

(2017) 01 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : CWP No.23108 of 2014

Harinder Singh

APPELLANT

Vs

Financial Commissioner (Appeals) Punjab

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 23-A

Citation : (2017) 1 LawHerald 307

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Sherry K. Singla, Advocate, for the Respondent No. 4; Mr. Yatinder Sharma, Addl. A.G. Punjab, for the Respondent; Mr. Vikas Mehsempuri, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Amit Rawal, J. (Oral) - The petitioner is aggrieved of the impugned order dated 29.05.2014 (Annexure P-5), whereby Financial Commissioner (Appeals) Punjab after accepting the revision petition of respondent No.4 has remanded back the matter to the Collector to decide the case afresh.

2. Mr. Vikas Mehsempuri, learned counsel appearing on behalf of petitioner submits that vide order dated 19.08.2009 (Annexure P-2), Collector had appointed the petitioner as Lambardar though he was working as Sarbrah Lambardar since 2000 and there is no complaint against the petitioner. The aforementioned order was assailed by respondent No.4 by filing appeal before Commissioner (Appeals), Patiala Division, Patiala and same was dismissed vide order dated 17.08.2010 (Annexure P-3). Respondent No.4 had filed revision petition against the order dated 17.08.2010 before Financial Commissioner (Appeals) Punjab-respondent No.1. However, the Financial Commissioner (Appeals) Punjab-respondent No.1 in revision petition has erroneously relied upon report of DDPO, Rupnagar dated 30.10.2013 (Annexure P-4) by forming

the opinion that the petitioner is in illegal possession of the land belonging to the Gram Panchayat. He submits that report was not based upon the appreciation of the provision of Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 as the proviso postulates that the area shown as manure pits or abadi can vests in the proprietor and nonproprietor. Nature of the property is reflected in the column Nos.6 and 7, as Gohar and Dher of the Jamabandi and petitioner being proprietor has been reflected as Cultivator, therefore, the alleged possession cannot be said to be illegal. All these aspects have not been examined. It was incumbent upon the FCR to examine the aforementioned matter, therefore, order under challenge is not sustainable and is liable to be set aside.

3. Mr. Sherry K. Singla, learned counsel appearing on behalf of respondent No.4 submits that as per the certificate obtained under the Right to Information Act, 2005 (Annexure R-5) dated 26.11.2014, the Gram Panchayat has also certified that the petitioner is in illegal possession. No harm and prejudice would be caused to the petitioner in case the matter is examined afresh by the Collector. The petitioner would have all remedy to refer the aforementioned provisions of law, in essence, writ petition is of the year 2014. Owing to the interim order, no further action has been taken thereon and thus urges this Court for dismissal of the writ petition.

4. I have heard learned counsel for the parties and appraised the paper book.

5. No doubt that the Petitioner has relied upon provision of section 32-A of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948, much less, provision, which thus:-

"23-A. As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under section 18, -

a) in the case of common purposes specified in sub clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercise by the State Government , shall vest in the State Government and

(b) in the case of any other common purpose, shall vest in the panchayat of that village; and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly:

Provided that in case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and nonproprietors of the village, such land shall vest in the proprietors and nonproprietors to whom it is given under the scheme of consolidation."

and the report of the DDPO prima facie does not reveal the examination of the aforementioned provisions of law but I cannot remain oblivious to the certificate

(Annexure R-5) given by the Gram Panchayat regarding illegal possession. Since disputed questions of fact have been raised, I am of the view that Collector would be most appropriate authority to examine all the aspects including the arguments of Mr. Mehsempuri, Advocate, raised in this petition i.e. provisions of law noticed above.

6. Both the parties shall be at liberty to raise all the pleas available to them.

7. Resultantly, order under challenge (Annexure P-5) is upheld.

8. Writ petition stands disposed of.

9. Collector is directed to decide the matter as expeditiously as possible preferably within a period of three months from the date of receipt of certified copy of the order.