Sr.No.350
IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

**CWP-11368-1993(O&M)**

**Decided on: 13.01.2016**

Jagdish Chander and others .............Petitioners

vs.

State of Punjab and others ...............Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover**

Present: Mr. Prem Nath Aggarwal, Advocate for the petitioners.
Mr.Anant Kataria, DAG, Punjab.
**

**Mahesh Grover, J**

The petitioners have impugned the order dated 18.05.1993 (Annexure P-5) passed by the Financial Commissioner, Revenue Punjab.

The facts would have to be noticed to understand the controversy.

One Shankar Dass son of Mohan Lal, predecessor-in-interest of the present petitioners purchased by virtue of an oral sale before 15.04.1953 land measuring 54 bighas and 10 biswas. He was held to be in possession of surplus area by the prescribed authority vide its order dated 29.12.1961, considering the fact that he was owner in possession of 34 acres and 10 marlas (31 St. Acres 4 Units) of agricultural land situated in village Sappanwali Tehsil Fazilka on 15.04.1953, the date of commencement of Punjab Security of Land Tenures Act, 1953 (hereinafter known as Act of 1953), under which provisions the surplus proceedings were determined.

No appeal or revision was preferred against the order of 1961 till the time the Collector made a reference to the Commissioner seeking review of the order of 1961 which was rejected for the first time on 19.04.1968 by virtue of Annexure P2 advising that remedy of appeal which was available ought to have been availed off. By a separate order dated 01.06.1972 vendee's file was directed to be closed and vendor's area directed to be assessed. Against this order, Shankar Dass filed an appeal. The order dated 01.06.1972 was set aside vide order dated 29.09.1975 (Annexure P-3). The

Collector then made another reference on 15.04.1977 to the Commissioner once again, seeking permission to review the order of 1961 which was rejected vide order dated 24.09.1979 (Annexure P-4). Despite the above, the Commissioner who succeeded the one who had made the earlier reference which stood declined once again made a suo motu reference on 19.02.1984.

Shankar Dass died on 09.07.1985 and the matter was thereafter prosecuted by his legal representatives. The Financial Commissioner to whom the reference was made accepted it vide the impugned order dated 18.05.1993 mandating a review of the 1961 order.

Learned counsel for the petitioners contends that the Financial Commissioner would have no power to mandate a review as the law does not confer any power upon him in this regard.

That apart, another argument that has been raised is regarding the inordinate delay in initiating the proceedings. It is stated that the first permission for review was declined on 19.04.1968 followed by another request in 1977 which was declined in 1979 and then fresh attempt initiated by the Financial Commissioner suo motu in 1984 resulting in the passing of the impugned order. It has been stated that this inordinate delay between the proceedings should have been a cause to dismiss the prayer for review of an order passed in 1961.

Learned counsel for the respondents, on the other hand, would justify the order passed by the Financial Commissioner.

I have heard the learned counsel for the parties and noticed that the order proceeds as if in exercise under Section 15 of the Punjab Land Revenues Act, 1887 is being exercised.

The entire proceedings since its inception were under the Act of 1953 and, therefore, there was a gross error committed by the Commissioner in referring to the powers under Section 15 of the Punjab Land Revenue Act, 1887 which was never invoked. If the provisions of the Punjab Security of Land Tenures Act, 1953 are noticed then Section 24 would provide the powers of appeal, review and revision, same is extracted here below:



"***24.Appeal, review and revision-****The Provisions* in regard to appeal, review and revision under this Act, shall, so far as may be, be the same as provided in section 80,81,82,83 and 84 of the Punjab Tenancy Act, 1887 (Act XVI of 1887 ].

[1]***[24-A Power to separate share of land-owners in joint lands -****(1) where a land-owner owns land jointly with other land-owners and his share of such land or part thereof, as ascertained from the record of rights, has been or is to be declared as surplus, area, the officer competent to declare such area, or, where such area has been declared, the officer competent to utilise it, may on his own motion, after summary enquiry and affording to the person interest in such land an opportunity of being heard., separate his share of such land or part thereof in the land owned by him jointly with other land-owners.*

*(2)Where, after the declaration of the surplus area of any person and before the utilisation thereof, his land has been subjected to the process of consolidation the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation ]*

The power of review as contained in Section 82 of the Punjab Tenancy Act, is also extracted here below:

**"82.Review by Revenue-officers -**(1) A Revenue-officer as such may either of own motion or on the application of any party interested review and on so reviewing modify reverse or confirm any order passed by himself or by any of his predecessors in office.

**Provided as follows :-**

(a)when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed and when a Revenue-officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in officer he shall first obtain the sanction of the

Revenue-officer to whose control he is immediately subject;

(b) no application for review of an order shall be entertained unless it is made within ninety days from the passing of the order or unless the applicant satisfies the Revenue-officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected there by to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue-officer of a lower class who has left the district or has ceased to exercise powers as a Revenue-officer and to whom there is no successor in office.

It is,thus, evident that a revenue officer may either on his own motion or on application of any party interested, review its order, reverse or confirm the order passed by his predecessors in office provided that when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed and when a revenue officer of a class below that of a Collector proposes to review an order whether passed by himself or by any predecessor of office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject.

That being the explicit mandate of the statute, it would imply that Collector who passed the order of 1961, wanting a review would essentially have to seek the permission of the Commissioner which he did on two occasions resulting in a denial.

The revisional power of the Financial Commissioner is contained in Section 84 of the Punjab Tenancy Act, the relevant portion of which is extracted here below:

> ***"84.Power to call for examine and revise proceedings of Revenue-officers or Revenue Courts**- (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 Courts subordinate to him.*
>
> *(2)A 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 a 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 opinion that it is inexpedient to interfere with the proceedings or the order or decree he shall pass an order accordingly.*

A perusal of the impugned order would reveal that this power was never exercised by the Financial Commissioner but despite this he observed that, " *It is a fit case for sanctioning review of the order dated 29.12.1961 which has been passed by Collector, Fazilka".*

An interpretation of the provisions of the statute extracted in the foregoing paragraphs leaves no manner of doubt that order of 1961 having been passed by the Collector, only the Commissioner could grant permission to review the said order. Having declined it on two occasions and that too over a period spaced out by considerable years, the last process initiated by the Commissioner suo motu on 19.02.1984 would be abusive to the process envisaged by the statute being beyond competence and hit by delay. It is not the order of the Commissioner of 1968 or 1972 declining the permission of review that was sought to be reviewed by the Commissioner on a suo motu reference initiated in 1984 but rather it was a permission to review an order of 1961 which was passed by the Collector and regarding which proceedings could have been initiated only by the Collector, which besides delay in initiating proceedings even if accepted to be justified would be a certain fatality to the respondent's cause.

For the aforesaid reasons, the writ petition is accepted and the impugned order is set aside by also keeping in view the fact that since 1961 the parties have been in settled possession.

**13.01.2016** **(MAHESH GROVER)**
**mamta** **JUDGE**