CIVIL MISCELLANEOUS

Before Mehar Singh and Prem Chand Pandit, JJ.

BHAGAT SINGH,—*Petitioner*

versus

ADDITIONAL DIRECTOR CONSOLIDATION OF HOLDINGS, PUNJAB, AND OTHERS,—*Respondents*

Civil Writ No. 2579 of 1965

1965

December 16th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21 and 42—Revision under S. 42—Whether can be filed without exhausting remedies under S. 21

Held, that a bare reading of section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, will show that the State Government has been empowered to examine any order passed, scheme prepared or confirmed or repartition made by any officer under this Act and pass such order as it deems fit. The only limitation on its power is given in the proviso, which says that no order, scheme or repartition shall be varied or reversed without hearing the parties concerned. This power of the Government has not been limited in any other manner. The section nowhere says that the State Government cannot interfere in a case where the remedies provided by section 21 of the Act have not been availed of by the person, who has made an application under this section. The words "at any time" used therein indicate that he can approach the State Government at any stage of the proceedings and it is not necessary for him to file objections and appeals under section 21(2), 3 and (4) before doing so. Under these circumstances, it cannot be said that respondent No. *1*, had no jurisdiction to pass the impugned order. It would, of course, be for the State Government to see whether an interference is called for at the instance of a party, who has not made use of the remedies given to him under section 21 of the Act. That is a matter entirely within the discretion of the Stae Government. To find out whether the State Government has exercised that discretion judicially or reasonably, it is necessary that the person concerned should raise the point before it, which will then give the reasons for interference under section 42. Those grounds can be examined by the High Court and decision can then be given as to whether the discretion was exercised arbitrarily or in a judicial manner.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order, dated the 5th April, 1965, passed by respondent No. 1.

S. S. SANDHAWALIA, ADVOCATE, for the Petitioner.

S. K. JAIN AND P. S. MANN, ADVOCATES, for the Respondents.

ORDER

PANDIT, J.—On a petition filed by Walaiti Ram, respondent No. 3, under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (hereinafter referred to as the Act), the Additional Director, Consolidaion of Holdings, Punjab, respondent No. 1, passed an order on 5th April, 1965, by which he held that a *ghair jari* well fell in *khasra* No. 688, which belonged to respondent No. 3 and during the consolidation of holding operations no valuation was assessed on it and the same had been given to Bhagat Singh, who was, however, not willing to pay any price for the same. As a result, respondent No. 1, ordered that the well be restored to respondent No. 3 and in lieu of the area of this well, Bhagat Singh be compensated by giving him land of equal standard value out of respondent No. 3's holding. Consequently, the necessary changes were made by him in this very order. Against this, Bhagat Singh has filed the present writ petition under Articles 226 and 227 of the Constitution. Pandit, J.

Two contentions have been raised by the learned counsel for the Petitioner—

(1) that the petition under Section 42 of the Act had been filed after limitation by respondent No. 3 and, therefore, respondent No. 1 had erred in law in entertaining the same; and

(2) that respondent No. 3 had neither filed any objections under Section 21(2) before the Consolidation Officer nor any appeals under Section 21(3) and (4) to the authorities concerned. He could not, therefore, file an application under Section 42 before respondent No. 1 and the latter had no jurisdiction to entertain such an application.

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As regards the first contention, it is clear from the impugned order that no such point was raised before respondent No. 1. In the absence of that, the petitioner cannot be allowed to raise the same for the first time in these proceedings, especially when it involves questions of fact. Moreover, even if the petition had been filed after the period of limitation prescribed in Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter called the Rules), this period could be extended by respondent No. 1, if sufficient cause had been shown for the delay. Since this point was not raised, therefore, this aspect of the matter was not considered by him. Under these circumstances, the petitioner cannot be permitted to urge this point now in these proceedings.

So far as the second, which was the main contention, is concerned, learned counsel for the petitioner submitted that if respondent No. 3 had not availed of the remedies under Section 21(2)(3) and (4) he was estopped from preferring a revision under Section 42 of the Act and respondent No. 1 had no jurisdiction to entertain such a petition. His argument was that by his non-filing the objections and appeals under Section 21, the order of repartition made by the authorities had become final. If the rightholders were to be given the right of approaching the State Government under Section 42 directly, then the provisions of Section 21 would become redundant and no person would like to file objections and appeals under that Section when he knew that he could easily by-pass all that procedure by filing a revision directly under Section 42 before the State Government. By doing so, he could also deprive the opposite party of his remedies of two appeals provided under Section 21 of the Act. Such could not be the intention of the Legislature and the Act should be construed in such a manner that the person concerned should not be allowed to move the State Government under Section 42 without exhausting the remedies given to him under Section 21 of the Act.

Section 42 runs as under:—

"S. 42. The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared

or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

A bare reading of this Section will show that the State Government has been empowered to examine any order passed, scheme prepared or confirmed or repartition made by any officer under this Act and pass such order as it deems fit. The only limitation on its power is given in the proviso, which says that no order, scheme or repartition shall be varied or reversed without hearing the parties concerned. This power of the Government has not been limited in any other manner. The Section nowhere says that the State Government cannot interfere in a case where the remedies provided by Section 21 of the Act have not been availed of by the person, who has made an application under this Section. The words "at any time" used therein indicate that he can approach the State Government at any stage of the proceedings and it is not necessary for him to file objections and appeals under Section 21(2), (3) and (4) before doing so. Under these circumstances, it cannot be said that respondent No. 1 had no jurisdiction to pass the impugned order. It, would, of course, be for the State Government to see whether an interference is called for at the instance of a party, who has not made use of the remedies given to him under Section 21 of the Act. That is a matter entirely within the discretion of the State Government. To find out whether the State Government has exercised that discretion judicially or reasonably, it is necessary that the person concerned should raise the point before it, which will then give the reasons for interference under Section 42. Those grounds can be examined by this Court and a decision can then be given as to whether the discretion was exercised arbitrarily or in a judicial manner. In the present case, however, this point was

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not raised before respondent No. 1. Under these circumstances, it cannot be said that respondent No. 1 had exercised this discretion in a perverse or arbitrary manner.

There is no merit in the submissions made by the learned counsel for the petitioner. If respondent No. 3 had not availed of the remedies given to him under Section 21, that did not estop him from filing a revision under Section 42 before the State Government, which had ample powers to interfere in suitable cases. As I have already mentioned above, there is nothing in the language of Section 42 to suggest that the State Government could not entertain such a petition. It is true that if a certain person does not file any objection against the repartition, the same would become final, but that also can be set aside by the State Government under Section 42. The provisions of Section 21 would not become redundant for the simple reason that ordinarily all the rightholders would have to avail of the remedies provided in Section 21 and it would be only in rare cases that they would directly approach the State Government under Section 42, because, in the first place, the State Government might ask them to exhaust their remedies available to them under the Act before approaching it, secondly, there would be interference only in very exceptional cases; and, thirdly, if once the State Government declines to interfere under Section 42, the rightholder would be deprived of the rights given to him under Section 21. There is also no question of depriving the opposite party of his remedies under Section 21, because, ordinarily, as already mentioned above, the State Government would not interfere under Section 42, if the remedies available to a party under the Act have not been exhausted by him. If, however, in some exceptional and hard cases, the State Government chooses to interfere, then that order would be passed after hearing all the parties concerned, who would then have the benefit of getting their case decided by the highest officer under the Act and, as such, they should not have any grievance on that account.

I had an occasion to deal with this precise question in *Rattan and another* v. *The State of Punjab and others* (1), where I observed thus—

"That a perusal of Seciton 42 of the East Punjab Holdings (Consolidation and Prevention of

(1) 1965 P.L.R. 276.

Fragmentation) Act, shows that the State Government, in order to examine the legality or propriety of the repartition made by any officer under the Act, is authorised at any time to call for and examine the record and pass such orders as it thiks fit. The only limitation placed by the Legislature on its power is mentioned in the proviso to the Section, which says that no repartition shall be varied or reversed without giving the parties interested therein an opportunity to be heard, except, of course in those cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration. Action under the Section can be taken both *suo motu* by the Government or at the instance of some interested party. The language of the Section, however, does not show that the party concerned must, in the first place, file objections or appeals under Section 21 of the Act before moving the State Government. The Section confers a special power on the State Government in suitable cases to take action under the Section only where it finds that there was some illegality or impropriety."

Learned counsel for the petitioner has not been able to persuade me to take a different view from the one taken by me in the above-mentioned case. As a matter of fact, a similar view was taken by Shamsher Bahadur, J., in *Sulhedi* v. *Additional Director, Consolidation of Holdings, Punjab*, Civil Writ No. 7 of 1963, decided on 24th September, 1964, and by Narula; J., in *Bhagwana, etc.* v. *State of Punjab*, Civil Writ No. 1370 of 1964, decided on 21st October, 1965.

It may be mentioned that the learned counsel for the petitioner invited our attention to the provisions of Section 15 (5) of the East Punjab Rent Restriction Act, 1949, in which the language used was of a somewhat similar nature as in Section 42 of the Act and a decision of Grover, J., in *L. Mulkh Rai* v. *The Municipal Committee, Dharamsala (Kangra)*; Civil Revision No. 440 of 1957, given on 21st November, 1958.

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In this authority, a preliminary objection has been raised on behalf of the respondent-committee that the revision should be dismissed on the short ground that the petitioner had not filed any appeal to the Appellate Authority, which he was entitled to do under the provisions of the East Punjab Urban Rent Restriction Act. Counsel for the petitioner had contended that, according to the provisions of Section 15(5) of the Act, it was open to this Court to examine the legality or propriety of any order made by the Rent Controller and the fact that such an appeal was not filed would not constitute a bar to a proper relief being given by this Court in revision. While repelling the contention of the learned counsel for the respondent, the learned Judge observed thus—

> "In the first place, the statute has made a specific provision for seeking a remedy against the order of the Rent Controller and as provided in Section 15 the decision of the Appellate Authority shall be final and the order of the Controller is to be final only subject to such a decision. It is, therefore, clearly contemplated that a party should approach the Appellate Authority for inviting its final decision on the points in dispute. It may be that this Court has very wide powers of revision under Section 15, but it would be neither expedient nor proper to interfere unless a cogent reason is given for not preferring the appeal in order to have the decision of the Appellate Authority as provided by Section 15. Moreover, it is well settled that a Court of revision will not interfere if there is an alternative remedy provided by the statute. In the present case, the alternative remedy was provided and the same has not been availed of for reasons which appear to be altogether flimsy."

These observations do not support the petitioner in the present case. The learned Judge has nowhere held that this Court had no jurisdiction to entertain the revision petition under Section 15 (5), if no appeal had been filed to the Appellate Authority by the petitioner under Section 15(1) (b). As a matter of fact, it was made clear that this Court could interfere if some cogent reason was given for

not preferring the appeal, though it was stated that it would neither be expedient nor proper to interfere in other cases, when the appeal had not been filed.

In view of what I have said above, this writ petition fails and is dismissed. There will, however, be no order as to costs.

Pandit, J.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

INCOME-TAX REFERENCE

Before D. Falshaw, C. J., and D. K. Mahajan, J.

M/S BALLIMAL-NAWAL KISHORE,—*Applicant*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JUMMU & KASHMIR AND HIMACHAL PRADESH,—*Respondent*

Income-Tax Reference No. 24 of 1962

1966

January 17th.

Income-tax Act (XI of 1922)—S. 10(2)(iii)—Gift made by donor by debiting the amount to his account in the firm and crediting the same amount to the accounts of the donees without passing actual cash—Whether valid—interest paid to the donees on such amounts—Whether proper deduction.

Held, that the validity of a gift made by way of debit and credit entries in the account books of a firm of which the donor is a partner must depend entirely on whether in the circumstances this is a natural method of transfer, and it is certainly not necessary for the donor to withdraw sums in cash from the firm to be re-invested by the donee or donees in the firm. Once the *bona fides* of the gift or gifts is accepted, there remains little or no difficulty in accepting the validity in ordinary circumstances. The statement of facts in the present case shows that if the parties had wished, the cash could have been realised and given to the donees, but this was not necessary and the amounts of the gifts were credited in their already existing accounts, and sums had been withdrawn by some of the donees from the amounts standing to their credit in the year following the gifts. The interests paid to the donees on such gifted amounts is a proper deduction under section 10(2)(iii) of the Indian Income-tax Act, 1922.