

6. In the result both the appeals succeed and are accepted. The impugned order is set aside and the parties are left to bear their own costs.

PATTAR, J.—I agree.

B.S.G.

Before D. S. Tewatia, J.

IQBAL SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

C.W. No. 3238 of 1973.

August 7, 1974.

*Punjab Security of Land Tenures Act (X of 1953)—Section 24—Punjab Security of Land Tenures Rules, 1956—Rule 2—Punjab Tenancy Act (XVI of 1887)—Sections 75 and 82—Punjab Land Revenue Act (XVII of 1887)—Sections 6 and 27—Naib-Tehsildar acting as a Circle Revenue Officer under Punjab Security of Land Tenures Act and Rules framed thereunder—Whether subject to the “immediate” Control of Collector (Agrarian) or the Collector of the District—Order of review passed by such Officer with requisite permission of Collector (Agrarian)—Whether valid.*

*Held*, that the expression “to whose control he is immediately subject” occurring in section 82(1) (a) of Punjab Tenancy Act, 1877 has to be viewed in the context of hierarchy of the Officers provided under section 75 of the Act which in terms refers to the provisions of Punjab Land Revenue Act, 1887, section 6 whereof categorises various classes of Revenue Officers such as Financial Commissioner, the Commissioner, the Collector, the Assistant Collector First Grade, and the Assistant Collector Second Grade. A Naib-Tehsildar, on whom powers of an Assistant Collector Second Grade, are conferred is subject to the control of the District only when he acts as Assistant Collector Second Grade. Where the Naib-Tehsildar acts in a different capacity such as Circle Revenue Officer in order to carry out the functions assigned to him under the provisions of Punjab Security of Land Tenures Act, 1953 and the rules framed thereunder then for that purpose he cannot be considered to be subject to the immediate control of the Collector of the District. The immediate control over him in regard to the Agrarian matters dealt with by him is that of the Collector (Agrarian). Hence an order of review passed by

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Circle Revenue Officer with the requisite permission of Collector (Agrarian) is perfectly valid.

*Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the orders, dated 23rd October, 1972, passed by respondent No. 2 (Annexure 'B') and further praying that during the pendency of the writ petition, the operation of the impugned order annexure-B be stayed.*

Lakhinder Singh, Advocate, for the Petitioner.

M. L. Sarin, Advocate, for Advocate-General (Punjab).

#### JUDGMENT

TEWATIA, J.—The short question that falls for determination in this writ petition is as to whether the Circle Revenue Officer for the purpose of reviewing his predecessor's order is to be considered subject to the immediate control of the Agrarian Collector or the Collector of the district.

(2) In order to appreciate the controversy, only a few relevant facts admitted on both hands need be stated. Shri Hem Raj acting as the Circle Revenue Officer,—*vide* his order dated 19th April, 1966, allotted 19 standard acres and 15½ units of land to the petitioners (sons of Nidhan Singh) to whom this area was earlier alleged to have been gifted by their father and which was ignored while calculating his surplus area. The Circle Revenue Officer thereafter sought review of his order. The requisite permission to review was accorded by the Collector (Agrarian) by his order dated 25th November, 1969. On review of his earlier order, the Circle Revenue Officer held that the petitioners were not entitled to the allotment of any area as tenants. This order was challenged in appeal. The case was remanded back to the Circle Revenue Officer on the ground that he had passed the review order without hearing the petitioners. The Circle Revenue Officer, reaffirming his earlier order, held that the petitioners were not entitled to the allotment as tenants of the area that had been allotted to them by his order dated 19th April, 1966. This later order was affirmed by the Collector (Agrarian) in an appeal filed by the petitioners. Against that order, the petitioners approached the Commissioner in a revision petition who recommended to the Financial Commissioner the acceptance thereof. The learned Financial Commissioner, however, by his order

dated 23rd October, 1972, declined the reference and upheld the order of the Circle Revenue Officer and that of the Collector (Agrarian), thus paving the way for the filing of the present writ petition in this Court.

(3) The relevant provisions having a bearing on the controversy require to be set out at the very outset:

(4) Section 24 of the Punjab Security of Land Tenures Act, 1953 (Act X of 1953) (hereinafter referred to as the Act), which deals with the power of review, etc., is in the following terms:

“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 section 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887 (Act XVI of 1887).”

The relevant provision of section 82 of the Punjab Tenancy Act, 1887 (Act XVI of 1887) (hereinafter referred to as the ‘Tenancy Act,’ reads—

“82. (1) A revenue officer, as such may either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

Provided as follows:—

(a) When a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a revenue officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the revenue officer to whose control he is immediately subject;

(b)

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(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d)	*	*	*	*	*	*
(2)	*	*	*	*	*	*
(3)	*	*	*	*	*	*

(5) The expression 'to whose control he is immediately subject' has to be viewed in the context of the hierarchy of the officers provided by section 75 of the Tenancy Act, which refers us to the provisions of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the 'Revenue Act'). In the latter Act it is section 6 that categorises various classes of revenue officers such as the Financial Commissioner, the Commissioner, the Collector, the Assistant Collector, First Grade, and the Assistant Collector, Second Grade.

(6) Sub-section (2) thereof provides that 'the Deputy Commissioner of a district shall be the Collector thereof.' Section 27 of the Revenue Act deals with the conferment of powers on different classes of revenue officers and sub-section (3) thereof is in the following terms:—

"27(3) If any of the powers of a Collector under this Act are conferred on an Assistant Collector, they shall, unless the State Government by special order otherwise directs, be exercised by him subject to the control of the Collector."

The burden of the argument advanced on behalf of the petitioners is that the exercise of power by an Assistant Collector is made expressly subject to the control of the Collector by sub-section (3) of section 27 of the Revenue Act, which provides for conferring powers of the Collector on various officers, say the Naib-Tehsildar, on whom are conferred the powers of an Assistant Collector of Second Grade, and that he should accordingly be considered under the immediate control of the Collector of the district and not of the Collector (Agrarian), i.e., the Sub-Divisional Officer.

(7) There obviously appears to be a certain amount of misconception in the mind of the petitioner in regard to the true import

of the above-said provisions. The Naib-Tehsildar would be subject to the control of the Collector of the district only when he acts as the Assistant Collector Second Grade, but where he acts in a different capacity such as the Circle Revenue Officer in order to carry out the functions assigned to him under the provisions of the Act and the rules framed thereunder, then for that purpose we would have to look to the provisions of that Act and the rules thereunder, if any.

(8) Rule 2(ii) of the Punjab Security of Land Tenures Rules, 1956, has defined the 'Circle Revenue Officer' to include 'any revenue officer authorised by the Collector to function as such in any Tehsil or part thereof. The powers of the Collector are conferred on all the Sub-Divisional Officers by notification dated 25th February, 1959, issued under rule 2 of the Punjab Security of Land Tenures Rules, 1956. The various provisions noticed above make it amply clear that the Circle Revenue Officer, while dealing with such agrarian matters as are contemplated by the Act and the Rules framed thereunder, is subject to the control of Collector (Agrarian). The expression 'immediate' used in clause (a) of sub-section (1) of section 82 of the Tenancy Act rather holds the key to the correct understanding of the above-said provision and cannot be lost sight of. In the light of above, the Naib-Tehsildar cannot be considered subject to the immediate control of the Deputy Commissioner. The immediate control over him in regard to the agrarian matters dealt with by him has to be that of the Sub-Divisional Officer or the Collector (Agrarian).

(9) A reference has been made to the provisions of section 78 of the Tenancy Act and section 11 of the Revenue Act. These two provisions deal with the powers of superintendence. These provisions are not at all applicable, because these provide for administrative and disciplinary matters and control of the various revenue officers at various levels by their superior officers. Reliance has been next placed on a decision of the Financial Commissioner reported in *Mohinder Singh and another v. The State of Punjab* (1). In that case, the learned Financial Commissioner was dealing with the power of review in a matter arising from the Pepsu Tenancy and Agricultural Lands Act,

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(1) 1971 P.L.J. 259.

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1955 (Act 13 of 1955). For one thing, there is no provision in that Act for review as it is there in the Punjab Security of Land Tenures Act, and it has been so held by this Court; and for another, the learned Financial Commissioner was swayed by the provisions of section 78 of the Tenancy Act and section 11 of the Revenue Act, which are not applicable, even remotely, to a matter like the present one.

(10) The petitioners, on merit, are not entitled to the allotment at all. They are sticking to the land only on the technical objection that the review order passed by the Circle Revenue Officer was illegal, as the requisite permission to review had been accorded by the Collector (Agrarian) who was not competent to grant the same. The learned Financial Commissioner has observed that even if the permission to review was not in accord with the provisions of laws, but if a matter like this was to come to his notice, he in his revisional jurisdiction would have set aside the original order of the Circle Revenue Officer as the same was palpably illegal and incorrect. In view of this, even if it is to be held for the sake of argument that the permission accorded by the Collector (Agrarian) was without jurisdiction, the Financial Commissioner having dealt with the matter and having expressed himself in the manner already noticed, there is absolutely no merit in the writ petition and the same deserves to be dismissed. I, therefore, dismiss the writ petition with costs.

*B.S.G.*

*Before R. S. Narula, C. J. and M. R. Sharma, J.*

THE SPEAKER, HARYANA VIDHAN SABHA AND OTHERS,—  
*Appellants.*

*versus*

SHRI SITA RAM AND OTHERS,—*Respondents.*

L.P.A. 424 of 1972.

August 16, 1974.

*Constitution of India (1950)—Articles 14, 16, 154, 187 and 309—  
Appointments of the Secretariat Staff of Legislative Assembly—  
Framing of Rules by the Governor under Article 187(3)—Whether*