

**Shamsher Singh v. Commissioner, Jullundur Division
and others (S. S. Kang, J.)**

respondents could point to support or justify this order. This being so there can be no escape from the conclusion that the procedure adopted by the trial court was one wholly unknown to law and the impugned order must thus be set aside as being blatantly contrary to law.

(3) Faced with this situation, Mr. Satya Dev Bansal, counsel for the respondents sought to prevent interference with the impugned order on the plea that the provisions of Section 115 of the Code of Civil Procedure, do not permit challenge in revision against it. This is indeed a contention wholly devoid of merit. Material irregularity in the impugned order is writ large and if allowed to stand, the order would undoubtedly occasion failure of justice. This being so, interference in revision is both competent and imperative.

(4) The impugned order of the trial court is accordingly hereby set aside with the direction that the witness—Kehar Singh *lambardar* be allowed to be further examined by the defendants, if they so desire, and he, thereafter be allowed to be cross-examined by the plaintiff. Counsel for the respondent made a prayer here that this witness may be declared to have been won over by the plaintiff and may consequently be permitted to be cross-examined by the defendants too. This is a prayer which may be addressed to the trial court and if made there, it would, of course, be open to the trial court to pass such orders thereon as it may deem appropriate.

(5) This revision petition is accordingly hereby accepted with costs. Counsel fee Rs. 200.

H. S. B.

Before : P. C. Jain, C.J. and S. S. Kang, J.

SHAMSHER SINGH,—Appellant.

versus

COMMISSIONER, JULLUNDUR DIVISION and others,—
Respondents.

Letters Patent Appeal No. 535 of 1982

August 5, 1986

Constitution of India, 1950—Articles 226 and 227—Punjab Land Revenue Act (XVII of 1887)—Section 3(8) as amended by Punjab

Act (IV of 1974)—Section 2—Lambardar failing to deposit in Government Treasury land revenue collected from land-owners—Proceedings initiated and completed under Land Revenue Act for recovery of such amount—Lambardar disclaiming to be a 'defaulter' in terms of Section 3(8) of the Act—Revenue authorities declaring such Lambardars as defaulters and directing recovery of arrears—Definition of 'defaulter' in section 3(8) subsequently amended by Punjab Act to include village officer—Such amendment made during pendency of writ proceedings instituted by the defaulter lambardar—Recovery proceedings against such Lambardar—Whether can be maintained for defaults committed prior to amendment—Amended section 3(8)—Whether retrospective in nature.

Held, that under unamended Section 3(8) of the Punjab Land Revenue Act, 1887, a Lambardar who collected the land revenue and embezzled the same could not be termed as a defaulter and that this money could not be recovered as arrears of land revenue. However, by amendment of clause (8) of Section 3 by Section 2 of Punjab Act, 1974, such a person becomes a defaulter. A statutory provision creating the liability or a penalty cannot be termed to be procedural. Equally, it cannot be termed as explanatory or declaratory. It is a substantive provision creating very drastic statutory liabilities. The form is not declaratory. By inserting the additional words nothing has been clarified which was previously ambiguous. A totally new category of persons has been included in the definition of defaulter. It is manifest from a perusal of Section 2 of the Amending Act that the same has not been expressly made retrospective. The language employed in the amending clause is very clear and categorical. It does not lead to inevitable conclusion that the Legislature impliedly intended to make the amendment retrospective. Since all proceedings against the Lambardar had been completed under unamended section 3(8) the principle of the application of an amended law to pending proceedings cannot be applied though the amendment had been made and enforced during the pendency of the writ petition. It is well settled that the proceedings in a writ petition under Articles 226/227 of the Constitution are not in the nature of an appeal or revision. They are proceedings of an extraordinary nature. Therefore, the principles that the appellate or revisional court may take into account any change in law during the pendency of the proceedings is not attracted to writ petitions. Therefore, the Lambardar could not be termed as a defaulter under Section 3(8) of the Act and the monies collected by the said Lambardar could not be recovered as arrears of land revenue as the amendment made in the aforesaid section is not retrospective in nature.

(Paras 7, 8 and 9).

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Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice J. M. Tandon, dated 6th January, 1982 in Civil Writ Petition No. 2469 of 1971, Lambardar Arjan Singh v. The Commissioner, Jullundur, etc.

D. S. Chahl, Advocate (Fateh Jang Singh Chahl, Advocate, with him), for the Appellant.

S. S. Bajwa, Advocate, for A.G. (Pb.), for respondent Nos. 1 and 2.

Nemo for respondent Nos. 3 and 4.

JUDGMENT

Sukhdev Singh Kang, J.:

(1) The challenge in this Letters Patent appeal is directed against the judgment and order, dated January 6, 1982, of a learned Single Judge of this Court dismissing the writ petition (C.W.P. No. 2469 of 1971) of Arjan Singh, father of Shamsher Singh, appellant, seeking a writ of *certiorari* quashing the order of the Collector, Ludhiana auctioning his land in order to recover the arrears of land revenue alleged to have been collected by Arjan Singh as Lambardar and not deposited in the Government treasury.

(2) The factual matrix is short and deserves notice at the outset;

Arjan Singh, father of the appellant, was Lambardar of Patti Bagu Singh, village Ghalib Kalan, Tehsil Jagraon, district Ludhiana. He was declared defaulter to the tune of Rs. 14,804.69 for having collected land revenue and not depositing the same in the Government treasury. His land measuring 50 Kanals 8 Marlas was auctioned by the Collector, Ludhiana (Respondent No. 2) on June 26, 1970 to recover Rs. 14,804.69 on account of arrears of land revenue. The objections filed by Arjan Singh under Section 91 of the Punjab Land Revenue Act, 1887 (for short, 'the Act') had been rejected by the Commissioner, Jullundur Division, Jullundur (respondent No. 1) on March 4, 1971. Aggrieved by these orders, Arjan Singh filed Civil Writ Petition No. 2469 of 1971 challenging the impugned orders on various grounds. With the permission of the Court, the writ petition was amended and it was, *inter alia*,

pleaded that the writ petitioner was not a defaulter within the meaning of clause (8) of Section 3 of the Act. A person who has misappropriated and embezzled Government money or the money he had collected on behalf of the Government cannot be held to be a defaulter as envisaged by clause (8) of Section 3. Since the writ petitioner was not a defaulter, proceedings taken under the Act for recovery of the above mentioned amount were wholly without jurisdiction and void *ab initio* in the face of the *ratio* of the Division Bench decision of this Court in *Gurmukh Singh and others vs. The State of Punjab and others* (1).

(3) The writ petition was contested by the respondents. They controverted the material allegations made in the writ petition. They contested the legal proposition propounded by the writ petitioner that a Lambardar who collects land revenue from the landowners and does not deposit the same in the Government treasury was not a defaulter within the meaning of clause (8) of Section 3 of the Act.

(4) During the course of arguments before the learned Single Judge, the appellant urged that he was not a defaulter within the meaning of clause (8) of Section 3 of the Act and as such, his land could not be put to auction for the recovery of any monies which he had allegedly collected from the landowners and not deposited in the Government treasury. It seems that the respondents brought to the notice of the learned Single Judge the provisions of Section 2 of the Punjab Act 4 of 1974, whereby the definition of 'defaulter' as given in clause (8) of Section 3 of the Act had been amended. Taking notice of that amendment, the learned Single Judge held that in view of the amended clause (8) of Section 3, the writ petitioner was a defaulter inasmuch as he did not deposit the land revenue which he had collected from the landowners as a Lambardar. The amendment made in clause (8) of Section 3 shall cover the writ petitioner (appellant) as well though he made default prior to the amendment. On this view of the matter, the learned Single Judge dismissed the writ petition. That is how the matter is before us in this Letters Patent appeal

(5) The land of the appellant had been auctioned on June 26, 1970. The collection of land revenue and embezzlement thereof, as claimed by the revenue authorities, had taken place before 1970.

(1) 1971 P.L.J. 166.

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Even the objections under Section 91 of the Act filed by the appellant against the auction of his land were dismissed by the Commissioner on March 4, 1971. The revenue authorities had taken action in accordance with the provisions of Section 3(8) of the Act as it existed at that time in its unamended form. They were of the view that the conduct of the appellant in collecting the land revenue from the landowners and not depositing the same in Government treasury rendered him a defaulter within the ambit of Section 3(8) of the Act. This view of the revenue authorities does not comport with the true meaning of the expression 'defaulter' as defined in Section 3(8) of the unamended Act, which reads as under :—

“ ‘Defaulter’ means a person liable for an arrear of land revenue and includes a person who is responsible as surety for the payment of the arrears.”

By Section 2 of Punjab Act 4 of 1974, the following words were added to the above clause at the end:—

“and a village officer who collects the land revenue or any other sum recoverable as land revenue and does not pay the same to the State Government in accordance with the rules framed under the Act.”

(6) The unamended clause (8) of Section 3 came for consideration before a Division Bench of this Court in *Gurmukh Singh and others vs. The State of Punjab and others* (supra), wherein it was held:

“By no stretch of language the word ‘defaulter’ as defined in Section 3(8) of the Punjab Land Revenue Act, can include a person who has misappropriated and embezzled Government money or the money that he had collected on behalf of the Government.”

The above decision had been rendered on January 27, 1971. The true scope of this provision stood explained by this Court when the Commissioner dismissed the objections of the appellant, who had specifically pleaded that he was not a defaulter within the meaning of Section 3(8) of the Act. It seems that the decision in

Gurmukh Singh's case (supra) had not been brought to the notice of the Commissioner. A Division Bench of this Court had occasion to consider the matter again in *Sardara Singh and others vs. Sardara Singh and others*, (2). After noticing the various statutory provisions, the decided cases on the subject and their in-depth and exhaustive analysis the view taken in *Gurmukh Singh's case* (supra) was reiterated thus :—

“A joint reading of Sections 61, 67, 71, 72, 73, 75 and 77 of the Punjab Land Revenue Act clearly shows that if any amount as arrears of land revenue is due from a landowner and the same could not be recovered by any other processes, in the first instance, his holding in respect of which the arrear is due, is to be sold and thereafter his other property. It is also clear that the word ‘defaulter’ in the various sections has been used for the landowner from whom the arrears of land revenue are actually due. It cannot be inferred from the said sections that the word ‘defaulter’ would include a Lambardar.”

Thus, it is crystal clear that on the language of unamended clause (8) of Section 3 of the Act, a Lambardar who collects land revenue from the landowners and does not deposit the same in the Government treasury, cannot be held to be a defaulter.

(7) The next question arises as to what is the effect of amendment of clause (8) of Section 3 by Punjab Act 4 of 1974. It is manifest from a perusal of Section 2 of the Amending Act that the same has not been expressly made retrospective. The language employed in the amending clause is very clear and categorical. It does not lead to inevitable conclusion that the Legislature impliedly intended to make the amendment retrospective. Shri Bajwa, learned counsel for the State, tried to contend that the amendment was procedural and it was only clarificatory in nature and, therefore, it may be presumed to have a retroactive application. We are not impressed by this argument. By this amendment the definition of ‘defaulter’ has been enlarged. A new liability in relation to the village headman has been created. Previously, a Lambardar who collected land revenue and embezzled the same could not be termed as a defaulter and that those monies could not be recovered as arrears of land revenue. However, by the amendment such a

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person becomes a defaulter. So, the statutory provision creating a liability or a penalty cannot be termed to be procedural. Equally, it cannot be termed to be explanatory or declaratory. It is a substantive provision creating very drastic statutory liabilities. The form is not declaratory. By inserting the additional words nothing has been clarified which was previously ambiguous. A totally new category of persons has been included in the definition of "defaulter". Shri Bajwa has not been able to bring to our notice any decision of the final court or of this Court declaring such an amendment of a definition clause creating drastic liabilities to be procedural, declaratory or explanatory. We do not accept the plea that the amendment of clause (8) of Section 3 of the Act is retrospective.

(8) Since the amendment is not retrospective, it cannot cover the case of the appellant. All the proceedings had been completed under the unamended Section 3(8). Even the principle of the application of an amended law to the pending proceedings cannot be applied though the amendment had been made and enforced during the pendency of the writ petition. It is well-settled that the proceedings in a writ petition under Articles 226/227 of the Constitution are not in the nature of an appeal or revision. They are proceedings of an extraordinary nature. So, the principle that the appellate or revisional Court may take into account any change in law during the pendency of the proceedings is not attracted to the writ petitions. If any authority for the proposition is needed, then reference may be made to a recent Division Bench decision of this Court in *Gram Sabha Salina vs. Nahar Singh and others* (3).

(9) To conclude, the appellant who is alleged to have embezzled land revenue collected by him from the landowners but had not deposited the same in the Government treasury was not a defaulter as contemplated by unamended clause (8) of section 3 of the Act. The proceedings for recovery of the monies from the appellant as arrears of land revenue had been taken when clause (8) of Section 3 had not been amended and the same had been completed in accordance with the unamended provision. Even the writ petition had been filed before the amendment was made in clause (8) of Section 3. The case of the appellant is not covered by the amended clause (8) of Section 3 because the same is not

retrospective and the respondents could not take any advantage of that clause.

(10) For the foregoing reasons, we allow the appeal and set aside the impugned judgment and order of the learned Single Judge. Consequently, the writ petition is allowed and the orders of the Collector, Ludhiana and the Commissioner, Jullundur Division, dated May 15, 1970 and March 4, 1971 are set aside, but with no order as to costs.

R. N. R.

Before : I. S. Tiwana, J.

BHARTI DEVI,—Petitioner

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 3378 of 1985

August 6, 1986

Constitution of India, 1950—Article 14—Lady Doctor appointed to do house job in a medical college—Government instructions prescribing criteria for such appointment—Physical and mental fitness according to the standard of fitness prescribed for entrance to the Punjab Medical College Service provided as one of the conditions for appointment—Standard of fitness prescribed for the service aforesaid not produced—Appointment of the doctor to the house job terminated on the ground that the doctor was 28 weeks pregnant and as such physically and mentally unfit—Pregnancy aforesaid—Whether renders the doctor unfit for appointment—Appointment aforesaid—Whether could be validly terminated.

Held, that as per the criteria prescribed for appointment to do the house job a candidate is required to (i) possess the minimum educational qualification of M.B.B.S. from a recognised University, (ii) should be registered with the Punjab Medical Council; and (iii) should be physically and mentally fit according to the standards of fitness prescribed for entrance to the Punjab Medical Service. However, in view of the fact that it has not been shown as to what is the criterion of mental and physical fitness laid down for entrance to the Punjab State Medical Service it cannot be said that the appointment of the doctor to do house job was violative