Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

HARI CHAND,—*Appellant.*

versus

THE FINANCIAL COMMISSIONER REVENUE, PUNJAB,

CHANDIGARH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 530 *of* 1980.

March 18, 1985.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-J—Utilisation of Surplus Area Scheme, 1960—Paragraph 14—Punjab Tenancy Act (XVI of 1887)—Section 82—Scheme framed under Section 32-J of Lands Act—Land allotted under provisions of said Scheme—Para 14 of Scheme subsequently added so as to provide for power to review orders in terms of section 82 of the Tenancy Act—Collector reviewing order of allotment made prior to conferment of powers to review—Such power—Whether can be exercised by the Authorities qua such an order.

Held, that the Utilisation of Surplus Area Scheme, 1960 has been framed under Section 32-J of the Pepsu Tenancy and Agricultural Lands Act, 1955. With the addition of paragraph 14 of the Scheme the power of review as provided for in section 82 of the Punjab Tenancy Act, 1887 became available to the authorities under the Scheme. Section 82 entitles a revenue officer either of his own or on an application of any party interested to review and on so reviewing, modify, revise or confirm any order passed by himself or any of his predecessors-in-office. However, to provide for power of review is primarily a matter of procedure. No party apparently has a vested right to a particular procedure or to a particular forum. A party asking for review can, at the maximum, be said to be exercising a remedial right as distinguished from enforcing a substantial right. The power of review provided for in the Scheme is more or less analogous to the power vested in a Civil Court under Section 152 of the Code of Civil Procedure. This section lays down that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either on his own motion or on the application of any of the parties. As such on the date the Collector passed the order permitting the review of the original order of allotment, the power to review had already been conferred on the Collector. Thus, an order passed reviewing an allotment order made prior to the conferment of the power to review is perfectly in order and the said power can be exercised by the competent authority.

(Paras 3 & 6).

Hari Chand *v.* The Financial Commissioner Revenue, Punjab, Chandigarh and others (I. S. Tiwana, J.)

Nar Singh *vs.* The State of Punjab and others, C.W.P. No. 3042 of 1969, decided on January 10, 1980.

OVERRULED.

Appeal under clause X of Letters Patent against the judgment dated 13th May, 1980 of Hon'ble Mr. Justice Harbans Lal dismissing the Civil Writ Petition No. 4926 of 1974 of the petitioner for setting it aside and allowing the said Civil Writ Petition in favour of the appellant.

K. C. Puri Advocate, for the appellant.

A. S. Sandhu Addl. A.G. Punjab, for respondent Nos. 1 to 4.

U. S. Sahni Advocate, for respondent No. 5.

JUDGMENT

I. S. Tiwana, J.

(1) In this letters patent appeal though the facts are simple and straight, yet these undoubtedly give rise to the following short but ticklish question of law:—

> Can the power to review an order be exercised by the authority concerned *qua* an order passed earlier to the date of conferment of the said power ?

This is how it has been projected before us.

(2) Hari Chand appellant was allotted 36 Bighas and 8 Biswas of land situated in the revenue estate of village Saidpura, Tehsil Rajpura, under the provisions of the Utilisation of Surplus Area Scheme, 1960 (for short, the Scheme) framed under section 32-J of the Pepsu Tenancy and Agricultural Lands Act, 1955. The area allotted was found to be surplus in the hands of one Jatinder Singh. Possession of this area was delivered to the appellant piecemeal; on October 24, 1964 and July 11, 1965. Later the Collector Agrarian, Patiala, on the basis of certain complaint routed to him through the Secretary to the Government and the Financial Commissioner of the State about the eligibility of the appellant for this allotment, decided,—*vide* his order dated February 28, 1973 (Annexure P. 3) that the order of allotment made in favour of the appellant in the earlier part of the year 1964, deserved to be reviewed and granted the necessary permission in this regard. The appellant remained unsuccessful in impugning the merits of order Annexure P.3 before the

Commissioner and the Financial Commissioner who,—*vide* their respective orders dated April 25, 1973 (Annexure P.4) and September 18, 1973 (Annexure P. 5) refuted the challenge of the appellant. Even the learned Single Judge has non-suited the appellant,—*vide* his order under appeal. The solitary submission of Mr. K. C. Puri, learned counsel for the appellant now is that since the power to review was conferred on the Collector Agrarian for the first time of June 4, 1965, i.e., much after the passing of the order of allotment in favour of the appellant in the year 1964, the said power could not be exercised in the absence of any explicit or implied indication with retrospective effect and the legality or the validity of the order of allotment could not be re-examined. In other words, the contention is that since the power of review had been granted subsequent to the finalisation of the order of allotment sought to be reviewed, the said power could not be exercised *qua* the said order in the absence of conferment of that power with retrospective effect.

(3) It is the admitted position in the instant case that the power of review was incorporated in the Scheme for the first time with the publication of notification dated June 4, 1965,—*vide* which paragraph 14 was added to the scheme. As per this paragraph, the power of review as provided for in section 82 of the Punjab Tenancy Act, 1887, became available to the authorities under the Scheme. This section entitles a Revenue Officer either of his own or on an application of any party interested to review and on so reviewing, modify, revise or confirm any order passed by himself or any of his predecessors-in-office. Sub-section (2) of this section provides that or purposes of this section the Collector shall be deemed to be 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 of a lower class who has left the District or has ceased to exercise powers as a Revenue revenue officer and to whom there is no successor-in-office. Sub-section (3) makes an order refusing to review or confirming on review as non-appealable.

(4) In support of his above noted stand, Mr. Puri squarely relies on the following enunciation of law by their Lordships of the Privy Council in *Delhi Cloth and General Mills Co. Ltd.* v. *Income-tax Commissioner, Delhi and another*, (1).

> "While Provisions of a statute dealing merely with matters of procedure may properly, unless that construction be

(1) A.I.R. 1927 Privy Council 242.

> textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. "....." Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect."

This principle of law has later been accepted and reiterated by their Lordships of the Supreme Court in *Dafedar Niranjan Singh another* v. *Custodian, Evacuee Property (Pb.) and another,* (2). Besides this the learned counsel also seeks reliance on a decision of a learned Single Judge of this Court in (*Nar Singh* v. *The State of Punjab and others*) (3), wherein a similar argument was accepted by the Court in setting aside the orders of the revenue authorities seeking to review the order passed earlier to the conferment of power on June 4, 1965.

(5) Having given our thoughtful consideration of the authoritative pronouncements of the Privy Council and the final Court, we are of the opinion that the said principle is not attracted to the facts of the case in hand. All that has been said by their Lordships of the Privy Council was in the context of right of appeal from the orders of a High Court in India made upon references either under section 51 of the Indian Income-tax Act, 1918 or section 66 of the Act of 1922. Until the case *Radhakrishna Ayyar* v. *Sundaraswami Lyer,* (4) was decided by the Board, it was generally supposed that appeals from such orders were regulated by sections 109 and 110 of the Code of Civil Procedure. The effect of the judgment in that case was to definitely lay down that from those orders there was in fact no statutory right of appeal at all. As a sequel to these pronouncements an amendment was brought about in the Act of April 1, 1926, by adding section 66A providing that an appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference under

(2) A.I.R. 1961 S.C. 1425.
(3) C.W. 3042/69 decided on 10-1-80.
(4) A.I.R. 1922 P.C. 257.

section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council. The question that engaged the pointed consideration of their Lordships was: 'Is there under this section any appeal at all from an order of the High Court made before the amendment came into force ?'.

(6) The answer to the question which has now been posed before us, i.e. 'Whether *qua* the order of allotment passed in favour of the appellant in 1964, the power of review conferred on the revenue authorities on June 4, 1965 could be exercised?' lies to our mind, in the very quote from the Privy Council judgment referred to above. We are of the firm opinion that there is a fundamental difference between a right of appeal which is in the nature of a substantive right of a party to the list and conferment or exercise of power of review by an authority. To our mind nothing is more firmly settled than the principle that the right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from a decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated and before a decision is given by, the inferior Court. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or to impair or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication. (See A.I.R. 1953 S.C. 221). This too is so very clear even from the above noted quote from the Privy Council decision. To provide for power of review or forum is, to our mind, primarily a matter of procedure. No party apparently has a vested right to a particular procedure or to a particular forum. A party asking for review can, at the maximum, be said to be exercising a remedial right as distinguished from enforcing a substantive right. Thus the principle stated by their Lordships of the Privy Council and as approved by their Lordships of the Supreme Court is not applicable to the facts of this case. Again, the case before the Supreme Court was not a case of review. The only question required to be determined therein related to the retrospectivity of section 27 of the Administration of Evacuee Property Act, 1950 and this aspect of the case was examined in the light of section 58(3) of the Act. As such, the question before their Lordships was materially different from the one in hand. Further, we are of the opinion that the power of review provided for in the Scheme is more or less analogous to the power vested in a Civil Court under section 152 of the Code of Civil

Procedure. This section lays down that clerical or arithemetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either or its own motion or on the application of any of the parties. The exercise of this power is undoubtedly an independent proceeding and cannot be held to be a continuation of the suit or the proceedings therein as is the case with regard to the right of appeal provided for against the original decrees or orders. This aspect of the matter has been considered by the apex *Court* in *Messrs Ganpat Rai Hiralal and another* v. *The Agarwal Chamber of Commerce Ltd.* (5) thus :—

> "There is no warrant for the view that the amendment petition under section 152, Civil Procedure Code, is a continuation of the suit or proceedings therein. It is in the nature of an independent proceedings, though connected with the order of which amendment is sought. Such a proceeding is governed by law prevailing on its date and not by the law prevailing on the date of that proceeding in which the order sought to be amended was passed."

In the instant case too, to our mind, no retrospectivity is involved as on the date the Collector passed the order permitting the review of the original order of allotment in favour of the appellant, the power was already there with him, i.e., having been conferred with effect from June 4, 1965.

(7) Decision in *Nar Singh's* case (supra) undoubtedly fully supports the contention of Mr. Puri, learned counsel for the appellant. That too, as already indicated, was a case under the Scheme and the order permitting the review of a similar order passed prior to the 4th of June, 1965, was set aside by the learned Judge following the dictum of their Lordships of the Privy Council in *Delhi Cloth and General Mills Co. Ltd.'s* case (supra). For all the reasons stated above we find it difficult to subscribe to the view expressed by the learned Single Judge as to our mind the material distinction between the right of appeal and the exercise of power of review was not specifically brought to the notice of the Court. Thus we respectfully disagree with the opinion expressed in that case and overruled the same.

(5) A.I.R. 1952 S.C. 409.

(8) In the light of the discussion above, we find no infirmity in the impugned order of the Collector, Annexure P.3, and the subsequent orders affirming the same. No other argument having been raised by the learned counsel for the appellant, we dismiss this appeal but with no order as to costs.

H.S.B.

FULL BENCH

Before D. S. Tewatia, S. P. Goyal and S. S. Sodhi, JJ.

PARKASH CHAND AND ANOTHER,—*Appellants.*

versus

PAL SINGH AND OTHERS,—*Respondents.*

First Appeal Against Order No. 135 *of* 1980

May 7, 1985.

Motor Vehicles Act (IV of 1939)—Sections 110 to 110-F—Fatal Accidents Act (XIII of 1855)—Sections 1, 1-A and 2—Claims for compensation arising from a motor accident—Substantive law that governs such claims—Such claims—Whether governed by section 1-A of the Fatal Accidents Act—'legal representatives of the deceased' referred to in section 110-A—Meaning of—Persons for whose benefit action for damages could be brought and by whom under the Fatal Accidents Act—Stated—Compensation awarded under Section 110-A—Whether includes damages on account of pecuniary loss suffered by the dependants and also loss suffered by the estate—Petition for compensation on account of death in a motor accident—Legal representatives and dependants of the deceased other than those enumerated in section 1 of Fatal Accidents Act—Whether have a locus standi *to maintain such a petition.*

Held, that section 110 of the Motor Vehicles Act, 1939 does no more than prescribing for the constitution and establishment of a forum for adjudicating the claim for compensation and section 110-A provides as to who could activate the given forum and for whose benefit. None of the two provisions, which are the only relevant provisions, in express terms, provides, as is provided under Section 1-A of the Fatal Accidents Act, 1855 that a party causing death of