab, in reply to the arguments of the learned counsel for the petitioner, has stated that the interpretation placed on the relevant provisions of the Act and the notifications by the opposite side on the face of it appears to be attractive, but, if a detailed probe is made, then the fallacy in the interpretation of the provisions becomes apparent. He argued that S. 32-D was brought in by the insertion of Chap. IV-A by the Pepsu Act No. 15 of 1956 and while inserting Chapter IV-A in the parent Act, although S. 50 was already there authorising delegation of power by the State Government to any officer, yet by way of abundant caution and specially for purposes of Chapter IV-A, a provision was made in sub-section (3) of S. 32-D giving authority to the State Government to authorise an officer to hear an appeal in case the State Government was not willing to hear the appeal itself for one or more reasons. Therefore, the provision in sub-section (3) of S. 32-D of the Act giving authority to the State Government to authorise an officer to hear an appeal was merely repetitive of the power already granted under S. 50 and did not in any way affect the true and correct interpretation of the provisions of sub-section (3) of S. 32-D. According to him, if sub-section (3) is read more closely, it would be found that an appeal would lie to the State Government or to an officer authorised by the State Government in this behalf. He has emphasised that appeal lies to the State Government whether it is heard by the State Government or it is authorised to be heard by an officer of the State Government. If the Legislature wanted that the appeal should be heard by an officer alone then the Legislature could indicate the officer in the statute or could give the authority to the State Government to name the officer. This is not what the Legislature has done. The Legislature has specifically enacted that the appeal shall lie to the State Government or the officer authorised by the State Government in this behalf and, therefore, whether the appeal is heard by the State Government itself or by its nominee, it would still be a decision by the State Government. Otherwise, there was no use of giving the right of appeal to the State Government in sub-section (3) and the only wording in sub-section (3)

would have been "prefer an appeal to an officer authorised by the State Government in this behalf, instead of "prefer an appeal to the State Government or an officer authorised by the State Government in this behalf. So keeping the differentiation between these two wordings, it is urged by the counsel for the State that full meaning has to be given to sub-section (3) and the only way to read it would be that an appeal lies to the State Government or to its nominee duly authorised in this behalf and there is no difference between a nominee and a delegate and, therefore, he has relied on *Roop Chand Vs. State of Punjab*, .

12. After placing the aforesaid interpretation on sub-section (3), he had to fairly concede on the basis of the decision of the Supreme Court in *Roop Chand's* case (*supra*), that once an appeal is heard by the Commissioner as an officer authorised as a nominee of the State Government, then there can be no further revision under sub-section (4) of S. 32-D either to the State Government or its delegate, the Financial Commissioner, and to that extent, sub-section (4) would be redundant as S. 42 of the Consolidation Act. was held to be redundant in a similar situation by the Supreme Court in the above noted case. However, he says that sub-section (4) would not become void for all purposes inasmuch as if no appeal is filed by an aggrieved person under sub-section (3), but directly a revision is taken under sub-section (4), then the State Government or its delegate, the Financial Commissioner or the Commissioner, as the case may be, would be entitled to hear the revision and such a revision would not be incompetent,.

13. In support of his argument, the learned counsel for the State has relied on sub-section (5) of S. 32-D and has argued that even this sub-section is referring to an order of the State Government which is to be passed under sub-section (3) or sub-section (4). He says, even the Legislature was conscious of the fact that the orders under sub-section (3) or sub-section (4) would be the orders of the State Government and, therefore, those orders of the State Government were held to be final by this sub-section. He further submits that S. 32-D was inserted in the year 1958 when similar provisions were contained in the Consolidation Act under S. 21 (4) and S. 42, where an appeal was to be heard under S. 21(4) by the State Government or its nominee and the revision under S. 42 was also to be heard by the State Government or its delegate. Those provisions came up for interpretation before the Supreme Court in *Roop Chand v, State of Punjab* (*supra*), in 1963, and, by virtue of that decision, sub-sections (3) and (4) of S. 32-D have to be interpreted in the same manner and, in doing so, the only irresistible conclusion is that the orders passed, whether under sub-section (3) or sub-section (4) by one officer or the other, would be the orders of the State Government and to harmoniously reconcile the two provisions the only correct way to interpret or read them would be that if an appeal is decided under sub-section (3), whether by the State Government or an officer duly authorised, the same would be treated as decision of the State Government and would be final under sub-section (5) and no revision would lie under sub-s. (4) and in cases where no appeal is taken under sub-section (3) and" instead a revision is filed

under sub-section (4), then the decision under sub-section (4), whether by the State Government or by an officer to whom the powers are delegated, would be final under sub-sec. (5) treating it to be that of the State Government. So, far as the notifications referred to by the learned counsel for the petitioner and reproduced above are concerned, the learned Additional Advocate General argues that the same cannot override the provisions of the Act and have to be read subject to the provisions of sub-secs. (3), (4) and (5) and in doing so if some part of the notification becomes unworkable, then to that extent the notification has to be held to be inoperative and ineffective. This is particularly with reference to the notification dated Dec. 23, 1963. According to the learned counsel, keeping in view" the Supreme Court decision in Roop Chand's case (supra), para 1 of the notification would be ineffective because the Financial Commissioner under sub-section (4) would not be able to revise the order of the Commissioner passed under sub-section (3), as an order under sub-section (3) would be of the State Government and the Financial Commissioner would also be acting as the State Government. However, para 2 would remain operative where the Commissioner would be able to hear a revision under sub section (4), where no appeal has been preferred under sub-section (3). He has also relied in support of his argument on the decisions of this Court in Kandhara Singh v. Bhajan Singh (supra), Chhota Singh v. State of Punjab (supra) and Kiahana Singh v. State of Punjab 1969 Pun LJ 573.

14. After hearing the learned counsel for the parties, we are of the view that the only way to interpret and read the provisions of sub-secs. (3), (4) and (5) of S. 32-D, keeping in view the decision of the Supreme Court in Roop Chand's case (supra), is that under sub-section (3), the power of hearing appeal is given to the State Government or to an officer authorised by the State Government and even if an appeal is decided by an officer authorised by the State Government in this behalf, he would be acting for and on behalf of the State Government and, therefore, his decision would also be the decision of the State Government in the eye of law. If the Legislature wanted that an appeal would lie to a named" officer or an officer authorised by the State Government in that behalf alone, then the provisions of sub-section (3) would have been entirely different and it; would have read either "prefer an appeal to..... officer" or "prefer an appeal to an officer authorised by the State Government in this behalf, whereas the present sub-section is "prefer an appeal to the State Government or an officer authorised by the State Government in this behalf". In this manner, the State Government may hear the appeal itself or may authorise an officer to hear the same. In both the situations, the appeal would be to the State Government and when it would be heard by an officer, it would be a decision of the State Government. Otherwise, it will be the choice of an appellant either to file the appeal before the State Government which would mean the Secretary or the Minister of the concerned Department or may file the appeal to the officer authorised by the State Government in this behalf that is the Commissioner as has been notified in the present case. In one event, when the appeal was taken to the State

Government, it would be a decision of the State Government and if the appeal is taken to the Commissioner, then it would not be a decision of the State Government. This would create an anomaly besides being against the true interpretation of sub-section (3). This interpretation is further supported by a reading of sub-section (5) and what has been held to be final is the order of the State Government, whether passed under sub-section (3) or sub-section (4). So, the Legislature is only envisaging the finality of the order passed under sub-section (3) and it cannot be argued that if an order is passed under sub-section (3) by the State Government then it is final and if it is passed by the Commissioner then it is not final. In either of the situations, the order would be deemed to be of the State Government and would be final and holding to the contrary would again create an anomaly which would be against the true interpretation of sub-section (5). From the interpretation which we have placed above, it is true as also conceded by the learned counsel for the State, that sub-section (4) would become redundant in a case where appeal was taken under sub-section (3) and was decided either by the State Government or its authorised officer but it would be effective in those cases where no appeal is filed under sub-section (3) and instead a direct revision is filed under sub-section (4). Similar would be the position with regard to the notification dated Dec. 23 1963. The Financial Commissioner will not be able to exercise his power under sub-section (4) in cases where an order has been passed by the Commissioner under sub-section (3) and to that extent clause (1) at the notification will be totally redundant but clause (2) of the notification would be effective where a Commissioner would be able to entertain a revision under sub-section (4) in cases where no appeal is preferred under sub-section (3).

15. We are not impressed by the argument of the learned counsel for the petitioner that in S. 50 of the Act, for purposes of delegation different words have been used as compared to the latter part of sub-section (3) of S. 32-D and, therefore, we should interpret the two provisions differently. Section 32-D was inserted by the Amendment Act No. 15 of 1956 and, therefore, it appears that by way of abundant caution or by way of repetition, authority was given in sub-section (3) to the State Government to authorise an officer to hear an appeal under sub-section (3) which will lie to the State Government. So, even if the words "or an officer authorised by the State Government in this behalf" were to be omitted, still by virtue of Section 50, the State Government could delegate its power of appeal to a Commissioner or any other officer and if the Legislature somehow has added the aforesaid words in sub-section (3), it makes no material difference and the position still remains the same that the State Government can authorise an officer hear an appeal which lies to, the, State Government. Therefore, the aforesaid words in sub-section (3) do not convey a different meaning and whether the words are to be read or not, the same result flows, that is, under sub-section (3) appeal lies to the State Government which may be disposed of by it or by its nominee.

16. Now let us compare the provisions of sub-section (3) and sub-section (4) of

Section 32-D of the Act with the provisions of S. 21(4) of the Consolidation Act as it stood before its amendment in view of the decision of the Supreme Court in Roop Chand's case (supra) and S. 42 of the Consolidation Act. The relevant provisions of S. 21(4) of the Consolidation Act were as under:--

"21 (4). Any person aggrieved by the order of the Settlement Officer (Consolidation) under sub-section (3) may within sixty days of that order appeal to the State Government."

S. 42 of that Act was as under:--

"42. The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any. order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the records of any case pending before or disposed of by such of6cer and may pass such order in reference thereto as it thinks fit."

S. 41 of the Consolidation Act empowered the State Government to delegate any of its powers or functions under that Act to any of its officers either by name or designation.

17. A comparison of the aforesaid provisions of the Consolidation Act with S. 32-D(3) and (4) and S. 50 of the Act clearly shows that S. 32-D(3) is analogous to S. 21(4) of the Consolidation Act except for the difference that in Section 32-D(3), apart from the words "prefer" an appeal. to the State Government", the sentence further continued "or an officer authorised by the State Government in this behalf". If these further words had not been added, even then by virtue of S. 50 of the Act the State Government could delegate its power to any officer including the Commissioner. The addition of further words, has made duplicacy with regard to the power to delegate or to authorise an officer to act on behalf of the State Government and this may be called duplicacy or repetition, but the net result is that the appeal lies to the State Government and, therefore, this provision is almost similar to the provision of Section 21(4) of the Consolidation Act Equally, the provision of S. 32-D(4) is similar to S. 42 of the Consolidation Act where the right of revision is given to the State Government to examine any record for itself. Further, the provision of S. 50 of the Act is similar to S. 41 of the Consolidation Act which empowers the State Government to delegate its powers or functions to any officer. Therefore, we find that the corresponding provisions of the two Acts are similar and have to be interpreted in the same manner.

18. For purposes of interpretation of the relevant provisions of the Act, we place reliance on the decision in Roop Chand's case (supra), where the Supreme Court held as follows:--

"Where the State Government has, under S. 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power gives under S. 21(4) to hear appeals to an officer, an order passed by such officer is an order passed by. the State Government itself and not an `order

passed by any officer under this Act" within the meaning. of S. 42. The order contemplated by S. 42 is an order passed by an officer in his own right and not as a delegate. The State Government, therefore, is not entitled under S. 42 to call for and examine the record of the case disposed of by the officer acting as delegate. An order passed by the State Government under S. 42 in such a case is a nullity and deserves to be set aside under Art. 32 of the Constitution of India."

It was further held:

"The word delegate means little more than agent. An agent exercises no powers of his but only the powers of his principal. Therefore, an order passed by an officer on delegation to him under S. 41(1) of the power of the Government under S. 21(4), is for the purposes of the Act, an order of the Government":

In the aforesaid Supreme Court case, against the order under S. 21(4), a revision was filed under S. 42 and that revision was allowed and the order under S. 21(4) was set aside. The Supreme Court held that since the order under S. 21(4) was of the State Government no order under S. 42 could be passed and as such the order u/s 42 being illegal was quashed. The Supreme Court, in Harbhajan Singh v. Karam Singh (supra), held that there is no provision in the Consolidation Act granting express power of review to the State Government in regard to an order made under S. 42 of the Act and, therefore, the previous order passed on an application under S. 42 could not be reviewed and the subsequent order of review would be ultra vires and without jurisdiction. On a parity of reasoning, the aforesaid decision would also be applicable to the facts of the present case inasmuch as the order u/s 32-D(3) of the Act would be of the State Government and an order u/s 32-D(4) would also be of the State Government. That would mean that the State Government is exercising the power twice over without there being any express power for review. On this ground also, if the Financial Commissioner had interfered under S. 32-D(4) and had reversed the order passed u/s 32-D(3), it would have been liable to be set aside on this ground. In the present case, in our view, the Financial Commissioner was justified in holding that no revision is competent.

19. Referring to Kandhara Singh v. Bhajan Singh (supra), it is true that the point which has been precisely raised before us was not raised there and, therefore, there is no specific decision about the interpretation of sub-secs. (3) and (4) of Section. 32-D of the Act in that case. Moreover, that decision proceeded on the assumption that the Commissioner decided the appeal u/s 32-D(3) as a delegate of the State Government and even the learned counsel for the petitioner has not disputed that if the appeal is decided by the Commissioner as a delegate of the State Government, then the power of revision u/s 32-D(4) cannot be exercised. As already pointed out, we are not impressed by the distinction which the learned counsel. for the petitioner wanted to raise on the peculiar wording of sub-section (3) with regard to the authorisation by the State Government as distinguished from delegation u/s 50 of the Act. Therefore, the aforesaid decision is correct where the quashing of the order of the Financial Commissioner by a

learned single Judge in the writ petition was upheld by the Letters Patent Bench.

20. With regard to *Chhota Singh v. State of Punjab* (supra), the decisions correct that after an order is passed under sub-section (3), the same cannot be upset in revision under sub-section (4) of Section 32-D of the Act.

21. So far as *Kishan Singh v. State of Punjab* (supra), is concerned, that decision is also correct as it was held therein that an order under sub-section (3) cannot be reversed in exercise of power under sub-section (4) of Section 32-D of the Act. We approve of this decision also.

22. After analysing the whole situation, we come to the following conclusions:

(i) That if against the order of the Collector an appeal is decided under subsection (3) of Section 32-D of the Act, no further revision would lie under sub-section (4) and finality would attach to the order under sub-section (3) by virtue of sub-section (5), as the order under sub-section (3) would be deemed to be passed by the State Government even if passed by an officer authorised by the State Government in this behalf.

(ii) That if no appeal is filed under subsection (3) then the revisional power under sub-section (4) can be exercised by the State Government or its delegate and finality will attach under sub-section (5) to such an order deeming the same to be of the State Government even if passed by its delegate.

(iii) Clause (1) of the notification dated December 23, 1963, would be redundant as the Financial Commissioner will not be able to hear a revision under sub-section (4) against an order passed by the Commissioner under sub-section (3) of Section 32-D of the Act and clause (2) of the notification will stand intact inasmuch as the power of revision under sub-section (4) would be exercised by the Commissioner in cases where no appeal has been preferred under sub-section (3) of Section 32-D of the Act.

(iv) The notification dated Sept. 18, 1958 would stand superseded by notification dated October 1, 1964, which would be valid and operative.

23. On the view we have taken, it must be held in this case that the Financial Commissioner was right in holding that no revision was competent before him u/s 32-D(4) of the Act against the order of the Commissioner passed under Section 32-D(3) and, therefore, we uphold his order which has been impugned in this writ petition on the point of jurisdiction. The writ petition may now be placed before a learned single Judge of this Court for decision of the same on merits.

S.S. Sandhawalia, C.J.

24. I agree.

D.S. Tewatia, J.

25. I agree.

26. Order accordingly.