

Bombay authority cited above. Accordingly, the appeal preferred to the District Court at Rohtak by the petitioners must be held to be within time.

(13) In the result, the petition is allowed and the order of dismissal of the appeal presented by the petitioners to the District Court at Rohtak is set aside. That Court is directed to hear and decide the appeal on merits. The parties are directed to appear in that Court on the 15th of December, 1969. There will be no order as to costs of the proceedings before us.

D. K. Mahajan, J.—I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RAM CHAND,—Petitioner.

Versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 1470 of 1965

November 27, 1969

Punjab Security of Land Tenures Act (X of 1963)—Section 24—Punjab Tenancy Act (XVI of 1887)—Sections 82, 85 and 88—Code of Civil Procedure (V of 1908) Order 47 Rule 1—Order of the Collector on the basis of the interpretation of the law then current—Review of the order on change in the interpretation of law—Whether permissible—Power of review of the revenue officers—Whether to be exercised only on grounds in Order 47 Rule 1 of the Code.

Held, that the powers of review under section 24 of the Punjab Security of Land Tenures Act, 1963, are the same as under section 82 of the Punjab Tenancy Act, 1887. All the revenue officers of all grades possess powers to review their own orders and those of their predecessors provided no appeal has been filed against those orders. The power of review which vests in the revenue officer under section 82 of the Tenancy Act is not limitless and the same cannot be exercised any time and in any case, because that would lead to confusing results and would vest the revenue officers with powers which may be misused arbitrarily and would create an atmosphere of uncertainty. The exercise of this power would be governed by the guiding principles

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which have been applicable to Courts generally. An undefined power of review under section 82 of the Tenancy Act cannot be utilised by the Collector for varying and altering his earlier order which had been passed in accordance with the interpretation of law that was current at that time, on the ground that subsequently there has been a change in the interpretation of law. Merely the fact that subsequent to the passing of the earlier order there has been a different interpretation of law, does not invest the Collector with the power to review his own previous order. (Paras 3 and 4).

Held, that no rules relating to the exercise of review jurisdiction under section 82 of the Tenancy Act by the revenue officers have been framed under section 85 of the Tenancy Act. Thus there will be no basis for holding that the revenue officer is to exercise the power of review on the grounds specified in Order 47 rule 1 of the Code of Civil Procedure. (Para 4)

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the orders of Respondent Nos. 2, 3 and 4, dated 29th March, 1965, 5th February, 1964 and 21st September, 1962, respectively.

R. N. MITTAL, ADVOCATE, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL, (HARYANA), for the respondents.

JUDGMENT

P. C. Jain, J.—Ram Chand has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the orders of the Collector, the Commissioner, and the Financial Commissioner, dated 21st September, 1962, 5th February, 1964, and 29th March, 1965, respectively.

(2) The brief facts on which there is no dispute are that the petitioner owned 101.65 Ordinary Acres 31.59 Standard Acres of land and the Collector, respondent No. 4, by his order dated 10th June, 1961, had allowed the petitioner to retain 96.56 Ordinary Acres/30 Standard Acres as his permissible area and the remaining area was declared surplus. The order dated 10th June, 1961 was passed by the Collector following the decision of the Financial Commissioner in *Mahia and others v. Dalip and others* (1). However, the decision in *Mahia's case*, (1), did not remain a good law and the settled law now is that a non-displaced person would be entitled to 30 Standard Acres as his permissible area, but if these 30 Standard

(1) 1961 L.L.T. 11.

Acres on conversion into Ordinary Acres, exceeded 60 Acres, then he would be entitled only to 60 Acres. In view of the changed interpretation of law, the Collector reopened the matter and by the impugned order, reviewed his previous order dated 10th June, 1961 and allowed the petitioner to retain 60 Ordinary Acres only and the rest of the area was declared surplus.

(3) The main ground urged by the learned counsel for the petitioner, was that the Collector, in the circumstances of the case, had no jurisdiction to review his previous order dated 10th June, 1961. According to the learned counsel, no valid ground existed for review and merely this fact that subsequent to the passing of the earlier order there had been a different interpretation of law, did not invest the Collector with the power to review his own previous order. It was also contended that the power of review could not be exercised by the Collector after a period of about 15 months. On the other hand, it was contended by the learned Advocate-General that the Collector had an unlimited power of review and the same could be exercised legally without any limitation. According to the learned Advocate-General, no fetters were imposed by the statute on the power of review to be exercised by the revenue officers. The short question that arises for consideration is whether in the circumstances of this case, the Collector had any jurisdiction to review his previous order dated 10th June, 1961.

(4) After giving my thoughtful consideration to the entire matter and to the relevant provisions of law, I am of the view that there is considerable force in the contention of the learned counsel for the petitioner, and the question referred to above has to be answered in the negative. The relevant provisions of law with which we are concerned are section 24 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act) and section 82 of the Punjab Tenancy Act, 1887 (hereinafter referred to as the Tenancy Act), which read as under:—

24. *Appeal, review and revision.*

The provision in regard to appeal, review and revision under this Act, shall, so far as may be, be the same as provided in sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887 (Act XVI of 1887)."

"82. *Review by Revenue Officers.*

(1) A Revenue Officer, as such, may either of his own motion or on the application of any party interested, review, and

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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 the Revenue Officer of a class below that of the Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;
 - (b) an application for review of an order shall not 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 parties affected thereby to appear and be heard in support of the order;
 - (d) an order against which appeal has been preferred shall not be reviewed.
- (2) For the purpose 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.
 - (3) An appeal shall not lie from an order refusing to review, or confirming on review, a previous order."

The powers of review under section 24 of the Act are the same as under section 82 of the Tenancy Act. A plain reading of the provisions of section 82 of the Tenancy Act, shows that all the revenue officers of all grades possess powers to review their own orders and those of their predecessors provided no appeal has been filed against those orders. It is also equally apparent that in section 82, no grounds have been mentioned like those given in Order 47, rule 1 of the Code of Civil Procedure on the basis of which a power of review could be exercised. The only safeguard is provided in cases where the order of the predecessor-in-office is to be reviewed. Thus

the question that needs consideration is whether section 82 of the Tenancy Act can be interpreted to mean that unlimited powers of review vest in the revenue officers. The answer to this question has to be independently arrived at, as I am not inclined to agree with the contention of Mr. Mittal, learned counsel for the petitioner, that the power of review has to be exercised by the revenue officers in accordance with the grounds prescribed in section 114 and Order 47, rule 1 of the Code of Civil Procedure. Section 88 of the Tenancy Act prescribes procedure for revenue Courts and not revenue officers. Admittedly no rules relating to the exercise of review jurisdiction under section 82 of the Tenancy Act by the revenue officers have been framed under section 85 of the Tenancy Act. Thus there will be no basis for holding that the revenue officer is to exercise the power of review on the grounds specified in Order 47 rule 1 of the Code of Civil Procedure. However, I have not been able to persuade myself to agree with the contention of the learned Advocate-General that the power of review which vests in a revenue officer under section 82 of the Tenancy Act is limitless and the same can be exercised any time and in any case, because that would lead to confusing results and would vest the revenue officers with powers which may be misused or used arbitrarily and would create an atmosphere of uncertainty. There can also be no manner of doubt that the Legislature could never intend to vest the revenue officers with wider powers of review than the ordinary Courts of law. In my view, the power of review which can be exercised by a revenue officer under section 24 of the Act, read with section 82 of the Tenancy Act, would be governed by the guiding principles which have been applicable to Courts generally. A somewhat similar question arose in *Harnek Singh v. The Commissioner, Jullundur Division, and another* (2), wherein R. S. Narula, J., while dealing with this question observed thus:—

“12. Mr. Mongia invited my attention to provisions of section 88 of the Punjab Tenancy Act, to show that the power of review has to be exercised by the Revenue Officers in accordance with the Code of Civil Procedure. Section 88, however, deals with the procedure of Revenue Courts and not Revenue Officers. Section 85 authorises the State Government to make rules for regulating the procedure of

Revenue Officers under the Punjab Tenancy Act. Admittedly no rules relating to the exercise of review jurisdiction under section 82 of the Act by Revenue Officers have been framed under section 85. In the absence of any rules and any statutory provision, the general principles for exercise of review jurisdiction will have to be applied to proceedings for review by the Revenue Officers. These principles are well-known and will have to be borne in mind by the appropriate Revenue Officers, while dealing with this matter, if and when it is raised before them again. In this particular case, it seems that the learned Commissioner did not apply his mind at all to this aspect of the matter, as possibly on account of some established practice, he appears to have been of the view that all these objections have to be decided by the Revenue Officer and not by the sanctioning officer."

(5) Now coming to the facts of the case in hand, it is clear that the power of review was exercised by the revenue officers on the ground that a different interpretation of law had been put subsequent to the decision of the Financial Commissioner in *Mahia's case* (1). This in my view could in no case be a ground for review. An undefined power of review under section 82 of the Tenancy Act could not be utilised by the Collector for varying and altering his earlier order which had been passed in accordance with the interpretation of law that was current at that time, on the ground that subsequently there has been a change in the interpretation of law. At the most what can be said is that the earlier order of the Collector was passed on a wrong view of the law but, as earlier observed, that itself is no ground for review. A similar question arose in a large number of cases where Banjar Qadim and Banjar Jadid land was taken into consideration while declaring the surplus area of a landowner. After the decision of this Court in *Nemi Chand Jain v. The Financial Commissioner, Punjab and another* (3), wherein it was held that such a land did not fall in the definition of land, numerous applications were filed by the landowners before the Collector for review; but all those applications were rejected on the short ground that review could not be allowed and was not permissible on the ground that a different interpretation had since been placed on the law. See in this connection, a Division Bench decision of this Court in *Amar Sarjit Singh*

(3) 1964 P.L.R. 278.

v. *The State of Punjab and others* (4). Exactly the same is the position in the present petition. If a private individual cannot ask for a review of an order by the Collector on the basis of the changed interpretation of law, I fail to understand, how a revenue officer can *suo motu* review his own order on that ground. The ground on which the review has been made by the learned Collector,—*vide* his order dated 21st September, 1962, is not a valid and legal ground for reviewing the previous order and thus the order of the Collector dated 21st September, 1962, cannot be sustained. The consequence would be that the orders of the Commissioner, and the Financial Commissioner would also automatically fall.

(6) The other contention of the learned counsel that under section 82 of the Tenancy Act a revenue officer cannot review his previous order at any time and such power has to be exercised within a reasonable period, has considerable force; but I do not propose to deal with this contention on merits in the view I have taken of the first contention of the learned counsel on the basis of which the petition is being allowed.

(7) For the reasons recorded above, I allow this petition and quash the impugned orders of the Collector dated 21st September, 1962, and those of the Commissioner and the Financial Commissioner dated 5th February, 1964, and 29th March, 1965, respectively. In the circumstances of the case there will be no order as to costs.

R.N.M.

FULL BENCH

Before D. K. Mahajan, Gopal Singh and Bal Raj Tuli JJ.

THE CONTROLLER OF ESTATE DUTY,—Applicant.

.... Versus

JAI GOPAL MEHRA,—Respondent.

Income Tax Reference No. 5 of 1969

March 10, 1971.

Estate Duty Act (XXXIV of 1953)—Sections 2(15), 9, 10 and 27—Relinquishment by a coparcener of his share in joint Hindu family less than two