



## IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 5554 of 2020

Decided on 19<sup>th</sup> December 2023

State of H.P.

...Petitioner

Versus

Vinod Gupta &amp; Ors.

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

<sup>1</sup>Whether approved for reporting? Yes

For the petitioner: Mr. Rohit Sharma, Deputy Advocate General.

For the respondents: Mr. Shrawan Dogra, Senior Advocate, with Mr. V.B. Verma, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this writ petition, the petitioner-State has prayed for the following reliefs:-

- i) *For issuance of writ of certiorari or the nature thereof by quashing and setting aside the impugned order dated 16.12.2019, in Revision Petition No.117 of 2019, passed by Financial commissioner(Appeals) H.P., and upholding the order dated 20.01.2017, passed by District Collector, Solan, H.P.*
- ii) *That record the case from the learned Financial Commissioner (Appeals), H.P., may kindly be called for the purpose of satisfying the legality or propriety of orders made therein."*

2. Brief facts necessary for the adjudication of the present petition are that proceedings were initiated against the respondents under Section 118 of the H.P. Tenancy and Land Reforms Act on the basis of a complaint. Same was decided against the respondents by District Collector/Deputy Commissioner, Solan, H.P., in terms of order dt.20.01.2017.

3. Feeling aggrieved by the order, an Appeal was filed by the respondents before the Appellate Authority i.e. Divisional Commissioner, Shimla Division. This Appeal was allowed in favour of the respondents by the learned Divisional Commissioner, who set aside the order passed by the District Collector/Deputy Commissioner, Solan, H.P., vide order dated 17.01.2019. This appellate order was further assailed by way a Revision by the State before the learned Financial Commissioner. Vide order dated 16.12.2019, learned Financial Commissioner upheld the order passed by the learned Divisional Commissioner and dismissed the Revision petition.

4. Feeling aggrieved, State of Himachal Pradesh has filed this writ petition through District Collecgtor, Solan.

5. Learned Deputy Advocate General has argued that the orders passed by both the learned Divisional Commissioner as well as the learned Financial Commissioner are not sustainable in the eyes of law as both erred in not appreciating that as the respondents were not agriculturist, they could not have purchased agricultural land in Himachal. He argued that there was no infirmity in the order passed by the learned Collector, which stood set aside. Accordingly, he prayed that the present Revision petition be allowed and the order passed by the learned Divisional Commissioner as well as learned Financial Commissioner be set aside.

6. Learned Senior Counsel for the respondents has argued that writ petition is not maintainable. He submitted that under the provisions of Section 118 of the H.P Tenancy and Land Reforms Act, Deputy Commissioner is Quasi-Judicial Authority as he exercises the powers of Collector in terms of the Act. Learned Senior Counsel referred to the order passed by the District Collector Solan/Deputy Commissioner, Solan, H.P., dated 20.01.2017, in terms whereof, proceedings which were initiated against the respondents by the State of Himachal

Pradesh were decided by the District Collector/Deputy Commissioner in a Quasi-Judicial capacity against the present respondents. Learned Senior Counsel further draw the attention of the Court to the subsequent orders passed i.e. the order passed by Divisional Commissioner, Shimla in Appeal No. 145 of 2017, titled *Vinod Gupta and Others vs. State of H.P.*, which was decided by the Appellate Authority in favour of the respondent dated 17.01.2019, as also the subsequent Revisional Order passed by Financial Commissioner (Appeals) in Revision Petition No.117 of 2019, decided on 16.12.2019, in terms whereof, the Revision Petition preferred by the State of Himachal Pradesh against the order passed in Appeal by the Divisional Commissioner was dismissed and the order passed by the Divisional Commissioner was affirmed. As per him, Deputy Commissioner was not the complainant, but was the authority, who exercised the jurisdiction conferred upon him under the provisions of Section 118 of H.P Tenancy and Land Reforms Act in deciding a *lis*. Therefore, the writ petition through District Collector by the State of Himachal Pradesh is not maintainable. Learned Senior Counsel further submitted

that otherwise also as the orders passed by Divisional Commissioner as well as Financial Commissioner were passed after having afforded opportunity of being heard etc., to the parties, therefore, also in exercise of its power of judicial review, this Court may not now re-appreciate the material on record and act as an Appellate Authority. Accordingly, he has prayed that the petition is liable to be dismissed on these counts.

7. I have heard learned Deputy Advocate General as also learned Senior Counsel appearing for the respondents.

8. It is matter of record that the first order passed against the respondents herein in case No.3/130/2014, copy whereof is on record, was passed by District Collector-cum-Deputy Commissioner, Solan, H.P., on 20.01.2017, while exercising power conferred upon him under Section 118 of the H.P. Tenancy and Land Reforms Act. It is also a matter of record that order passed by the Collector-cum-Deputy Commissioner, Solan, H.P., was set aside in appeal, i.e., Appeal No.145 of 2017, by the Divisional Commissioner, Shimla Division, Shimla, vide order dated 17.01.2019, and

order passed in appeal was affirmed in Revision by the Divisional Authority, i.e., the Financial Commissioner (Appeals) Himachal Pradesh, Shimla, in Revision Petition No.117 of 2019, filed by the State against the respondents.

9. Vide this writ petition, petitioner-State is assailing the order passed by the learned Financial Commissioner as also the learned Divisional Commissioner. The order assailed by way of appeal was the one, passed by the District Collector Solan. Present writ petition has been filed by the State of Himachal Pradesh through District Collector, Solan, H.P. This Court fails to understand as to how the petition could have been filed by the State of Himachal Pradesh through District Collector Solan, H.P., who happened to be the statutory quasi-judicial authority, who had adjudicated in the matter at the first instance as a judge. On this count, there is merit in the contention of the learned Senior Counsel for the respondents that the present writ petition is not maintainable through District Collector, Solan, H.P., because a quasi-judicial authority cannot assail the subsequent adjudication in terms whereof, its order has been interfered with by the superior authority.

**10.** This is for the reason that unlike a complainant, a quasi-judicial authority has to act impartially and take a call on the *lis* which is before it and after the case stands decided by, it become *functus officio*. It neither has the power to file an appeal nor review or revision etc., against its order. It is for the aggrieved party to assail the order and the authority which passes the order cannot be said to be an aggrieved party.

**11.** In fact, in the scheme of judicial discipline, once the order passed by the District Collector was assailed by way of an appeal and the Appellate Authority passed an order, the order passed by the District Collector merged in the order passed by the Appellate Authority and it became binding upon the District Collector. Similarly, when in Revision petition, learned Financial Commissioner finally decided the Revision petition, the order passed by the District Collector, as it stood merged in the order passed by the Divisional Commissioner and the subsequent order passed by the Divisional Commissioner now stood merged in the order that was passed by the Financial Commissioner. These extremely important aspects of the matter have not been appreciated by the District

Collector while filing this writ petition before this Court on behalf of the State.

12. Otherwise also, during the course of hearing, learned Deputy Advocate General was called upon to point out as to what procedural infirmities were committed either by the Divisional Commissioner or by the Financial Commissioner in the course of the adjudication of the appeal and revision. The same could not be pointed out. Therefore, also this Court is of the considered view that the orders impugned do not call for any interference in exercise of the power of judicial review.

12. Accordingly, in view of the above observations, this petition is dismissed. Pending miscellaneous applications, if any, also stand disposed of.

**(Ajay Mohan Goel)**  
Judge

December 19, 2023  
(Vinod)