

Dr. S. Dutt.
v.
 University of
 Delhi

 Sarkar. J.

that the arbitration was to three Arbitrators, one nominated by each of the parties and the third by the Chancellor of the University. This point was decided against the respondent by the High Court. As, however, the appeal must be dismissed for the reason that the award contains an error on the face of it, as we have earlier found, it becomes unnecessary to decide the point raised by the respondent. We, therefore, do not express any opinion on this question.

In the result this appeal is dismissed with costs throughout.

B. R. T.

LETTER PATENT APPEAL.

Before Bhandari, C. J. and Dulat, J.

STATE OF PUNJAB AND FINANCIAL COMMISSIONER
 (REVENUE) PUNJAB,—*Appellants.*

versus

S. GIAN SINGH EX TEHSILDAR.—*Respondent.*

Letters Patent Appeal No. 82 of 1957.

1958

 Sept., 3rd

Punjab Land Revenue Act (XVII of 1887)—Section 9—Punjab Tehsildari Rules, 1932 made under—Whether abrogated by the Government of India Act, 1935 or the Constitution of India—Financial Commissioner—Whether continues to have the power to appoint and to dismiss the Tehsildars.

Held, that the Punjab Tehsildari Rules, 1932, are not inconsistent with the provisions of the Government of India Act, 1935, or the Constitution of India. These rules must be deemed to have been made under the appropriate provisions of the Government of India Act, 1935. But these rules purport to have been framed under the provisions of section 9 of the Punjab Land Revenue Act, 1887, and although this section was amended by the Government of India (Adaptation of Indian Laws) Order, 1937, the

rules continue in force by virtue of Paragraphs 9 and 10 of the said Order in Council.

Held further, that the Financial Commissioner who had power to appoint and to dismiss the Tehsildars, continues to exercise these powers. These powers have not been abrogated or withdrawn.

Appeal under Clause 10 of the Letters Patent from the order of Hon'ble Mr. Justice Bishan Narain, dated 4th April, 1957, in Civil Writ No. 148 of 1956.

CHETAN DAS, Assistant Advocate-General, for Appellant.

M. R. MAHAJAN, for Respondent.

JUDGMENT

BHANDARI, C. J.—This appeal under clause 10 of the Letters Patent raises the question whether the Punjab Tehsildari Rules, 1932, have been abrogated by the Government of India Act, 1935 or the Constitution of India. Bhandari, C. J.

Shri Gian Singh petitioner, officiating Tehsildar, was dismissed by the Financial Commissioner on the 26th October, 1953, and the order of dismissal was confirmed by the State Government on the 6th March, 1956. The petitioner then presented a petition under Article 226 of the Constitution which came up for hearing before a learned Single Judge of this Court. The learned Single Judge came to the conclusion that although the petitioner was afforded a reasonable opportunity of being heard before the order of dismissal was passed, the order of dismissal could not be upheld as it was passed by the Financial Commissioner in exercise of powers conferred by the Punjab Tehsildari Rules which had ceased to exist. In this view of the case the learned Single Judge accepted the petition and declared that the order of dismissal

State of Punjab and Financial Commissioner (Revenue) Punjab
 v.
 S. Gian Singh
 Ex Tehsildar

passed by the Financial Commissioner was void and of no effect. The State Government has appealed and the question for this Court is whether the Court below has come to a correct determination in point of law.

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 Bhandari, C. J.

Mr. Mahajan, who appears for the petitioner in the present case, frankly admits that his client was afforded a reasonable opportunity of having his say, and the only question, which requires decision, therefore, is whether the Punjab Tehsildari Rules, 1932, are void and of no effect.

Section 9 of the Punjab Land Revenue Act, 1887, was in the following terms:—

“9. The Provincial Government shall fix the number of Tehsildars and Naib-Tehsildars to be appointed, and the Financial Commissioner may make rules for their appointment and removal.”

In exercise of the powers conferred by section 9 of the Punjab Land Revenue Act referred to above, the Financial Commissioner made certain rules, known as the Punjab Tehsildari Rules, 1932, which empowered the Financial Commissioner to appoint a Tehsildar, to hold an enquiry against him and to pass an order of dismissal.

Section 9 of the Act of 1887 was amended by the Government of India (Adaptation of Indian Laws) Order, 1937 and the words “and the Financial Commissioner may make rules for their appointment and removal” were omitted.

A question at once arises whether, in view of the modifications which were made by the Order in Council referred to above, the Punjab Tehsildari Rules have been repealed and abrogated.

These rules have either been made in exercise of the powers conferred by the Government of India Act, 1919 or in exercise of the powers conferred by the Punjab Land Revenue Act, 1887. If they have been made in exercise of the powers conferred by the Government of India Act, 1919, they continue in force under section 276 of the Government of India Act, 1935 and Article 313 of the Constitution of India. Section 276 is in the following terms:—

State of Punjab
and Financial
Commissioner
(Revenue)
Punjab
v.
Gian Singh
Ex Tehsildar
Bhandari, C. J.

“276. Until other provision is made under the appropriate provisions of this part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.”

Article 313 runs as follows:—

“313. Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.”

State of Punjab and Financial Commissioner (Revenue) Punjab
 v.
 S. Gian Singh
 Ex Tehsildar
 Bhandari, C. J.

It has not been shown that the Tehsildari Rules have been replaced by another set of rules, or that these rules are inconsistent with the provisions of the Government of India Act or the Constitution of India. It seems to us, therefore, that these rules must be deemed to have been made under the appropriate provisions of the Government of India Act, 1935.

But these rules purport to have been framed under the provisions of section 9 of the Punjab Land Revenue Act, 1887 and although this section was amended by the Government of India (Adaptation of Indian Laws) Order, 1937, the rules continue in force by virtue of Paragraphs 9 and 10 of the said Order in Council. Paragraph 9 runs as follows:—

“9. The provisions of this Order which adopt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order; and any such notification, order, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.”

Paragraph 10 is in the following terms:—

“10. Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question.”

State of Punjab
and Financial
Commissioner
(Revenue)
Punjab
v.
S. Gian Singh
Ex Tehsildar
Bhandari, C. J.

A perusal of these provisions of law makes it quite clear that the Financial Commissioner who had power to appoint and to dismiss the Tahsildars, continues to exercise these powers. These powers have not been abrogated or withdrawn.

For these reasons, I would accept the appeal, set aside the order of the learned Single Judge and dismiss the petition. Having regard to the intricacy of the point in issue, I would leave the parties to bear their own costs.

Dulat. J.—I agree.

B. R. T.

Dulat, J.

CIVIL WRIT.

Before Bishan Narain, J.

THE HYDERABAD (SIND) ELECTRIC SUPPLY

CO. Ltd.,—Petitioner.

versus

UNION OF INDIA, ETC.,—Respondents.

Civil Writ Case No. 199-D of 1955.

Displaced Persons (Claims) Supplementary Act (XII of 1954)—Section 5(b)—Settlement Commissioner—Whether can reopen and redecide any claim which had already

1958
Sept. 5th