(2011) 04 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 55 of 2004

Surinder Singh	APPELLANT
Vs	
Sham Lal and Another	RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2011) 04 SHI CK 0017

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition under Article 227 of the Constitution of India is directed against the order dated 14.10.2003 passed by the learned Financial Commissioner (Appeals), H.P in Revenue Revision No. 185 of 1995.

2. Briefly stated the facts of the case are that Sh.Sham Lal, Respondent No. 1 herein filed an application on 30.11.1986 before the learned Assistant Collector, 2nd Grade, Solan seeking correction of revenue entries in respect of land comprised in Khasra No. 212/1 measuring 471 square meters. His case was that Khasra No. 212/1 was a part of old Khasra No. 858/35 owned and possessed by him alongwith his brothers. He further alleged that he and his brothers were always shown to be owners in possession of the aforesaid land but after the year 1982-83, Champa Rani, the present Petitioner managed to get herself shown to be in possession in connivance with the settlement staff.

3. Smt.Champa Rani raised the issue that the learned Assistant Collector, 2nd Grade, Solan had no jurisdiction to entertain the petition or decide the same who referred the matter to the Collector. The learned Sub Divisional Collector, Solan dismissed the claim of Champa Rani on 19.8.1989. A Revision Petition was filed against this order which was also dismissed by the learned Divisional Commissioner, Shimla on 5.4.1990.

4. Thereafter, the petition was heard on merits and allowed vide order dated 23.7.1992 by the Assistant Collector, 2nd Grade, Solan. An appeal filed before the learned Sub Divisional Collector, Solan by Smt. Champa Rani was dismissed on 14.5.1993. Thereafter, Smt. Champa Rani filed a Revision Petition before the learned Divisional Commissioner who came to the conclusion that the long-standing entries in the Jamabandi should not have been corrected by the revenue officer and, therefore, recommended that the Revision Petition filed by Smt. Champa Rani be accepted. The Financial Commissioner (Appeals) vide impugned order dated 14.10.2003 came to the conclusion that the name of the Respondent was deleted from the revenue record without following any legal procedure and rejected the recommendation made by the learned Commissioner. Shimla Division. Champa Rani died in the meantime and her son Sh. Surinder Singh filed the present petition.

5. The main issue raised by Sh. B.K. Malhotra, learned Counsel for the Petitioner is that the entries which were incorporated during the settlement proceedings cannot be corrected by the revenue officer when no appeal had been filed to challenge the order of the settlement officer. He submits that the settlement took place in the year 1984-85 and in these proceedings, Smt.Champa Devi was shown to be in possession of this land and, therefore, the revenue officer had no right to correct the revenue entries in this regard.

6. On the other hand, Sh. Neeraj Gupta, learned Counsel for the Respondent No. 1 submits that the objection of jurisdiction having once been raised and decided against the Petitioner and such order having attained finality, the Petitioner cannot now challenge the jurisdiction of the revenue authorities to make the corrections.

7. I have gone through the entire record of the case. In the application filed by Sham Lal, Respondent No. 1 before the learned Assistant Collector, 2nd Grade, Solan, it was alleged that the change in the entries relating to Khasra No. 212/1 previously was shown Khasra No. 858/35 whereby Champa Rani was shown in possession is against the law. Report of the Patwari was called for and he reported that Champa Rani had nothing to do with the land. Thereafter, notice was issued to Champa Rani. The Assistant Collector vide his order dated 30.6.1987 made a reference to the Collector on the ground that he was not sure whether he could make correction in the revenue entry since the correction had been ordered by the learned Settlement Collector. The Respondent filed an application before the learned Sub Divisional Collector that the case be transferred since the learned Assistant Collector had no jurisdiction to correct the revenue entries which had been incorporated during the settlement proceedings. Accordingly, the learned Assistant Collector vide his order dated 30.6.1987 referred the matter to the learned Sub Divisional Collector, Solan. The learned Sub Divisional Collector rejected this contention vide his order dated 23.2.1988 and came to the conclusion that the revenue officer had the jurisdiction to decide the application and to make correction in the revenue record. Against this order

of the learned Sub Divisional Collector, Champa Rani filed a Revision Petition before the learned Commissioner, Shimla Division wherein also the main objection was that the revenue officer had no right to correct the revenue record once it has been changed in the settlement proceedings. This Revision Petition was rejected on 5.4.1990. It is not disputed before me that this order has attained finality.

8. Thereafter, the matter went back to the learned Assistant Collector, 2nd Grade, Solan who vide his order dated 25.7.1992 found that as per the evidence on record and the report of the Patwari, possession of the disputed land was that of Sham Lal and, therefore, directed that revenue record be corrected in accordance with law. This order was challenged before the learned Sub Divisional Collector who dismissed the appeal but the Commissioner, Shimla Division accepted the Revision Petition filed by Smt.Champa Rani.

9. Sh. Neeraj Gutpa urges that once the issue of jurisdiction had been decided by the learned Divisional Commissioner in earlier proceedings, in the second Revision Petition, the Divisional commissioner could not have set aside the findings of his predecessor on coming to the conclusion that the revenue authorities had no jurisdiction to change the revenue entries.

10. The main ground which weighed with the learned Divisional Commissioner was that during the settlement proceedings, the present Petitioner did not file any appeal or challenge the same and only moved an application on 30.11.1986 before the Assistant Collector. It is undisputed that the revenue entries were changed in favour of the Respondent No. 1 after 1982-83 sometime in the year 1984-85. The Commissioner, Shimla Division gravely erred in holding that such longstanding entries could not be corrected. The entries were only 2 to 3 years old in the year 1986 when the application for correction was filed.

11. As far as jurisdiction is concerned, the matter having been once decided by the learned Divisional Commissioner and having attained finality, both the authorities erred in holding that revenue officer could not have made such correction.

12. Sh. B.K. Malhotra, submits that the question relating to jurisdiction of the Court cannot be deemed to be finally determined by an erroneous decision of the Court and such decision cannot operate his resjudicata. He relies upon the judgment of the Apex Court in Mathura Prasad Sarjoo Jaiswal and Ors. v. Dossibai AIR 1971 SCC 2355.

13. I am unable to accept this contention. In this case, findings were given in the same proceedings and have attained finality. These findings were not given in any other proceedings. Secondly, another important factor is that Champa Rani did not care to place on record the order of the Settlement Collector. It was she alone who could have brought to the notice of this Court the order of the Settlement Collector. When no such order has been brought on record, how can reliance be placed on the same. Champa Rani could not only rely upon the

change in the revenue entries but it was her duty to show how these revenue entries were brought about. Both the learned Assistant Collector and the learned Sub Divisional Collector had come to a finding of fact that the Respondent is not in possession of the land. This finding could have been set aside in revisional proceedings by the learned Divisional Commissioner. The learned Financial Commissioner rightly rejected the recommendations of the Divisional Commissioner.

14. Admittedly prior to 1983-84 the land was being shown in the ownership and possession of the present Respondent. It was the duty of Champa Rani to show how she came in possession of the suit land.

15. In view of the above discussion, I am of the considered view that the learned Divisional Collector gravely erred in holding that the revenue officer was not entitled to make the corrections. The learned Financial Commissioner rightly rejected his recommendations. Accordingly the petition is dismissed. No order as to costs.

