

(2013) 07 P&H CK 0721
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8235 of 2013

Charan Singh and Another	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0721

Hon'ble Judges : Jasbir Singh, J;G.S. Sandhawalia, J

Bench : Division Bench

Advocate : M.L. Saggar, with Mr. Sunny Saggar, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed against the order dated 21.8.2009 (Annexure P-8) whereby the Collector, Roop Nagar had found the petitioners in illegal possession of the land measuring 16 Kanals 18 Marlas and passed an order of delivering of possession of the said land to the Gram Panchayat, Abiana Khurd. The appeal against the said order was dismissed vide order 7.4.2010 (Annexure P-10) by the Commissioner, which is subject matter of challenge along with demarcation report conducted on 26/27.10.2010. That it is a matter of record that against the orders dated 21.8.2009 and 7.4.2010, the petitioners had approached this Court by filing Civil Writ Petition No. 13560 of 2010. This Court vide order dated 6.8.2010 disposed of the said writ petition in view of the consensus arrived at between the parties that the land in dispute would be demarcated by the Tehsildar, Anandpur Sahib. It was further directed that the parties shall maintain status-quo with respect to possession during the pendency of the demarcation proceedings. The parties were directed to appear before the Tehsildar, Anandpur Sahib on 6.9.2010. The order dated 6.8.2010 reads as under:-

During the pendency of the writ petition, the petitioners and the Gram Panchayat arrived at a consensus that in order to finally resolve this dispute, it would be

appropriate if the land is demarcated by the Tehsildar, Anandpur Sahib.

In further to this agreement, Mr. C.L. Premy, counsel for the Gram Panchayat has filed an affidavit of Sh. Kamal Singh, Sarpanch of Gram Panchayat, Village Abiana Khurd, Tehsil Anandpur Sahib, Distt. Ropar, deposing that the Gram Panchayat is ready for a fresh demarcation.

In view of the agreement between the petitioners and the Gram Panchayat, the writ petition is disposed of with the following directions:-

1. The Tehsildar, Anandpur Sahib is directed to personally demarcate land measuring 70 Kanals 3 Marlas bearing Khewat No. 47, Khatoni No. 29, Khasra No. 44R/24/2, (7-12), 25(7-19), 45R/21, (7-11), 49R/2 (2-15), 3(8-0), 4(8-0), 5(8-0), 6(8-0), 7(8-0), 7(4-6) allegedly located within the revenue limits of village Nangal, HB No. 431, Tehsil Anandpur Sahib, Distt. Ropar.
2. The Tehsildar, Anandpur Sahib shall, while demarcating the above land, demarcate the common boundaries of villages Nangal and Abiana Khurd, situated in village Anandpur Sahib so as to determine, whether this land falls within village Nangal or village Abiana Khurd.
3. While demarcating the boundaries of the villages and the land, the Tehsildar, Anandpur Sahib shall comply with the Financial Commissioner's instructions issued for demarcation of agricultural land.
4. The Tehsildar, Anandpur Sahib shall conclude demarcation proceedings within three months from the date of receipt of a certified copy of this order.

During the pendency of demarcation proceedings, parties shall maintain status-quo with respect to possession.

Parties are directed to appear before the Tehsildar, Anandpur Sahib on 6.9.2010.

2. The petitioners filed representation before the Deputy Commissioner on 10.11.2010 (Annexure P-12) bringing the order to his notice and the fact that Jasbir Singh, Kanungo be not associated with the said demarcation. Thereafter, in compliance with the direction of this Court, demarcation was carried out by the Tehsildar, Anandpur Sahib on 26/27.10.2010. It was further recorded that both the parties were satisfied from all aspects and had put their signatures and thumb marks upon the said report. Thereafter, the petitioners filed Civil Misc. Application No. 14089 of 2012 in the decided Civil Writ Petition No. 13560 of 2010 for ignoring the said demarcation report on the ground that it was conducted in the presence of Jasbir Singh, Kanungo. The said application was listed before the learned Single Judge, who dismissed the same by holding that in case the petitioners were aggrieved by the demarcation conducted as per order dated 6.8.2009, they could challenge the said report in accordance with law. The said order dated 15.2.2013 reads as under:-

CM No. 14089 OF 2012

Prayer in this application is to order a fresh demarcation as the demarcation, allegedly, conducted in compliance with order dated 06.08.2009 passed in CWP No. 13560 of 2010 is not in accordance with law as it was carried out in the presence of Jasbir Singh, Kanungo, who is not posted in the area and is personally interested in the land, in dispute.

The writ petition was decided as parties agreed to a demarcation. The applicant/petitioners are aggrieved by the demarcation conducted as per order dated 06.08.2009. The remedy, if any, of the petitioners is to challenge the demarcation report.

The application is accordingly dismissed with liberty to the applicant/petitioners to challenge demarcation report, in accordance with law.

3. Thus, from the reading of the aforesaid order, it would be clear that the matter was disposed of on 15.2.2013 and the learned Single Judge did not feel the occasion to allow the application of the petitioners. Subsequently, the writ present petition has been filed challenging the same two impugned orders dated 21.8.2009 and 7.4.2010 along with demarcation report which was carried out in pursuance of the order of this Court.

4. It was put to learned senior counsel as to how the second writ petition was maintainable and the following order was passed on 11.7.2013:-

When confronted with a fact that as to how the writ petition is competent, Learned Senior Counsel for the petitioners places reliance upon an order passed by Learned Single Judge on 15.02.2013, giving liberty to the petitioners to lay challenge to the demarcation report as per law. He states that this order would mean that the petitioners would have liberty to file a fresh writ petition. We have read the order dated 15.02.2013. We are not agreeable to the explanation given. To get clarification of the order passed on 15.02.2013, let this matter be put up in a Division Bench headed by Hon"ble Mr. Justice Rajive Bhalla on 22.07.2013.

5. Thereafter, the matter was being placed before the said Court and after due consideration, following order was passed on 23.7.2013:-

The writ petition has been placed before this Bench after a Coordinate Bench passed the following order:-

When confronted with a fact that as to how the writ petition is competent, Learned Senior Counsel for the petitioners places reliance upon an order passed by Learned Single Judge on 15.02.2013, giving liberty to the petitioners to lay challenge to the demarcation report as per law. He states that this order would mean that the petitioners would have liberty to file a fresh writ petition. We have read the order dated 15.02.2013. We are not agreeable to the explanation given. To get clarification of the order passed on 15.02.2013, let this matter be put up in a Division Bench headed by Hon"ble Mr. Justice Rajive Bhalla on 22.07.2013.

We have perused the order dated 15.02.2013 passed by one of us (Rajive Bhalla,

J.) and find that there is nothing to clarify as the order is self speaking, unambiguous and clear. The writ petition be placed before the Bench as per subject roster.

6. Thus, from the above sequence of events, it would be clear that the matter was disposed of on consensus inter-se the parties wherein they had agreed to certain conditions. Thereafter, on the demarcation being carried out also, as per demarcation report the parties were satisfied but the petitioners then chose to file Civil Misc. Application No. 14089 of 2012 in Civil Writ Petition No. 13560 of 2010 which was dismissed by the learned Single Judge with liberty to the petitioners to challenge the demarcation report in accordance with law and their prayer to ignore the same was rejected. The present petition thereafter filed now on the same cause of action is clearly not maintainable. The petitioners have been given liberty to challenge the demarcation report in accordance with law and no such liberty was granted to file a fresh petition. Accordingly, the writ petition being misconceived and not maintainable is dismissed.