

Punjabi University in April, 1968. There is thus no merit in the writ petition which is hereby dismissed, but without any order as to costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsheer Bahadur and R. S. Narula, JJ.

BRIJ LAL AND OTHERS,—*Petitioners.*

versus

THE FINANCIAL COMMISSIONER, REVENUE, PUNJAB, CHANDIGARH
AND OTHERS,—*Respondents.*

Civil Writ No. 2679 of 1968

March 12, 1969.

Punjab Land Revenue Act (XVII of 1887)—Sections 7(1), 23(2) and 24—Financial Commissioner of the State of Punjab sitting in Chandigarh—Whether has jurisdiction to dispose of matters relating to Punjab—Interpretation of statutes—Headnotes to a section—Whether govern its construction.

Held, that the words “within the local limits of his jurisdiction” employed in sub-section (2) of section 23 of Punjab Land Revenue Act, have to be read in the context of sub-section (2) of section 7 which deals with a situation where there are more than one Financial Commissioner in the State. Powers are distributed between these Financial Commissioners by the State Government and under sub-section (2) of section 23, he is to exercise his powers within the limits of his jurisdiction. Far from laying any fetter on the place of sitting, all that sub-section (2) of section 7 requires is that each of the Financial Commissioners would exercise the powers in respect only of the areas or matters within his own jurisdiction. Read in this way, there is no statutory bar for the Financial Commissioner, Punjab, to exercise his powers in Chandigarh which since the Punjab Reorganisation Act, 1966, has ceased to remain within the jurisdiction of the State of Punjab. In the context and circumstances of the prevailing situation, the Financial Commissioner of the State of Punjab under sub-section (2) of section 23 of the Punjab Land Revenue Act may hold his sittings in Chandigarh where the headquarter of the State is located and dispose of matters relating to Punjab (Paras 10 & 11).

Held, that the head-note of the section, though it may give a clue to its construction, does not, however, govern it. The note cannot affect the construc-

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tion of the language used in the body of the section if it is otherwise clear and unambiguous. (Para 10).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the orders dated 31st May, 1965, 14th December, 1965, 12th April, 1966 and 19th January, 1968 of the respondents Nos. 4, 3, 2 and 1, respectively as illegal, ultra vires, and without jurisdiction.

P. N. AGGARWAL, ADVOCATE, for the Petitioners

H. L. SARIN, SENIOR ADVOCATE WITH A. L. BAHL AND H. S. AWASTHY, ADVOCATES, for respondents 5 and 6.

JUDGMENT.

SHAMSHER BAHADUR, J.—This judgment, which will dispose of Civil Writ Nos. 2679 and 3798 of 1968, to challenge the same order of the Financial Commissioner, Punjab, of 19th of January, 1968, dismissing the petition for revision of Nathu Ram, also called Nathu Singh, *alias* Hari Singh, calls first for a narration of events which led to the passing of the impugned order.

(2) This Nathu Ram, son of Bahadur Chand, died on 26th of February, 1968, soon after the passing of the impugned order, dated 19th of January, 1968. Nathu Ram, besides leaving his own sons, daughters and widow, had three brothers, Lal Chand, Jas Ram and Hari Ram, who themselves and their sons on the one hand, and the sons and widow of Nathu Ram on the other, have brought these two petitions to challenge the order of the Financial Commissioner which is concerned only with the application for sale granted in favour of Sahi Ram, son of Dilsukh Ram, a tenant of Nathu Ram. The earliest order, to which reference may be made, is that of the Collector, Fazilka of 26th of December, 1960, dealing with the assessment of the surplus area of Nathu Singh *alias* Hari Ram of Mauza Khera in Fazilka Tehsil. According to this order, Nathu Ram is shown to be the owner of 43 standard acres and 2½ units, none of which was reserved within the limits of the permissible area. An area measuring 13 standard acres and 2½ units was declared surplus and this consisted of Khasra Nos. 1161 and 1170, all of which was *nehri*.

(3) Sahi Ram, who is a respondent in these petitions, made an application on 17th of January, 1965, against Nathu Ram in respect of Khasra Nos. 337, 338, 340 and 389, under section 18 of the Punjab

Security of Land Tenures Act, 1953 (hereinafter called the Act), for the purchase of this land of which he claimed to be in cultivating possession since Kharif, 1958. Asa Ram, brother of Sahi Ram, as a mortgagee of this land for Rs. 11,000 was impleaded in the application. Asa Ram made no objection to the purchase and made an appearance before the Assistant Collector but Nathu Ram remained absent and *ex parte* proceedings were taken against him. Both Lekh Raj Patwari and Sahi Ram were examined by the Assistant Collector and on a perusal of the Jamabandis and Khasra Girdawaris it was found that the applicant had been cultivating the land for more than six years. An order in favour of the applicant was, therefore, made under the provisions of section 18 of the Act and he was directed to make the requisite payment of the sum of Rs. 10,218.45 to Asa Ram, mortgagee in ten six-monthly instalments of Rs. 1,021.85. Against this order, which was passed on 31st May, 1965, Nathu Ram preferred an appeal under section 80 of the Act. The record was gone into by the Collector Ferozepur, the appellate authority, and in the elaborate order of 14th December, 1965, it was found by him that the land measuring 22 Bighas in Khasra Nos. 337, 338, 440 and 489 did not form a part of the reserved area of Nathu Ram, who was its proprietor and had been in continuous cultivation of the tenant for a period of six years. These two essential requisites under section 18 of the Act entitled the tenant to make an application for purchase which was rightly granted by the appropriate authority. The entire evidence bearing on the essential points, namely land being under the tenancy of Sahi Ram and not forming part of the reserved area of Nathu Ram was gone into and the finding of the revenue authority affirmed. The appeal was, therefore, dismissed with costs.

(4) In a revision petition filed by Nathu Ram, the Commissioner, Jullundur Division, in his order of 12th April, 1966, again affirmed the finding that the land in dispute formed part of the area of Nathu Ram and had been in cultivating possession of Sahi Ram for a period of more than six years, and the tenant was entitled to a purchase of this area measuring 22 Bighas. It was particularly mentioned in the order that the area claimed by the tenant Sahi Ram did not form part of the reserved area. Another point was raised before the Commissioner that there were certain co-sharers in the joint holding and they should have been impleaded in the proceedings for purchase of the land under section 18 of the Act. In the words of the Commissioner :—

"This plea too has no force. The respondent was a tenant of the petitioner alone and he had made the application to

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acquire the proprietary rights of the tenancy under the petitioner”.

In the revenue records, in other words, Nathu Ram was shown as the proprietor and against him alone the application for purchase could lie.

(5) Still dissatisfied with the order, Nathu Ram preferred a revision petition to the Financial Commissioner which was, however, dismissed because of its being belated. While the order of the Commissioner was passed on 12th April, 1966, the petition for revision to the Financial Commissioner was not filed till 18th of March, 1967. Only seven days were spent in obtaining copy and the Financial Commissioner observed in the order passed on 19th January, 1968, that “seven days were spent in obtaining a copy. Allowing 90 days for filing the petition, the delay is of 243 days”. It was mentioned that the petitioner was stated to be a heart patient and was prevented from making the application in time. The medical certificate, however, showed that Nathu Ram was in the Amritsar hospital for only 12 days. The delay was not condoned and the petition was rejected as barred by time.

(6) Against this order of the Financial Commissioner, there are two sets of *certiorari* petitions as already mentioned, one being Civil Writ No. 2679 of 1068 filed by Brij Lal and Birbal, sons of Lal Chand, Jas Ram, son of Bahadur, Sunder Lal, son of Jas Ram and Dari Ram, son of Bahadur. Besides Sahi Ram and Asa Ram, the widow and minor sons of Nathu Ram were impleaded as respondents 7, 8 and 9, these being Chandrawali, Pirthi Raj and Ram Kumar. Four other respondents, Parmeshwari, Saraswati, Jai Kaur and Vidya, daughters of Nathu Ram were also impleaded, these being respondents 10, 11, 12 and 13. This petition filed through Mr. P. N. Aggarwal, Advocate on 24th of August, 1968, was admitted by the Bench of Capoor and Sodhi, JJ., on 28th of August, 1968. The same learned counsel filed the other petition, Civil Writ No. 3798 of 1968, on behalf of Pirthi Raj, Ram Kumar and Chandrawali, sons and widow, respectively of Nathu Singh. In this petition, only Sahi Ram and Asa Ram were made respondents and not the other relative-co-sharers. This petition was filed on 17th of December, 1968 and was admitted by Narula and Sarkaria, JJ., on 19th December, 1968. for hearing by a D. B.

(7) Common points have been canvassed in these petitions and it seems to us that if one of these has to be dismissed the same consequence must follow in respect of the other.

(8) The point in the forefront in the two petitions is that the Financial Commissioner, sitting in the Union Territory of Chandigarh has no jurisdiction to dispose of matters relating to Punjab. The power of revision of a Financial Commissioner is derived from section 24 of the Act dealing with an appeal, review or revision and is in these words :—

“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.”

The powers of revision under the Punjab Tenancy Act are contained in section 84, sub-section (1) which says that :—

“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 Court subordinate to him.”

Under sub-section (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 of decree, he shall pass an order accordingly.”

Under sub-section (5), the grounds of interference by the Financial Commissioner are too approximate to the powers of the High Court “in the exercise of its revisional jurisdiction. . . . under the law for the time being in force” to interfere with the proceedings or an order or decree of a Civil Court.

(9) The powers of the Collector and the Financial Commissioner are the same under sub-section (2) of section 75 of the Punjab Tenancy Act as those possessed by these officers under the Punjab Land Revenue Act, 1887, whose relevant provisions applicable to the case in point may now be referred to. Section 6 of the Punjab Land Revenue Act deals with the Revenue-officers who are classed as “the Financial Commissioner, the Commissioner, the Collector, the

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Assistant Collector of the first grade and the Assistant Collector of the second grade". Under sub-section (5) of section 6 :—

"Subject to the provisions of this Act, the jurisdiction of the Financial Commissioner extends to the whole of the territories administered by the State Government of Punjab and of Commissioners and of Collectors and Assistant Collectors to the divisions and districts, respectively, in which they are for the time being employed."

Under sub-section (1) of section 7 "there shall be one or more Financial Commissioners, who shall be appointed by the State Government" and under sub-section (2) :—

"Where more Financial Commissioners than one have been appointed, the State Government may make rules as to the distribution among them of business under this or any other Act, and by those rules require any case or class or classes of cases to be considered and disposed of by the Financial Commissioners collectively."

Section 23 has on its margin the caption "place of sitting" and its provisions are these:—

"23(1) An Assistant Collector may exercise his powers under this Act at any place within the limits of the district in which he is employed.

(2) Any other Revenue-officer may only exercise his powers under this Act within the local limits of his jurisdiction."

(10) It is urged by Mr. Aggarwal that the Financial Commissioner, who exercises his powers as a Revenue-officer under sub-section (2) of section 23, is enjoined in consequence of this provision to exercise his powers only within the local limits of his jurisdiction and this cannot extend beyond the State of Punjab. The head-note of the section, though it may give a clue to its construction, does not, however, govern it. The words "within the local limits of his jurisdiction" employed in sub-section (2) of section 23 have to be read in the context of sub-section (2) of section 7 which deals with a situation where there are more than one Financial Commissioner

in the State. Powers are distributed between these Financial Commissioners by the State Government and under sub-section (2) of section 23, he is to exercise his powers within the limits of his jurisdiction. Far from laying any fetter on the place of sitting, all that sub-section (2) of section 7 requires is that each of the Financial Commissioners would exercise the powers in respect only of the areas or matters within his own jurisdiction. Read in this way, there is no statutory bar for the Financial Commissioner to exercise his powers in Chandigarh which since the Punjab Re-organisation Act, 1966, has ceased to remain within the jurisdiction of the State of Punjab. As held by the Supreme Court in *Western India Treaties Ltd. v. Municipal Corporation of the City of Poona* (1), "the marginal note cannot affect the construction of the language used in the body of the section if it is otherwise clear and unambiguous". Again, in another decision of the same Court in *Bhinka and others v. Charan Singh* (2), Mr. Justice Subba Rao (later Chief Justice of India) relied on the following passage of Maxwell on Interpretation of Statutes, 10th Edition, page 50 :—

"The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words."

In an earlier judgment of the Supreme Court in *Nalinakhya v. Shyam Sunder* (3), Mr. Justice S. R. Das, said about a contradiction between a marginal note and the main body of the statutory provision:—

"The marginal note cannot control the meaning of the body of the section if the language employed therein is clear and unambiguous. If the language of the section is clear then it may be that there is an accidental slip in the marginal note rather than that the marginal note is correct and the accidental slip is in the body of the section itself".

Thus, the heading "place of sitting" cannot control what is actually provided for in sub-section (2) of section 23. It may be that in

(1) A.I.R. 1959 S.C. 586.

(2) A.I.R. 1959 S.C. 960.

(3) A.I.R. 1953 S.C. 148.

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actual practice the Financial Commissioners always held their sittings within the State of Punjab. After the passage of the Punjab Reorganisation Act, two separate States out of the State of Punjab have been carved out, namely the States of Punjab and Haryana. The administrative headquarters of both the States are at Chandigarh which is now a Union Territory. The Secretariates of the two States, the common High Court and indeed all the important offices of the two States operate from Chandigarh. The Financial Commissioners have been holding their sittings in Chandigarh ever since the creation of the new States under the Punjab Reorganisation Act. Under section 89 of this Act, the appropriate Government is given power within two years to make adaptations and modifications of any law by way of repeal or amendment as may be necessary or expedient. Even if it be held, as contended for by the learned counsel for the petitioners, that sub-section (2) of section 7 of the Punjab Land Revenue Act obliges a Financial Commissioner to hold his sittings within the State, all that can be said is that the State Government of Punjab has not made the necessary adaptations in the Punjab Land Revenue Act with regard to the jurisdiction of the Financial Commissioner to enable him to hold his sittings in Chandigarh which no longer lies within the territorial limits of the State. Now, sub-section (1) of section 90 of the Punjab Reorganisation Act says :—

“Notwithstanding that no provision or insufficient provision has been made under section 89 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union Territory of Himachal Pradesh or Chandigarh construe the law in such manner, without affecting substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.”

(11) The Parliament under the Punjab Reorganisation Act has vested the High Court with the powers of the widest amplitude to construe the law according to the changed conditions and we feel no difficulty at all to say that in the context and circumstances of the prevailing situation, the Financial Commissioner of the State of Punjab under sub-section (2) of section 23 of the Punjab Land Revenue Act may hold his sittings in Chandigarh where the head-quarter of the State is located for the time being, and indeed is not

precluded from doing so even according to the unadapted provisions of the Punjab Land Revenue Act. Such a construction to section 7(2) of the Punjab Land Revenue Act, which this Court is not only empowered but enjoined to make when it concededly does not affect the substance of the law, would meet the requirements of the situation which in the last analysis must be viewed realistically.

(12) With regard to the dispute on merits, there is not much which this Court can do for the petitioners. In the first place, the order passed in revision by the Financial Commissioner is based on his view of limitation. The Financial Commissioner has undoubted powers to exercise his discretion and wherever it is "inexpedient to interfere" he has power to dismiss a petition. The authority of a Financial Commissioner approximates closely to that of the High Court in the exercise of revisional jurisdiction. It is well-known that the High Court does not usually exercise its powers in a petition which is belated though no hard and fast rule can be laid on that score. We cannot subscribe to the proposition that a revisional Court is bound to look into the merits before it can dismiss the petition as belated. We do not think that the discretion exercised by the Financial Commissioner was in any way arbitrary or unjust. It is well to emphasise that the dispute in controversy had been pursued by Nathu Ram, and judging from the points raised before the authorities concerned quite diligently. Both the Collector in appeal and the Commissioner in revision had dealt with the points which it is now contended Nathu Ram failed to urge with the emphasis which the requirements of the case called for. If the Financial Commissioner in the exercise of his undoubted jurisdiction took an erroneous view on the question of limitation, the High Court cannot, according to the rule laid down in *Ebrahim Aboobakar v. Custodian-General* (4) by the Supreme Court, interfere in *certiorari* proceedings.

(13) The petition, Civil Writ No. 2679 of 1968, has been filed by the sons of Lal Chand, Jas Ram, his son Sunder Lal and Hari Ram. In the orders of the Revenue-officers it is made clear that the *Khata* in possession of Sahi Ram tenant was in the name of Nathu Ram as proprietor. According to the written statements filed in these petitions, there were 60 shareholders shown in the *Jamabandis* and this fact has been suppressed in the petition. We do not see how it was to the advantage of Nathu Ram to have suppressed this fact but in any event, the contents of the *Jamabandis* could have been

(4) A.I.R. 1952 S.C. 319.

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examined by the concerned parties. It is further admitted in the petitioners' own replication that Nathu Ram held land in his *hisedari*. In other words, Nathu Ram's right to lease the land does not appear to have been contested and indeed this position does not appear to have been in dispute at any stage in the prolonged litigation before the Revenue authorities. Only some of the co-sharers were minors and Nathu Ram's own brothers, who are now the petitioners in Civil Writ No. 2679 of 1968, could have raised the matters which are now sought to be argued by Mr. Prem Nath Aggarwal. Nathu Ram was shown to be the proprietor of the land which had been held by the tenant. The tenant had applied under section 18 of the Act for the purchase of land. The mortgagee was served with a notice though Nathu Ram was not present himself before the Assistant Collector. In the appeal preferred by Nathu Ram, all the relevant points were taken up and fully discussed in the judgment of the Collector. This aspect of the matter has already been emphasised in the discussion of the orders which culminated in the revision petition before the Financial Commissioner preferred by Nathu Ram. It is in the forefront of both the petitions that Nathu Ram was negligent in the pursuit of his own interests and it was even suggested that he had lost his sanity and balance. The manner in which he contested his rights in the petitions does not support this suggestion. It has been submitted in a very earnest plea raised by Mr. Aggarwal that the interests of the other co-sharers had never been disclosed by Nathu Ram in his defence. Even if this had a bearing on the case, we do not think that the Revenue-officers committed an error in the exercise of their jurisdiction and it may be repeated that this particular plea was noticed and rejected in the order passed by the Commissioner in the exercise of his revisional jurisdiction. The petition of Nathu Ram's own sons and widow, which is Civil Writ No. 3798 of 1968, was filed merely as a cover for the earlier petition filed by Brij Lal and others. In a way, Nathu Ram's sons and daughters would be bound by the acts of their father, and if there is no merit in the petition of Brij Lal and others, we do not see how the petition of Nathu Ram's sons and widow can succeed.

(14) It has been vehemently urged that the rights of the co-sharers have been sacrificed by the neglect of Nathu Ram. In the first place, no material has been placed before us to show what the shares of the petitioners were. Nor is it possible to reach the conclusion that the land which had been given on lease came out of the reserved area. Be that as it may, the grievance of the petitioners,

if they have any, can be redressed in appropriate proceedings for partition in the Revenue Courts. It is not for this Court in Writ proceedings to set aside the orders which were *prima facie* within the exercise of jurisdiction.

(15) In this view of the matter, both these petitions must fail and are dismissed. In the circumstances, there would be no order as to costs.

R. S. NARULA, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and Bal Raj Tuli, J.

STATE OF PUNJAB AND OTHERS,—*Appellants.*

versus

MOHAN SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 463 of 1966

March 13, 1969.

Punjab Land Revenue Act (XVII of 1887)—Sections 155(3) and 155—Punjab General Clauses Act (I of 1898)—Section 11(2)—Punjab Tehsildari Rules (1932)—Rule 3—Appointment of a Tehsildar—Whether can be made by Financial Commissioner (Revenue) alone—Amendment of a Standing Order relaxing the provisions of rule 3—Whether over-rides the rule—Phrase “Financial Commissioners”—Whether can be read in the singular.

Held, that according to rule 3 of the Punjab Tehsildari Rules, 1932, appointment of a Tehsildar can be made only by “Financial Commissioners” and not by Financial Commissioner (Revenue) alone. Any amendment in a Standing Order cannot over-ride the Rules and if any relaxation of rule 3 of the Rules is to be made, it can be made only by following the same procedure as is prescribed for the framing of the rules. The procedure requires pre-publication under section 156 of the Land Revenue Act and subsequent sanction of the State Government under sub-section (3) of section 155 of the Act. The provisions of section 11(2) of the Punjab General Clauses Act, 1898, are not helpful. The words in the singular are deemed to include the plural and *vice versa* only if there is nothing repugnant in the subject or context. The use of the phrase “Financial Commissioners” instead of “Financial Commissioner” in