

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14051 of 2022(O&M)

Date of Decision:30.11.2022

Hariram

.....Petitioner

Versus

Financial Commissioner, Haryana, Chandigarh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Gunjeet Brar, Advocate
for Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Amit Aggarwal, DAG., Haryana.

LISA GILL, J(Oral).

Prayer in this writ petition is for setting aside order dated 17.07.2020, Annexure P-7, passed by the Financial Commissioner, Haryana, whereby application, Annexure P-6-A, of the petitioner seeking review of order dated 14.01.2015, Annexure P-5 (wrongly mentioned as Annexure P-6 in the writ petition), passed by the Financial Commissioner, has not been entertained on the ground of it being beyond jurisdiction. There is a further prayer for quashing order dated 19.09.2005, Annexure P-2, passed by the Collector, Kaithal, whereby petitioner's application under Section 13-A of the Punjab Village Common Lands (Regulation) Act, (now Haryana Village Common Lands (Regulation) Act, 1961 as notified on 05.04.2021) (for short 'the Act'), has been dismissed as well as order dated 06.12.2006, Annexure

P-3, passed by the Commissioner, Ambala Division, dismissing petitioner's appeal under Section 13-AA of the Act.

It is stated that the petitioner is in possession of 44-K 17-M of land in village Buddanpur Gujran, Tehsil Guhla, District Kaithal. Petitioner claims to be a member of the proprietary body of the village being in possession of land as co-owner (Hissedar) as per jamabandi for the year 1960-61. This entry, it is stated was changed vide mutation no. 75 in favour of the Gram Panchayat, but was restored as *Shamilat Deh* vide mutation no. 103 dated 14.04.1964. This entry continued up to the year 1992 when it was purportedly changed in an abrupt manner in favour of the Gram Panchayat consequent to Amendment Act No.9 of 1992 vide mutation no. 220 sanctioned on 30.06.1992. It is stated that as per Full Bench judgement of this High Court in **Jai Singh and others Vs. State of Haryana, AIR 1995 (P&H) 243**, mutations sanctioned in favour of the Gram Panchayat on the basis of the Amendment Act were null and void, therefore, stood set aside.

Petitioner, it is stated thereafter on 11.09.2003 filed application/suit under Section 13-A of the Act for declaration to the effect that he is the owner of land in question. It was prayed that petitioner being a member of the proprietary body of the village was in possession thereof as owner and that the land had never been reserved for common purposes. The Collector, Kaithal, vide order dated 19.09.2005, Annexure P-2, rejected the petitioner's claim.

Appeal filed by the petitioner was dismissed by the Commissioner, Ambala Division, on 06.12.2006, Annexure P-3.

ROR No. 425 of 2006-07 was filed by the petitioner challenging the abovesaid orders. It is stated that as the petitioner was advised to withdraw the revision petition with liberty to file a fresh

application before the Collector in view of the various judgments of this Court in his favour, petitioner filed an application for withdrawal with liberty to file a fresh application before the Collector. However, the Financial Commissioner, vide order dated 14.01.2015, Annexure P-5 (wrongly mentioned as Annexure P-6 in the writ petition), dismissed the revision petition as withdrawn without affording liberty to the petitioner to file fresh application.

Review application was filed by the petitioner on 20.01.2019, which was not entertained by the Financial Commissioner being beyond jurisdiction.

Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioner argues that the Financial Commissioner, has erroneously returned the review petition filed by the petitioner being beyond jurisdiction. It is contended that as per Section 13-A (2) of the Act, procedure for deciding the suit under Sub Section 1 thereof, shall be the same as laid down in the Code of Civil Procedure, 1908. Furthermore, there is a provision for appeal and revision in Section 13-AA of the Act.

Financial Commissioner, it is further submitted was under a legal obligation to first consider the averments in the review application and thereafter pass a considered order and could not have simply refused to entertain the review petition on the ground that it was beyond jurisdiction. It is thus prayed that this writ petition be allowed.

Short reply on behalf of respondents no.1 to 4 has been filed and arguments raised by learned counsel for the petitioner have been refuted with the averments that there is no provision for review of an order by the Financial Commissioner. It is further submitted that Amendment Act of

1992, has been upheld by the Hon'ble Supreme Court in **State of Haryana Vs. Jai Singh and others, 2022 (2) R.C.R (Civil) 803**. The Hon'ble Supreme Court has specifically held therein that the entire land reserved for common purposes by applying pro rata cut had to be utilized by the Gram panchayat for the present and future needs of the village community and that no part of the land can be re-partitioned amongst proprietors. It is thus prayed that this writ petition be dismissed.

We have heard learned counsel for the parties and have gone through the file with their able assistance.

Section 13-A and 13-AA of the Act, reads as under:-

13-A Adjudication:-

“13A.(1) Any person or in the case of a panchayat either the panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a panchayat under this Act, in the court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908).

13 AA. Appeal and Revision:-

13AA. (1) Any person, aggrieved by an order passed under sub-section (1) of section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in

such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-section (1), call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

It is a matter of record that the power to review is not provided in the Act. It is settled position that a judicial or quasi-judicial authority cannot review its own order unless it is vested with the power of review. It has been specifically held by this High Court in **Gurjinder Singh and another vs. State of Punjab and another, 2016 (3) R.C.R (Civil) 342** as under:-

“8. There is no gain-saying that a judicial or quasi-judicial authority cannot review its own order unless the power of review is vested in it. There is no inherent power of review exercisable by a judicial or quasi-judicial Forum. There is a conceded fact in the case in hand that there is no provision in the 1948 Act enabling the Authorities to review their own orders.”

In case of **Rama Sarup and others Vs. State of Haryana and others, 2006(4) R.C.R (Civil) 350**, it is categorically observed that 1961 Act is a complete Code in itself and provisions of CPC are not applicable so as to confer the remedy of review. Therefore, argument raised by learned counsel for the petitioner that power of review is inherent or available due to applicability of provisions of CPC, is clearly misplaced.

It is pertinent to note, at this stage, that application for review was moved after a lapse of 4 years of withdrawal of the revision petition on

14.01.2015. Petitioner, clearly did not avail the proper remedy in accordance with law as available to him within a reasonable period and proceeded to file the review application, which is not maintainable in any manner.

Keeping in view the facts and circumstances as above, we do not find any ground whatsoever to interfere in this matter.

No other argument has been raised.

Writ petition is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

November 30, 2022.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.