

LETTERS PATENT APPEAL

Before Prem Chand Pandit and Gopal Singh, JJ.

BALBIR KAUR,—Appellant.

versus

THE FINANCIAL COMMISSIONER TAXATION, PUNJAB, CHANDIGARH
AND OTHERS,—Respondents.

Letters Patent Appeal No. 79 of 1970

September 27, 1971.

Punjab Security of Land Tenures Act (X of 1953)—Section 24—Punjab Security of Land Tenures Rules (1956)—Rule 6(8)—Punjab Tenancy Act (XVI of 1887)—Sections 80 to 84—Provisions of—Whether applicable to the proceedings under Punjab Security Act—Time-barred appeal before the Commissioner—Whether can be treated as a revision petition.

Held, that under section 24 of Punjab Security of Land Tenures Act, 1953; the provisions of Sections 80 to 84 of Punjab Tenancy Act, 1887, are made applicable, so far as it is possible, to the proceedings under the Punjab Security of Land Tenures Act. As the provisions of some other Act are also incorporated in this Act, the expression "so far as may be" has been used in section 24 of the Act. There is no provision in sections 82 to 84 of the Punjab Tenancy Act which is inconsistent with that in the Punjab Security of Land Tenures Act. Similarly there is no provision in Punjab Security of Land Tenures Act, which runs counter to any one in sections 80 to 84 of Punjab Tenancy Act. Rule 6(8) of Punjab Security of Land Tenures Rules, 1956, as well does not in terms bar a revision petition against the order of the Commissioner in appeal. Hence if an appeal before the Commissioner against the order of the Collector is barred by limitation, the matter having come to the notice of the Commissioner and he is of the view that an illegality has been committed by the Collector, he can validly treat the time-barred appeal as revision petition and recommend the case to the Financial Commissioner for setting aside the order of the Collector. (Paras 3 and 5)

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment dated 19th December, 1969, passed by Hon'ble Mr. Justice Ranjit Singh Sarkaria, in Civil Writ 619 of 1968.

H. L. Sarin, Advocate with M. L. Sarin, and K.T.S. Tulsi, Advocates,
for the appellant.

R. K. Chhibber, Advocate for Advocate General (Punjab) for Nos. 1 & 2.
Naginder Singh, Advocate, for respondent No. 3.

JUDGMENT

PANDIT, J.—On 15th April, 1953, Shrimati Ratno held land measuring 67 standard acres $4\frac{1}{2}$ units, in village Chauslewad, District Amritsar. On 4th April, 1960, the Collector, Surplus Area, declared land, measuring 37 standard acres $4\frac{1}{2}$ units, as surplus with her. Dharam Singh and others, to whom Ratno had sold some land, filed an appeal against the order of the Collector praying that the same be set aside as they were not heard before it was passed. This appeal was accepted by the Commissioner on 7th November, 1962, and he remanded the case to the Collector, Surplus Area, for a fresh decision. Meanwhile, Ratno died in March, 1962, and on her death, her estate was mutated in favour of Shrimati Balbir Kaur, Darbara Singh, Mohinder Singh and Dharam Singh on the basis of a registered will dated 24th October, 1957, which was alleged to have been executed by Ratno in their favour. On 14th October, 1964, the Collector declared land, measuring 10 standard acres $5\frac{1}{4}$ units, as surplus with Balbir Kaur. She preferred an appeal against this order on the ground that the tenancy areas of her old tenants had not been excluded by the Collector, while determining the surplus area. The Commissioner accepted her appeal on 17th May, 1965, and he again remanded the case to the Collector for deciding it *de novo*. On 6th April, 1966, the Collector, after excluding the tenancy area, measuring 5 standard acres $10\frac{1}{2}$ units, declared 4 standard acres and $11\frac{1}{2}$ units, as surplus with Balbir Kaur. Thereafter, one Karnail Singh filed an appeal against this order of the Collector before the Commissioner on the ground that surplus area to the extent of 4 standard acres and $6\frac{1}{2}$ units, had been allotted to him on 20th November, 1964, and its possession was also delivered to him on 30th November, 1964, and in spite of that he was not heard by the Collector. The Commissioner held the appeal of Karnail Singh to be barred by limitation, but treating it as a revision, he referred the case to the Financial Commissioner with the recommendation that the entire proceedings be quashed and the Collector be directed to hold the enquiry once again from the very beginning. The Commissioner was of the view that the disposition of the land under the registered will dated 24th October, 1957, was hit by the provisions of section 10-A (b) of the Punjab Security of Land Tenures Act, 1953, hereinafter called the Act, and the same could not be taken into consideration while assessing the surplus area of Ratno. The Financial Commissioner on 24th

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October, 1967, accepted the recommendation made by the Commissioner and remanded the case to the Collector with the direction that he should decide it afresh in accordance with law and after hearing all the interested parties, including the landowner, the tenants and the transferees, if any. This order was challenged by Balbir Kaur by means of a writ petition, which she filed in this Court in January 1968. The petition was dismissed by a learned Single Judge of this Court on December 19, 1969. The present Letters Patent Appeal has been filed against that decision.

(2) The sole point argued before us was that after having held that the appeal of Karnail Singh was barred by limitation, the Commissioner could not have treated the same as a revision petition and then referred it to the Financial Commissioner. This, according to the learned counsel for the appellant, was contrary to the provisions of section 24 of the Act and Rule 6(8) of the Punjab Security of Land Tenures Rules, 1956. The relevant provisions read thus :

Section 24. "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)."

Rule 6(8). "Any person aggrieved by a decision of the Collector or the Special Collector may, within 60 days from the date of communication of the decision to such person, to be computed after excluding the time spent in obtaining a copy of such decision, appeal to:—

- (a) the Commissioner of the Division where the person resides, in case the person resides in Ambala or Jullundur Division;
- (b) the Commissioner of the Division where the largest portion of the holding of the person is situate, in case the person resides outside Ambala and Jullundur Division;

and the decision of the Commissioner which shall be duly communicated by the Commissioner to the Collector or Collectors concerned shall be final."

(3) The argument was that according to rule 6(8), if a person was aggrieved by a decision of the Collector, he could, within 60 days, appeal to the Commissioner and the decision of the later would then be final, meaning thereby, that the aggrieved party could not then file a revision against it. Learned counsel contended that under section 24 of the Act, the provisions with regard to appeal, review and revision as given in sections 80 to 84 of the Punjab Tenancy Act, 1887, would be applicable only if they were not inconsistent with any provisions of the Punjab Security of Land Tenures Act. The argument proceeded that since under rule 6(8), the decision of the Commissioner on appeal became final, therefore, it could not be revised by the Financial Commissioner and the provisions of section 84 of the Punjab Tenancy Act could not be brought into operation for that purpose.

(4) It is undisputed that if the provisions of section 84 of the Punjab Tenancy Act are applicable to the proceedings under the Punjab Security of Land Tenures Act by virtue of section 24 of the Act, then the Commissioner in the instant case had the power to treat a time barred appeal before him as a revision and make a reference to the Financial Commissioner under the provisions of that Act. Section 84 of the Punjab Tenancy Act reads:—

- “(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 Court subordinate to him.
- (2) A Commissioner or Collector may call for the report 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.

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- (5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may, under the law for the time being in force, interfere with proceedings or an order or decree of a Civil Court, he shall fix a day of hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.
- (6) Except when the Financial Commissioner fixes under subsection (5) a day for hearing the case, no party has any right to be heard before the Financial Commissioner when exercising his powers under this section."

(5) In the present case, there is no doubt that the Commissioner acted under the provisions of section 84 of the Punjab Tenancy Act and converted a time-barred appeal into a revision and referred the same to the learned Financial Commissioner with the recommendation that the entire proceedings conducted so far be quashed and the case remanded to the Collector with the direction that he should hold *de novo* enquiry according to law. Therefore, the only question to be determined is whether the provisions of sections 80 to 84 of the Punjab Tenancy Act are deemed to be incorporated in the Punjab Security of Land Tenures Act by virtue of section 24 of the Act or not. A bare reading of the said section shows that the provisions with regard to an appeal, review and revision under the Act shall, so far as may be, be the same as provided in sections 80 to 84 of the Punjab Tenancy Act, 1887. Since the provisions of some other Act were being incorporated in this Act, this expression—"so far as may be"—had to be used, so that if there was any provision in sections 80 to 84 of the Punjab Tenancy Act, which was inconsistent with that of the Punjab Security of Land Tenures Act, then the former would obviously not apply. Learned counsel for the appellant could not point out any provision in the Act, which ran counter to any one in sections 80 to 84 of the Punjab Tenancy Act. He only referred to rule 6(8) mentioned above. But even that rule does not say that no revision was competent against the order of the Commissioner. In

my opinion, therefore, a reading of section 24 makes it clear that the provisions of sections 80 to 84 of the Punjab Tenancy Act would be applicable, so far as it is possible, to the proceedings under the Punjab Security of Land Tenures Act. The learned Single Judge, while commenting on the expression "so far as may be" observed:

"The words 'so far as may be' only mean 'so far as may be reasonably practicable' or 'so far as may be applicable without leading to any anomaly'. (See *Mac Donald v. Canadian Pacific Exploration Company*) (1). The necessity for incorporating this phrase "so far as may be" arose because the hierarchy of the officers of the various functionaries under the Act is not absolutely identical with that of the functionaries under the Tenancy Act. For instance, some functions, namely, to decide landowner's application for exemption from ceiling on the ground of orchards, well-run farm, etc., are to be performed under the Act by a Board and not by the Collector, Commissioner or any other Revenue Officer, whose order under the Tenancy Act is appealable or revisable. Obviously, the provisions of Sections 80 to 84 of the Tenancy Act cannot be pressed into service for giving revisional powers to the Commissioner or the Financial Commissioner over the decision of the Board. That is why, in rule 12, a special provision with regard to appeal from a decision of the Special Board to the State Government had to be made."

(6) It may be stated that this very matter came up for consideration before Mr. G. S. Kahlon, Financial Commissioner, in *Jaswant Singh v. The State* (2), and he held as under:—

"Section 24—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)."

Now the cases of determination of 'surplus area' are not included in the specific section 22 of the Act or in any other

(1) (1899) 7 B.C.R. 39.

(2) 1961 P.L.J. 11.

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section in order to take them out of the general purview of section 24. So they must come under section 24, and the interpretation of the expression 'so far as may be' in this section 24 becomes a relevant and important consideration in this matter. According to Stroud's Judicial Dictionary, "A perfect direction or convention, wrong in itself, is not vitalised by a proviso that it is to be operative only 'so far as', 'so long as' or 'as near as', the rules of law will permit; nor will such phrases, by themselves, control the construction."

Therefore, a plain reading of sections 22 and 24 of the Punjab Security of Land Tenures Act would show that there is no other special restriction intended in the interpretation of section 24 besides what has specifically been stated in section 22 already.

There is no dispute about the competence of the State Government in making the Punjab Security of Land Tenures Rules under section 27 of the Act. But as has been laid down in the case *State of Madhya Pradesh v. A. K. Jain and others* (3).

"Rules must be read together with their relevant Act, they cannot repeal or contradict express provisions in the Act from which they derive their authority. If the Act is plain, the rule must be interpreted so as to be reconciled with it, or, if it cannot be reconciled, the rule must give way to the plain terms of the Act——It is well-established in India that if the rules framed under the statute are in excess of the provisions of the statute or are in contravention of or inconsistent with such provisions, then these rules must be regarded as *ultra vires* of the statute and cannot be given effect to."

The rule in question in the present cases [Rule 6 (8) (b)] lays down that the Commissioner's order 'shall be final'; whereas the provisions of the parent Act (The Panjab Security of Land Tenures Act), as discussed above, do not cut out

the right of revision before the Financial Commissioner against such orders of the Commissioner. Therefore, it has to be held that this particular provision of the Rule 6(8) (b) of the Panjab Security of Land Tenures Rules, 1956, as amended upto the 31st July, 1959, is inconsistent with the provisions of the parent Act and hence *ultra vires*. The right of revision to the Financial Commissioner passed under Rule 6(8) (b) of the Panjab Security of Land Tenures Rules, must therefore lie."

(7) As I have already held above, that if once we come to the conclusion that the provisions of section 84 of the Panjab Tenancy Act will be applicable to the proceedings under the Panjab Security of Land Tenures Act, then there is no manner of doubt that the orders passed by the Commissioner and thereafter by the learned Financial Commissioner are unexceptionable. Even though Karnail Singh's appeal was barred by limitation, yet since this matter had come to the notice of the Commissioner and he was of the view that an illegality had been committed by the Collector in assessing the surplus area, he could validly recommend the case to the learned Financial Commissioner for setting aside all the proceedings up-to-date and remanding the case to the Collector for a fresh decision in accordance with law.

(8) In view of what I have said above, this appeal fails and is dismissed. There will, however, be no order as to costs.

Gopal Singh, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before D. K. Mahajan and H. R. Sodhi, JJ.

DELCO ENGINEERING WORKS,—Appellants.

versus

GENERAL MOTORS CORPORATION.—Respondents.

Regular First Appeal No. 142 of 1967

October 13, 1971.

Trade and Merchandise Marks Act (XLIII of 1958)—Section 27—Passing off action—Determination of—Principles as to—Stated.