IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1222/2005
Reserved on: 20.11.2007
Decided on.30.11.2007

Smt. Murtu Devi & others. **…Petitioners**

Versus

Smt. Bakshish Kaur. **…Respondent**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes*

For the petitioners : Mr. B.C. Negi, Advocate.

For the respondent: Mr. Ajay Kumar, Advocate.

Rajiv Sharma, J. (oral)

The brief facts necessary for the adjudication of this petition are that the petitioners filed a suit under section 58 (3) of the H.P. Tenancy and Land Reforms Act, 1972 (hereafter referred to as the Act for brevity sake) for declaration that they were non-occupancy tenants of the suit land. The respondents had filed the reply to the suit to which the rejoinder was also filed by the petitioners. The Assistant Collector Ist Grade-cum-Land Reforms Officer, Tehsil Kasauli vide order dated 3rd March, 1997 decreed the suit in favour of the petitioners and they were declared as non-occupancy tenants on the land comprising Khasra No. 7,8,9,10,17/13, 11 and 14 plots 7 measuring 13-14 bighas situated in revenue Village Dawli, Tehsil Kasauli entered in khewat No.1, Khatauni No.1 of the jamabandi for the year 1992-93. Consequently, the decree sheet was also

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

prepared by the Assistant Collector 1st Grade-cum-Land Reforms Officer on 3rd March, 1997. The respondent preferred an appeal against the judgment and decree dated 3rd March, 1997 before the Collector, District Solan, H.P. The appeal was barred by limitation. An application under section 5 of the Limitation Act for condonation of delay was filed by the respondent. The primary contention in the application preferred under section 5 seeking condonation of delay was that earlier the applicant was residing at 5, Sunehari Bagh, New Delhi at the official residence and subsequently the residence was shifted prior to passing of the order dated 3rd March, 1997. It is further stated in the application that the respondent came to know about the passing of the impugned judgment and decree by the trial court in the first week of November, 1997 and thereafter the application was preferred for obtaining the certified copy of the judgment and decree on 3.11.1997, which was supplied on 26.11.1997. The petitioners had filed reply to the application and had averred therein that the appeal was barred by 215 days. The appeal preferred by the respondent on 2.12.1997 was dismissed by the District Collector on the ground of delay on 25.9.2001. The respondent filed a revision assailing the order dated 25.9.2001 before the Financial Commissioner (Appeals) bearing No.8 of 2002 under section 65 of the Act. The learned Financial Commissioner (Appeals) accepted the revision on 18.10.2005 and set aside the order passed by the Assistant Collector Ist Grade, Kasauli dated 3.3.1997 as well as the order passed by the Collector, District Solan dated 25.9.2001.

Mr. B.C. Negi, Advocate had strenuously argued that the Financial Commissioner (Appeals) has exceeded his jurisdiction vested in him under section 65 of the Act. He then contended that the Financial Commissioner (Appeals) could not set aside the judgment and decree

dated 3rd March, 1997 as well as appellate order dated 25.9.2001 on merits and at the most he could remand the matter back to the Collector to hear the same afresh.

Mr. Ajay Kumar, Advocate had supported the order dated 18.10.2005 passed by the Financial Commissioner (Appeals).

I have heard the learned counsel for the parties and perused the record.

The petitioners had filed a suit under section 58 (3) of the Act. The suit was decreed by the Assistant Collector Ist Grade-cum-Land Reforms Officer on 3.3.1997. The appeal preferred against the order dated 3.3.1997 was barred by limitation. A separate application under section 5 of the Limitation Act seeking condonation of delay was filed to which the reply was filed by the petitioners. The District Collector after hearing the parties at length rejected the application preferred under section 5 of the Limitation Act and consequently the appeal was also dismissed by him on 25.9.2001. The revision was preferred under section 65 of the Act against the order dated 25.9.2001. The prayer sought in the revision reads thus:

> **"It is therefore most respectfully prayed that this revision may very kindly be allowed and the order dated 25.9.2001 passed by the Ld. Collector Solan may be quashed and set aside and the delay in filing the appeal may be condoned and the matter may be remanded back to the Ld. Collector for deciding the same on merits."**

The Financial Commissioner (Appeals) had formulated the following points for consideration, which reads thus:

> **"Having heard the ld. Counsel for the parties and perusing the record of the courts below. I find that the sole point for adjudication as brought forth in the revision petition as well as the arguments put forth is whether the appeal filed by the present petitioner before the ld. Collector on 2.12.97, against**

the order of the Land Reforms Officer dated 3.3.97 was barred by limitation?

The Financial Commissioner (Appeals) on the basis of the prayers sought for in the revision petition was to address whether the application preferred by respondent for condonation of delay was rightly rejected by the Collector instead of going into the merits of the case. Whether the Assistant Collector 1st Grade, Kasauli had the jurisdiction to pass the impugned judgment and decree was to be seen by the appellate authority in appeal. The Financial Commissioner (Appeals) has come to an abrupt conclusion that the appellate authority has failed to exercise the jurisdiction vested in him without any discussion. What was before the District Collector was the application preferred by the respondent for the condonation of delay. The appellate authority has passed a speaking order dismissing the application of respondent seeking condonation of delay in filing the appeal. The Financial Commissioner (Appeals) was only required to consider the order passed by the appellate authority on 25.9.2001 declining to condone the delay. The Financial Commissioner (Appeals) could decide the matter only by restricting it to the pleadings of the parties and the reliefs made in the revision preferred against the order dated 25.9.2001. The only relief sought in the revision was that the order dated 25.9.2001 may be quashed and set aside and the delay in filing the appeal may be condoned. The Financial Commissioner (Appeals) instead of addressing the main issue before him has transgressed his jurisdiction by setting aside the judgment and decree dated 3.3.1997 and the appellate order dated 25.9.2001.

To appreciate whether the order passed by the Financial Commissioner (Appeals) is in conformity or not with section 65 of the H.P.

Tenancy and Land Reforms Act, 1972, it will be apt to take note of the bare provisions of section 65 of the Act Section 65 reads thus:

> **"65. Power to call for, examine and revise proceedings of Revenue Officers and Revenue Courts.- (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.**
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> **(2) The Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court under his control.**
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> **(3) If in any case in which the 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 with his opinion on the case for the orders of the Financial Commissioner.**
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> **(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 the 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 the proceedings or an order or decree of a Civil Court, he shall fix a day for 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.**
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> **(6) Except when the Financial Commissioner fixes under sub-section (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."**

It is evident from the language employed in section 65 of the Act that the Financial Commissioner can 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 the proceedings or an order or decree of a civil court. It necessarily implies from the language of sub-section (5) of section 65 that it is relatable to section 115 of the Code of Civil Procedure, 1908. Thus, the Financial Commissioner can only exercise the revisional powers which are akin to the powers exercised by the High Court under section 115 of the Code of Civil Procedure, 1908.

The High Court can exercise the power under section 115 of the Code of Civil Procedure, 1908 to satisfy itself on three aspects (i) that the orders passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court ought to exercise jurisdiction; and (iii) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision.

It is well settled by now that revisional court is not a second or a first appellate court. The revisional jurisdiction cannot be equated with that of a full fledged appeal. The revisional power can also not be resorted to re-appreciate the evidence. The revisional court is required to limit its decision to the question put before it. In the present case, the only question to be gone into by the Financial Commissioner (Appeals) was whether the appellate authority had correctly rejected the application preferred by the respondent under section 5 of the Limitation Act or not alone, but the Financial Commissioner (Appeals) has touched the very

merits of the case and ultimately he had set aside the order passed by the authorities below.

The Apex Court has held in ***Om Prakash versus Basanthilal*** (1999) 9 SCC 618 that the High Court had committed error since it has decided case on the basis of the statutory provision in respect of which there was no foundation in the pleadings. Their Lordships have held as under:

> **"A perusal of the provisions of Section 10(3) (iii) (b) and (c) would show that both are mutually exclusive and operate in different fields. The ingredients of both the clauses are different and distinct. However, one of the ingredients may be overlapping. For purposes of seeking relief of eviction under section 10 (3) (iii) (b), a landlord has to satisfy different requirements than the requirements contemplated under section 10 (3) (iii) (c) of the Act. The High Court without maintaining the distinction between the two provisions of the aforesaid two separate clauses proceeded to decide the case of the landlord under section 10 (3) (iii) (c) of the Act without there being any foundation to that effect. This approach of the High Court, according to our view, was not legally correct.**

The Financial Commissioner (Appeals) without there being any factual foundation in the pleadings had decided the matter on its merits. Their Lordships of the Hon'ble Supreme Court in ***Amla Chakravarty (dead) through LRs versus Ranjit Kumar Choudhury***, (2000) 10 SCC 339 have held as under:

> **"After we heard the matter, we fell that we need not go into the first and second submissions of learned counsel for the appellants. We are of the view that this appeal can be disposed of on the third submission of learned counsel for the appellants. So far as the third submission is concerned, a perusal of the pleading in the plaint shows that the suit filed by the landlord was on the basis of the second lease dated**

2.12.1970, although it was not specifically referred to in the plaint. In the written statement the tenant admitted that the plaintiff is a landlord and he is a tenant. It was also admitted therein that there existed a relationship of landlord and tenant between him and the plaintiff, and further he has been paying rent to the plaintiff. It was very well understood before the trial court that the parties were litigating on the basis of the second lease deed, namely, lease deed dated 2.12.1970. It is no doubt true that one of the preliminary objections taken by the tenant in his written statement was that the suit was bad for non-joinder of the other legal heirs of the original tenant and also an issue was struck to that effect. But the mere objection or framing of an issue in that respect was not sufficient, as no factual foundation was laid in that regard in the written statement and, therefore, there was no occasion for the Court to embark upon the said inquiry. There having been no factual foundation about the said plea, the High Court was not justified in entering into that question."

Their Lordships of the Hon'ble Supreme Court in ***Nawal Kishore Tulara Versus Dinesh Chand Gupta and others***, (2001) 6 SCC 110 have held as under:

"A perusal of the order passed by the High Court and the discussion held clearly shows that the court had completely mis-directed itself in embarking upon an enquiry into the validity of the document and ultimately, in holding that the document, sought to be exhibited by the defendant could not be held to be a valid agreement under the relevant provisions of the Contract Act. As a matter of fact, the question for consideration before the revisional court was confined to the admissibility of the document on the grounds raised by the plaintiff. The revisional court, after holding that the reasons given by the trial court, for not exhibiting the document, could not be sustained, exceeded its jurisdiction in entering into the question of validity of the document on merits in the light of the provisions of the Contract Act. The order of the High Court

virtually decided the suit. It is beyond the scope of the revision petition and suffers from patent illegality on the face of it causing prejudice to the case of the defendant."

As far as the contention of Mr. Ajay Kumar, advocate that it can be presumed that the Financial Commissioner had exercised his suo motu powers is untenable since there cannot be a straight jacket formula for exercising the suo motu jurisdiction at any time under any circumstances that too without taking into consideration the averments contained in revision petition. It is in the rare of the rarest cases when the suo motu powers can be exercised but in the present case, there was no occasion for the Financial Commissioner (Appeals) to set aside the well reasoned order passed by the authorities below. A Division Bench of Madras High Court in ***G. Kumaraswamy versus Corporation of Madras*** 1996 A I H C (Madras High Court) 4576 has held as under:

"As we have already pointed out, the exercise of suo motu jurisdiction either under Arts. 226 of 227 of the Constitution or under S. 115 of the Civil Procedure Code would depend upon the facts and circumstances of each case, conduct of the parties, the fact situation obtaining on the date the Court is called upon to exercise the jurisdiction suo motu, the extent or nature of injustice going to be perpetuated if this Court were to decline to exercise the jurisdiction suo motu. Therefore, it cannot be laid down as a straight jacket formula that suo motu jurisdiction can be exercised at any time under any circumstances. Examining the facts of this case in the light of what we have stated above, we find it difficult to agree with the contention of the learned counsel for the appellant. Firstly, the appellant himself is disentitled for such a relief by his conduct in not challenging the order of injunction, which he would have very well challenged through the process known to law. Secondly, apart from allowing the order of jurisdiction to operate for several years, he has also gone on with the trial of the suit. Thirdly, in the suit itself, the question as to whether

there is an unauthorized constitution or an encroachment is made by the second respondent/plaintiff in the suit is involved the suit which is ripe for hearing of arguments. Fourthly, the second respondent was granted the planning permission by the Corporation on 6.6.1985 and the same was revoked on 21.12.1990. The appeal preferred by the second respondent against the said order of revocation is still pending before the Appellate Authority of the Corporation. Further, to avoid any complication in the matter, we adjourned these appeals with a specific observation without making any record of the same that the appellant may be restored with the possession of about 250 sq. ft. with the building thereon and that the appellant shall not cause any damage to the property, till the disposal of the said suit. The second respondent had also agreed to it. Both the sides took time to inspect the property and file a report before this Court. On the next date of hearing, the appellant expressed inability to take possession with a condition that he should not cause any damage to the property when he is entitled to unconditional possession under the decree passed in C.R.P. No. 1382 of 1995. We directed the parties in the aforesaid terms only with a view to ensure that the appellant is put in possession and the suit can be decided within a short time and ultimately in the event whosoever succeeds, possession delivered in the interregnum can be treated in accordance with the decree passed. We have referred to this only to show the conduct of the appellant. He having gone on with the trial of the suit, at the fag end of the suit wants to have the decree executed and put in possession unconditionally. Further the suit can be heard and decided within any time as may be fixed by this Court, for which both sides are willing. These circumstances dissuade us to decline to exercise jurisdiction suo motu."

Consequently, in view of the observations made herein above, the writ petition is allowed. The order dated 18.10.2005 is quashed and set aside. The matter is remanded back to the Financial Commissioner

(Appeals) to decide the revision afresh in accordance with law. To avoid delay, the parties are directed to appear before the Financial Commissioner (Appeals) on 12.12.2007.

There shall be no order as to costs.

November 30, 2007 **(Rajiv Sharma), Judge**
Awasthi