
Before V.K. Bali & Rajive Bhalla, JJ

TARLOK SINGH,—Petitioner

versus

FINANCIAL COMMISSIONER CO-OPERATION, PUNJAB
& OTHERS,—Respondents

C.W.P. No. 5759 OF 2003

25th May, 2004

Punjab Land Revenue Act, 1887—S.45—Punjab Land Records Manual — Paras 7.29 & 7.30 — Constitution of India, 1950—Art.226—Dispute regarding possession of land—Correction of khasra girdawri—Assistant Collector ordering correction of khasra girdawri—after visiting the disputed land – Collector setting aside the order while remanding the matter for fresh decision by Assistant Collector —No appeal filed against the order of Collector by either party —Petitioner filing suit for permanent injunction on the basis of exclusive possession over the suit land—Assistant Collector adjourning the matter sine die to await the decision of Civil Court — Petitioner challenging the said order — Collector & Additional Commissioner dismissing appeal & revision of the petitioner but not ordering correction of khasra girdawri — Meanwhile, Civil Court decreeing the suit of the petitioner — Financial Commissioner ignoring judgment of Civil Court and ordering correction of jamabandi while holding that the orders of Revenue Officers directing correction of khasra girdawri had not been incorporated in jamabandi — Order of Financial Commissioner based upon an erroneous fact — Under paras 7.29 & 7.30 of the Manual, Financial Commissioner has power to order correction of clerical mistakes only appearing in the previous jamabandi which have crept into the current jamabandi — Financial Commissioner has no jurisdiction to order correction of jamabandi which did not suffer from any clerical or patent defect — Under Section 45 of the 1887 Act remedy for an aggrieved person regarding correction of record-of-rights is to file suit for declaration under Specific Relief Act — Findings of the Civil Court are binding upon the Revenue Officers and are to be implemented.

Held, that the learned Financial Commissioner, while directing the correction of the Jamabandi, committed an error of fact. The learned Financial Commissioner proceeded to exercise jurisdiction, to correct clerical mistakes in the Jamabandi, in the belief that the order directing correction of khasra girdawris had not been incorporated in the Jamabandi for the year 1997-98. The assumption of jurisdiction by the learned Financial Commissioner was, thus, based upon an erroneous fact that an order directing correction of khasra girdawaris existed. The only order dated 4th October, 1996 passed by the Assistant Collector, IInd Grade, Phagwara, directing correction of khasra girdawaris having been set aside, before the Jamabandi for the year 1997-98 was attested, there was no defect, clerical or patent, that could confer jurisdiction on the Financial Commissioner to correct the Jamabandi.

(Para 25)

Further held, that Section 45 of the 1887 Act, by the very words used therein, bars the jurisdiction of the revenue officers, including the Financial Commissioner, from directing correction in the Jamabandis. The only remedy available to an aggrieved individual, is to file a suit under Chapter VI of the Specific Relief Act, 1963.

(Para 27)

Further held, that the Financial Commissioner, apparently, sought to exercise powers under Paras 7.29 and 7.30 of the Punjab Land Records Manual. The said provisions only permit the correction of clerical mistakes appearing in the previous Jamabandi which have crept into the current Jamabandi. As no such clerical mistake existed in the Jamabandi for the year 1997-98, the learned Financial Commissioner had no jurisdiction to exercise powers under Paras 7.29 and 7.30 of the Punjab Land Records Manual and order correction of jamabandi.

(Para 28)

Further held, that the Financial Commissioner had no jurisdiction to sit in judgment over the findings record by the Civil Court and hold that it was not clear from the orders of the Civil Court as to who was in actual cultivating possession of the suit land. The

judgments and decrees of the Civil Court are binding upon Revenue Officer, including the Financial Commissioner. The scheme of the Act confers primacy on the judgments and decrees of the Civil Court regarding questions decided therein. Possession, as determined by a Civil Court, has to be reflected in the revenue record.

(Para 30)

Punish Jindia, Advocate and Munish Sareen, Advocate, for
the petitioner

Nirmaljit Kaur, Additional Advocate General, Punjab for
respondents Nos. 1 to 4.

G. S. Nagra, Advocate, for respondents Nos. 5 to 8.

JUDGMENT

RAJIVE BHALLA, J.

(1) The petitioner, by way of the present writ petition, seeks the issuance of a writ in the nature of certiorari for quashing the orders of the Assistant Collector IInd Grade, Phagwara dated October 04th 1996 (Annexure P-4), also of the Assistant Collector IInd Grade, Phagwara, dated November 07, 1997 (Annexure P-6), of the Collector, Phagwara, dated August 05, 1999 (Annexure P-7), of the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar, dated January 25, 2001 (Annexure P-9) and of the Financial Commissioner (Co-operation) dated October 23, 2002 (Annexure P-11).

(2) A brief narrative of the facts will be essential.

(3) The petitioner, claims to have purchased 20 Kanals, including the land in dispute,—*vide* registered sale deed dated July 15, 1983, pursuant where to he claims to be in possession, since 1983. His possession is reflected in the khasra girdawaris since 1983 and in the Jamabandi for the year 1992-93 (Annexure P-1).

(4) The private respondents filed an application (Annexure P-2) before the Assistant Collector IInd Grade, Phagwara, praying therein, for a correction of Khasra girdawari of land measuring

2 Kanals 16 Marlas bearing khasra Nos. 18//2/1 Min-Garb (1 Kanal 8 Marlas) and 18/1/2 Min Sharak (1 Kanal 8 Marlas), situated in Village Nasirabad, Tehsil Phagwara, District Kapurthala, on the plea that they were in actual cultivating possession.

(5) On September 27, 1996, the Assistant Collector IInd Grade, Phagwara, visited the disputed land and,—vide order dated October 04, 1996 (Annexure P-4), held that the private respondents were in cultivating possession of the afore-mentioned land and therefore ordered correction of the khasra girdawari entries from Sauni 1993 to Haari 1996.

(6) In an appeal, preferred by the petitioner before the Collector, Phagwara, the above order was set aside, vide order dated October 9, 1997 (Annexure P-5), and the matter remanded for a decision afresh. Neither party preferred an appeal/revision against the order of the Collector dated October 9, 1997 (Annexure P-5). Thus, the order of the Assistant Collector IInd Grade dated October 4, 1996 (Annexure P-4) directing correction of the khasra girdawaris stood set aside.

(7) In the interregnum, the petitioner filed Civil Suit No. 172 dated June 15, 1996, in the Court of Additional Civil Judge (Senior Division), Phagwara, for permanent injunction restraining the private respondents from interfering, in any manner whatsoever, or dispossessing the petitioner illegally and forcibly from the land measuring 20 Kanals Kitta 5 bearing khasra numbers 14//11 (7 Kanals, 4 Marlas), 12/2 (6 Kanals 18 Marlas), 19/3 (2 Kanals 12 Marlas), 18//1/2/2 (1 Kanal 18 Marlas) and 2/1/1 (1 Kanal 8 Marlas). This land includes the land in dispute.

(8) Taking into account the pendency of the civil suit, the Assistant Collector, IInd Grade, Phagwara,—vide order dated November 7, 1997 (Annexure P-6), consigned the application to the Record Room with liberty to the parties to seek revival of the application after decision of the civil suit.

(9) The petitioner impugned the order of the Assistant Collector, IInd Grade, Phagwara, dated November 7, 1997, by way of an appeal filed before the Collector, Phagwara. The Collector inspected the spot, though, no report is available on record, and,—vide order dated August 5, 1999 (Annexure P-7) held that the

private respondents were in actual cultivating possession of the suit land. However, it would be significant to note here that the Collector did not pass any order directing the correction of the khasra girdawari. He simply dismissed the appeal.

(10) Before the above order dated August 5, 1999, could be passed by the Collector, the Jamabandi for the year 1997-98 came to be attested, showing the petitioner to be owner in possession of the khasra numbers in dispute.

(11) The order of the Collector dated August 5, 1999, was impugned before the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar, by the petitioner. The Additional Commissioner (Appeals),—*vide* order dated January 25, 2001 (Annexure P—9), dismissed the revision. However, no order was passed directing the correction of the entries in the khasra girdawaris.

(12) The petitioner impugned the afore-mentioned order before the Financial Commissioner (Co-operation), Punjab, Chandigarh, by way of a revision petition. During the pendency of this revision petition, the Civil Court decreed the suit filed by the petitioner and issued a permanent injunction restraining the private respondents from interfering in or dispossessing the petitioner illegally and forcibly from the land measuring 20 Kanals Kitta 5 bearing khasra numbers 14//11 (7 Kanals 4 Marlas), 12/2 (6 Kanals 18 Marlas), 19/3 (2 Kanals 12 Marlas), 18//1/2/2 (1 Kanal 18 Marlas) and 2/1/1 (1 Kanal 8 Marlas).

(13) The learned Financial Commissioner,—*vide* order dated October 23, 2002 (Annexure P-11), dismissed the revision petition, upheld the orders of the Revenue Officers and directed the correction of the Jamabandi for the year 1997-98 so that the cultivation column could reflect the name of the private respondents. The learned Financial Commissioner held that the Collector,—*vide* order dated August 5, 1999 (Annexure P—7) correctly decided that the private respondents were in cultivating possession.; It was also held that, as the orders of the revenue officers directing correction of the khasra girdawaris had not been incorporated in the Jamabandi for the year 1997-98, the Financial Commissioner was empowered to order correction thereof and, consequently, a direction was issued to correct the Jamabandi and reflect the possession of the private respondents.

(14) The petitioner filed the present writ petition impugning the aforementioned orders.

(15) Upon notice, the official respondents as also the private respondents have filed separate written statements. However, the common stand, of the respondents, is that, as the khasra girdawaris from 'Sauni' 1993 to 'Haari' 1996 stood corrected and as the said correction was not reflected in the Jamabandi for the year 1997-98, the Jamabandi suffered from a patent error which the learned Financial Commissioner was empowered to correct. It is also pleaded that the judgment and decree of the Civil Court being based upon a Jamabandi which was void, had no effect.

(16) We have heard the learned counsel for the parties, perused the writ petition, the impugned orders, various documents annexed with the writ petition as also the written statements filed by the respondents.

(17) Learned counsel for the petitioner contends that a perusal of the orders passed by the revenue officers reveals that prior to the attestation of the Jamabandi for the year 1997-98, in the year 1998, there was no order in existence directing the correction of the khasra girdawaris from 1993 onwards. The order of the Assistant Collector IInd Grade, Phagwara, dated October 4, 1996 (Annexure P-4), directing the correction of the khasra girdawaris, had been set aside by the Collector, Phagwara,—*vide* his order dated October 9, 1997 (Annexure P-5). Thereafter, no revenue officer ever passed any order directing correction of the khasra girdawaris. In this view of the matter, the learned Financial Commissioner committed a serious error of fact, in holding that the orders of the revenue officers directing correction of the khasra girdawaris had not been incorporated in the Jamabandi and, therefore, the Jamabandi suffered from a patent defect, which could be corrected by him.

(18) It is further contended, by the learned counsel for the petitioner, that once a Jamabandi had been attested, any grievance in respect, thereof could only be rectified by way of a Civil Suit. Section 45 of the Punjab Land Revenue Act (hereinafter referred to as 'the Act') states in clear terms that entries in the Jamabandi can only be corrected by laying challenge thereto, before a Civil Court and, therefore, the learned Financial Commissioner has exceeded his jurisdiction in directing correction of the Jamabandi.

(19) Learned counsel for the petitioner further contends that the learned Financial Commissioner had no jurisdiction to ignore, interpret, explain, distinguish or attempt to bye-pass a judgment of the Civil Court. The learned Financial Commissioner was bound by the judgment and decree of the Civil Court and, therefore, could not have ordered the correction of the khasra girdawaris contrary to the findings returned by the Civil Court, which were to the effect that the petitioner was in possession. The revenue authorities are bound by the judgments and decrees of the Civil Court and the findings of a Civil Court have to be reflected in the revenue record.

(20) Learned counsel for the respondents, on the other hand, assert that the Assistant Collector IInd Grade as also the Collector, visited the site in dispute and there after returned a finding that the private respondents were in possession. The Jamabandi for the year 1997-98 did not reflect the true position regarding possession as it did not incorporate the corrected entries and the Financial Commissioner was empowered under Paras 7.29 and 7.30 of the Punjab Land Records Manual to order correction of Jamabandi. It is further argued that the judgment of the Civil Court was not binding upon the Financial Commissioner as the Civil Court had primarily relied upon a Jamabandi which was null and void. The learned Financial Commissioner rightly ignored the judgment of the Civil Court. It is further contended that Section 45 of the Act does not bar, Revenue Officers including the Financial Commissioner, from ordering correction of a Jamabandi which suffers from a patent error of fact or a clerical mistake and, therefore, the impugned orders are liable to be upheld and the present writ petition dismissed.

(21) Before proceeding to decide the matter, a few facts need to be clarified :

(22) A perusal of the record reveals that the Jamabandi for the year 1997-98 was attested and filled in the year 1998. The Assistant Collector IInd Grade, Phagwara,,—*vide* order dated October, 1996 (Annexure P-4) had, indeed, directed correction of the Khasra girdawari. However, the Collector, Phagwara,—*vide* his order dated October 09, 1997 (Annexure P-5), set aside the said order and remitted the matter to the Assistant Collector IInd Grade, Phagwara, for a decision afresh. Assistant Collector IInd Grade, Phagwara, thereafter,—*vide* order dated November, 07, 1997 (Annexure P-6)

adjourned the matter sine die to await the decision of the Civil Court. In appeal against this order, the Collector,—*vide* order dated August 05, 1999 (Annexure P-7), held the private respondents to be in possession, but did not direct the correction of the Khasra girdawaris. Similarly, the Additional Commissioner (Appeal), Jalandhar Division, Jalandhar, while dismissing the revision,—*vide* orders, dated January 25, 2001 (Annexure P-9), did not direct the correction of the khasra girdawaris.

(23) It is, thus, apparent that in the year 1998, when the Jamabandi came to be attested, there was no order in existence directing correction of the khasra girdawari, which correction could have been incorporated in the Jamabandi for the year 1997-98. The orders of the Collector (Annexure P-7) and the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar, (Annexure P-9), holding the private respondents to be in possession, came into existence after 1998, i.e. on August 05, 1999 and January 25, 2001, respectively. Even otherwise,—*vide* these orders, correction of the khasra girdawaris was not ordered. As a natural corollary, on the date the Financial Commissioner passed the impugned order, there was no order, in existence, passed by any Revenue Officer, directing correction of the entries in the khasra girdawaris.

(24) The learned Financial Commissioner, on the other hand, directed correction of the Jamabandi for the year 1997-98 on the ground that, while preparing the Jamabandi in 1998, the Revenue Officers committed an error, as they did not incorporate the orders,—*vide* which the khasra girdawaris from 'Sauni' 1993 to 'Haari' 1996 were directed to be corrected, showing the private respondents in possession.

(25) From the factual position, narrated above, it is apparent that the learned Financial Commissioner, while directing the correction of the Jamabandi, committed an error of fact. The learned Financial Commissioner proceeded to exercise jurisdiction, to correct clerical mistakes in the Jamabandi, in the belief that the order directing correction of khasra girdawaris had not been incorporated in the Jamabandi for the year 1997-98. The assumption of jurisdiction by the learned Financial Commissioner was, thus, based upon an erroneous fact that an order directing correction of khasra girdawaris existed. As narrated above, the only order directing correction of khasra

girdawaris having been set aside, before the jamabandi for the year 1997-98 was attested, there was no defect, clerical or patent, that could confer jurisdiction on the Financial Commissioner to correct the Jamabandi.

(26) The learned Financial Commissioner also ignored the mandate to Section 45 of the Act, which reads as under :—

“Section 45 :—Suit for declaratory decree by person aggrieved by an entry in a record :— If any person considers himself aggrieved as to any right of which he is in possession, by an entry in a record-of-rights or in an annual record, he may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1963.”

(27) Section 45 of the Act, by the very words used therein, bars the jurisdiction of the revenue officers, including the Financial Commissioner, from directing correction in the Jamabandis. The only remedy available to an aggrieved individual, is to file a suit under Chapter VI of the Specific Relief Act, 1963. The Financial Commissioner was obviously not exercising jurisdiction under the afore-mentioned Act.

(28) The learned Financial Commissioner, apparently, sought to exercise powers under Paras 7.29 and 7.30 of the Punjab Land Records Manual. The said provisions only permit the correction of clerical mistakes appearing in the previous Jamabandi which have crept into the current Jamabandi. As no such clerical mistake existed in the Jamabandi for the year 1997-98, the learned Financial Commissioner had no jurisdiction to exercise powers under Paras 7.29 and 7.30 of the Punjab Land Records Manual and order correction of the Jamabandi.

(29) Another aspect of the matter that merits consideration is that the learned Financial Commissioner ignored and, in fact, differed with the judgment of the Civil Court. Admittedly, during the pendency of the revision before the learned Financial Commissioner, the Civil Court had decreed the suit in favour of the petitioner. While examining the judgment of the Civil Court, the learned Financial Commissioner held as follows :—

“-----Insofar as the Civil Courts orders are concerned, the restraint order against the respondents is based on the

entries in the Jamabandi. It is, however, not clear from the orders of the Civil Court as to who is in actual cultivating possession of the land-----”

(30) The Financial Commissioner had no jurisdiction to sit in judgment over the finding recorded by the Civil Court and hold that it was not clear from the orders of the Civil Court as to who was in actual cultivating possession of the suit land. The judgment and decrees of the Civil Court are binding upon Revenue Officers, including the Financial Commissioner. The scheme of the Act confers primacy on the Judgments and decrees of the Civil Court regarding questions decided therein. Possession, as determined by Civil Court, has to be reflected in the revenue record.

(31) In order to fortify the afore-mentioned finding, the decree passed by the Civil Court is reproduced as follows :—

“This suit is coming on this day for final disposal before me in the presence of Shri M.K. Sareen, Advocate, counsel for the plaintiff, Shri L.M. Chopra, Advocate, counsel for defendants Nos. 2 and 3, and none for defendant No. 1. It is hereby ordered that the suit of the plaintiff is decreed with costs for permanent injunction. The defendants are restrained from interfering or dispossessing the plaintiff illegally and forcibly from the land measuring 20 Kanals Kitta 5 bearing khasra nos. 14/11/ 7-4, 12/2/6-18, 19/3/2-12, 18/1/2/1-18, 2/1/1/1-8 as entered in khewat/khatauni no. 5/5 of Jamabandi Ex. PB for the year 1992-93 of village Nasirabad, Teshil Phagwara District Kapurthala.”

(32) The said decree, when read along with the judgment, leaves no manner or doubt that the Civil Court had held the petitioner to be in actual physical possession of the land in dispute and, consequently, issued an injunction restraining the private respondents from interfering in the possession of the petitioner. The Financial Commissioner appropriated to himself the powers of an Appellate Court, exercising jurisdiction under the Code of Civil Procedure and, therefore, committed a gross irregularity, rendering his order a nullity.

(33) Before parting with the judgment, we may notice a contention, raised by the learned counsel for the respondents that as per Rapat No. 104 dated November 08, 1996, the entries in the khasra girdawari regarding possession, which were to be reflected in the names of the private respondents, were ignored by the revenue staff while attesting the Jamabandi for the year 1997-98 and, therefore, the Financial Commissioner was justified in rectifying this error. Suffice it to say that the afore-mentioned Rapat dated November 08, 1996 was based upon the order of the Assistant Collector IInd Grade dated October 04, 1996, which order was set aside by the Collector,— *vide* order dated October 09, 1997, and therefore all subsequent proceedings/orders/revenue entries that came into existence pursuant to order dated October 04, 1996, would automatically fall to the ground and, therefore, the said Rapat No. 104 dated November 08, 1996, is totally inconsequential and does not confer any right upon respondents Nos. 5 to 8 or powers upon the Revenue Officer to order correction of Jamabandi.

(34) In view of what has been discussed above, it is apparent that the learned Financial Commissioner had no jurisdiction to order correction of the Jamabandi as the said Jamabandi did not suffer from any clerical or patent defect, as envisaged under Paras 7.29 and 7.30 of the Punjab Land Records Manual. The learned Financial Commissioner also had no jurisdiction to ignore the judgment and decree of the Civil Court and hold to the contrary. In this view of the matter, the impugned orders, namely, of the Collector dated August 05, 1999 (Annexure P-7), of the Additional Commissioner (Appeals) dated January 25, 2001 (Annexure P-9) and of the Financial Commissioner dated October 23, 2002 (Annexure P-11) are set aside and a direction is issued to the official respondents to implement the judgment and decree of the Civil Court dated September 21, 2002, in letter and spirit, till such time as the same is reversed, modified or set aside by Court of competent jurisdiction.

R.N.R.