

Munshi Singh v. The State of Punjab, etc. (Jain, J.)

five years. From section 4 of the Act it is apparent that the Executive Officer is invested with the executive power for the purpose of carrying on the administration of the municipality in accordance with the provisions of the Act and the Rules framed thereunder and the Municipal Act. The various powers that can be exercised by him are specified in Schedule I to the Act. Schedule I to the Act gives the powers which he can exercise under section 4(b) of the Act. From the various provisions of the Act it is abundantly clear that it is only some of the executive functions that have to be performed by the Executive Officer and the powers of taxation and the formulation of policy in general still vest in the Municipal Committee. It is thus apparent that there is sufficient guidance for the Government to enable it to decide whether the Act needs extension to any Municipal Committee.

(22) In view of the above discussion, I find no merit in these appeals and would dismiss both of them with costs.

HARBANS SINGH, C.J.—I agree.

N.K.S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

MUNSHI SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 548 of 1969.

August 25, 1971.

*Pensu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-D—Collector declaring surplus area and final draft statement published in the Gazette—Commissioner—Whether can re-open the case under his revisionary powers after such publication.*

*Held*, that the requirement of sub-section 6 of Section 32-D of the *Pensu Tenancy and Agricultural Lands Act, 1955*, is that the draft statement

is to be made final in terms of the order of the Collector or the State Government, as the case may be, or, in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner, (if any). It is also provided that after completing this formality the draft statement shall be published in the official gazette and thereafter no person shall be entitled to question it in any Court or before any authority. Thus where a draft statement has been made final in terms of the order of the Collector sub-section (6) of section 32-D puts a complete bar to the same being questioned in any Court or before any authority. The Commissioner has no jurisdiction to re-open the matter in exercise of his revisionary powers under sub-section (4) after the publication of the final draft statement. The words 'at any time' in this sub-section mean "upto the time of the publication of the final draft statement" and do not connote the meaning 'limitless in time'. (Para 5).

*Petition under Articles 226 and 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 proceedings relating to the declaration of his surplus area stated after the publication of the gazette on June 16, 1961 (copy Annexure 'E' to the petition).*

K. C. PURI AND S. K. GOYAL, ADVOCATES, for the petitioner.

R. C. SETIA, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the respondents.

#### JUDGMENT

JAIN, J.—(1) Munshi Singh has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the proceedings relating to the declaration of his surplus area started after the publication of the gazette on June 16, 1961 (copy Annexure 'E' to the petition).

(2) The facts of this case as given in the petition may briefly be stated thus:—

The petitioner owns land in village Nathewala, tehsil Faridkot, district Bhatinda. The petitioner had transferred two-third share of his total land in favour of his sons, Karnail Singh and Gurnam Singh. This transaction was reduced into writing on March 5, 1953, in a Bahi. The translation of the entry in the Bahi is attached with this petition as Annexure 'A-1'. A report with regard to the said transfer was made by the Patwari on September 3, 1956. Proceedings were started against the petitioner with regard to his surplus

area under the provisions of Chapter IV-A of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Act No. XIII of 1955) (hereinafter referred to as 'the Act') by the Collector, who,—*vide* his order, dated September 19, 1960, declared 551 kanals and 10 marlas of land equal to 59.53 standard acres as surplus, after excluding the area which had been transferred by the petitioner in favour of his sons. A true copy of the order is attached with the petition as Annexure 'C'. Thereafter, the Collector passed an order on April 6, 1961, under section 32-D(6) of the Act making the draft statement final with regard to the area which had been declared surplus by him. This order was followed by a publication made in the Punjab Government Gazette with regard to the surplus area (copy of the gazette is attached with the petition as Annexure 'E'). It is further stated in the petition that in the year 1962, a report was made by the Collector, respondent No. 3, that he be allowed to review the order of his predecessor, dated September 19, 1960. The Commissioner, respondent No. 2,—*vide* his order, dated December 27, 1962, allowed the review. The case was taken up by the Collector on July 30, 1965, when he reported to the Commissioner, respondent No. 2, that there was no provision in the Act for review and that the order should be set aside in exercise of the revisional powers. On the report it was again held by respondent No. 2, that the earlier order of review was valid, however, it was also stated in the order by the Commissioner that to put the matter beyond the pale of doubt, the remand be treated in exercise of his revisional authority for a fresh decision in accordance with law. A true copy of the order is attached with the petition as Annexure 'F'. The matter was taken up by the Collector afresh for the declaration of the surplus area. As the claim put in by the petitioner for exemption was not allowed, the petitioner filed this petition in which, as earlier observed, he challenged all the proceedings that were taken by the revenue authorities after the publication of the gazette in pursuance of the order of the Collector, dated April 6, 1961. Written statement in the shape of affidavit has been filed by Shrimati K. Goel, Under-Secretary to Government of Punjab, Revenue Department, in which an effort has been made to support the legality of the proceedings taken after the order of the Collector, dated April 6, 1961.

(3) It was contended by Mr. K. C. Puri, learned counsel for the petitioner, that the Commissioner under the Act had no power to review the order of the Collector, dated April 6, 1961, and the gazette notification publishing the final draft statement, dated June 16, 1961. This contention of the learned counsel was not controverted

by the learned counsel appearing for the State. So far as this Court is concerned, it is a settled proposition of law that under the Act there is no power of review. See in this connection a Division Bench Judgment in *Harpal Singh v. The State of Punjab and others* (1), wherein it was observed thus:—

“The second contention of Mr. K. C. Puri, is even of greater validity. It is argued that the Pepsu Tenancy and Agricultural Lands Act and even the Rules framed thereunder confer no power of review whatsoever on the authorities under the Act. It is hence argued that the proceedings taken in review by the Collector, Agrarian Reforms are also devoid of jurisdiction and consequently invalid. There is patent merit in this contention. It is conceded on behalf of the respondents that there is no provision in the relevant statute granting express power of review to any of the authorities under the said Act. It is well-settled that the power of review is a creature of the statute and there exists no inherent power to review a judicial decision given on merits.”

If the matter had rested only on the question of review, then this petition would straightaway have been allowed, but the difficulty has arisen because the Commissioner,—*vide* his order, dated December 7, 1965, also made the remand in exercise of his revisionary authority, Mr. K. C. Puri, learned counsel for the petitioner, contended that even then the Commissioner could not pass the remand order under his revisionary authority as in the instant case the final draft statement had been published and the order of the Collector had become final. It was also submitted by Mr. K. C. Puri, that under sub-section (4) of Section 32-D, the power of revision could be exercised by the State Government only before the publication of the final draft statement.

(4) After giving my thoughtful consideration to the entire matter, I find great substance in these contentions of the learned counsel.

Section 32-D of the Act reads as under :—

“(1) On the basis of the information given in the return under section 32-B (or the declaration furnished under sub-section

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- (1) of section 32-BB, which shall be duly verified through such agency as may be prescribed or the information obtained by the Collector under sub-section (3) of section 32-BB or section 32-C, the Collector shall prepare a draft statement in the manner prescribed showing among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the landowner may retain by way of his permissible limit or exemption from ceiling and also the surplus area.
- (2) The draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P, regarding exemption from ceiling if claimed by the landowner and be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. Any objection received within thirty days of the service shall be duly considered by the Collector and after affording the objector an opportunity of being heard order shall be passed on the objection.
- (3) Any person aggrieved by an order of the Collector under sub-section (2) may, within thirty days of the order prefer an appeal to the State Government or an officer authorized by the State Government in this behalf.
- (4) Without prejudice to any action under sub-section (3), the State Government may of its own motion call for any record relating to the draft statement at any time and after affording the person concerned an opportunity of being heard, pass such order as it may deem fit.
- (5) Any order of the State Government under sub-section (3) or sub-section (4), or of the Collector subject to the decision of the State Government under those sub-sections shall be final.
- (6) The draft statement shall then be made final in terms of the order if the Collector or the State Government, as the case may be; or in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner (if any); and published in the Official

Gazette and no person shall then be entitled to question it in any court or before any authority.

- (7) The final statement shall then be submitted by the Collector to the State Government as soon as may be and a copy thereof may on demand be given to the landowner or the tenant concerned."

(5) Under sub-section (4), the State Government has power on its own motion to call for any record relating to the draft statement at any time and pass such order as it may deem fit after affording opportunity of hearing to the person concerned. The question that arises for consideration is whether the words 'at any time' are to be understood to mean limitless in time or they be read to limit the exercise of the power of the State Government within some prescribed time. The answer to this question in my view, is available in sub-section (6) of this section. The requirement of that sub-section is that the draft statement is to be made final in terms of the order of the Collector or the State Government, as the case may be, or, in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner, (if any). It is also provided that after completing this formality the draft statement shall be published in the official gazette and thereafter no person shall be entitled to question it in any Court or before any authority. In the instant case, admittedly the draft statement was made final in terms of the order of the Collector passed on September 19, 1960, and was published in the official gazette on June 16, 1961. This having been done, sub-section (6) of section 32-D puts a complete bar to the same being questioned in any Court or before any authority. The Commissioner, as such, had no jurisdiction to reopen the matter in exercise of his revisionary powers under sub-section (4) after the publication of the final draft statement. The words 'at any time' would mean up to the time of the publication of the final draft statement and do not connote the meaning 'limitless in time.'

(6) Mr. R. C. Setia, learned counsel for the State, contended that the power under sub-section (4) could be exercised at any time and that no limit could be put on its exercise. In support of his contention, reliance was placed by the learned counsel on a decision of R. S. Narula, J., in *Kishan Singh v. The State of Punjab and others* (2). After giving my thoughtful consideration, I am of the view that

the decision in *Kishan Singh's case* is distinguishable and does not help the learned counsel for the respondents. In that case the scope of sub-section (6) was not considered nor is it clear from that decision whether any final draft statement was published or not. It was a case where no proceedings were taken under sub-section (3) of the Act and it was in those circumstances that R. S. Narula J., arrived at a conclusion that the power under sub-section (4) could be exercised by State Government. Thus the only possible conclusion that can be arrived at on the plain reading of the section is that the power under sub-section (4) cannot be exercised by the State Government after the publication of the final draft statement. The being so, the proceedings started thereafter have to be quashed.

(7) It was also contended by the learned counsel that the impugned order of the Commissioner by which he remanded the case for decision to the Collector was also liable to be quashed on the ground that the same was passed without applying mind and without hearing the petitioner. This contention of the learned counsel has great merit and is concluded by the decision of R. S. Narula, J., in *Kishan Singh's case* (2).

(8) Before parting with the judgment, a preliminary objection that was raised on behalf of the State may be noticed. It was contended by Mr. R. C. Setia, learned counsel, that the petition was belated as it had been filed after about four years of the passing of the order by the Commissioner by which he remanded the case to the Collector for deciding it afresh and that the petitioner was estopped as he had taken part in the proceedings after the remand. In the circumstances of the case, I am of the view that the preliminary objection is not tenable. The order passed by the Commissioner has been found by me to be without jurisdiction and that being so I do not feel inclined to dismiss this petition on the basis of this preliminary objection. The petitioner was succeeded in showing that the proceedings taken after the publication of the final draft statement could not legally be sustained as the same were without jurisdiction.

(9) No other point was urged on either side.

(10) For the reasons recorded above. I allow this petition with costs and quash all the proceedings started against the petitioner after the publication of the final draft statement on June 16, 1961.

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N. K. S.