
(2013) 12 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12007 of 2011

Parminder Singh	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0169

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—In this petition, the petitioner has challenged order/ Sanad Taqsim dated 22.12.2009 passed by respondent No. 2 and order dated 05.07.2011 passed by respondent No. 3 and has prayed that respondent No. 3 be directed to decide the partition application afresh in accordance with law. As per the pleaded facts, respondent Nos. 4 to 9 filed application for partition on 13.06.2006 against respondent No. 10, real brother of respondent No. 5, who filed his reply on 04.10.2006. The petitioner purchased land measuring 12 Kanals 01 Maria from respondent No. 10 on 08.06.2007 and 12 Kanals 01 Maria on 22.06.2007. After the purchase, the petitioner filed application dated 27.07.2007 for impleading himself as a co-respondent. On 27.07.2007, respondent No. 3 passed the following order:--

File presented. Counsel for both the parties came present in the Court. Sh. Baldev Singh filed reply to the objections of Naksha "Ara". Copy of the same was given to the applicant. Sh. Parminder Singh has presented an application for impleading him party. Copy of the same has been given to the counsel for the applicant. File be put up on 03.08.2007 for reply to the application for impleading party and for arguments on Naksha "Ara". Baldev Singh respondent got his statement recorded regarding application submitted by Sh. Parminder Singh that he has no objection, in impleading Sh. Parminder Singh as party. File be put up on 03.08.2007.

2. On 25.10.2007, respondent No. 5 filed an application for proceeding with the

partition application. Respondent No. 10 filed objections dated 18.01.2008 to Naksha Ara to which reply was filed by the applicants in the partition application on 28.01.2008. Ultimately, Naksha Ara was passed vide order dated 28.02.2008 and Naksha Irri on 28.03.2008 behind the back of the petitioner without deciding his application for impleading him as a party. Respondent No. 10 challenged the order dated 28.02.2008 by which Naksha Ara was passed in appeal and the said order was set aside by respondent No. 2 on 02.07.2008 and the case was remanded back to respondent No. 3 to decide the case on merits after visiting the spot. When the file was taken up on 21.07.2008, both the original parties to the partition colluded and the matter was compromised in order to defeat the right of the petitioner/purchaser from respondent No. 10 because they both suffered a statement on 21.07.2008 that they have compromised the matter and have no objection qua Naksha Ara and Naksha Irri and as such, the earlier Nakshas be kept as it is and Sanad Taqsim be issued in accordance with the same. Respondent No. 3, vide his order dated 21.07.2008, passed Naksha Ara and Naksha Irri, ordered for issuance of Sanad Taqsim and dismissed the application of the petitioner by the same order for becoming the party. The petitioner etc. filed appeal against the order dated 21.07.2008 which was accepted by respondent No. 2 vide his order dated 30.01.2009 and the case was remanded back to respondent No. 3 to consider the application of the petitioner. The parties were directed to appear before respondent No. 3 on 17.02.2009. Respondent Nos. 5 to 9 filed appeal against the order dated 30.01.2009 but it was dismissed as withdrawn on 26.04.2011 because the respondents got issued Sanad Taqsim on 22.12.2009 by submitting an application dated 21.10.2009 and affidavit of the same date. When the petitioner etc. came to know about it, they immediately moved an application dated 02.07.2010 before respondent No. 3 but since no action was taken by him, the petitioner moved respondent No. 2 because, in the meantime, respondent No. 5 also moved an application dated 21.10.2010 for issuance of warrants of possession on the basis of the Sanad Taqsim. Respondent No. 2 directed respondent No. 3 to hold an inquiry into the matter and submit his report vide his letter dated 03.09.2010. Respondent No. 3, vide his letter No. 1697/Reader-I dated 27.09.2010, submitted the report mentioning specifically that Ujjagar Singh (respondent No. 5) made a wrong statement and sworn a false affidavit but despite that no action was taken and respondent No. 3 issued warrants of possession on 05.07.2011 which has compelled the petitioner to approach this Court by way of the present writ petition.

3. In this case, at the time of notice of motion, following order was passed by this Court:--

Learned counsel for the petitioner has argued that in a partition proceeding, petitioner had moved an application seeking impleadment on 27.07.2007, asserting that he has purchased part of the disputed property from one of the co-sharers Baldev Singh; without deciding the impleadment application, partition was finalised vide order dated 21.07.2008 and by the same order, impleadment

application was rejected; as per learned counsel for the petitioner, impleadment application ought to have been decided prior to the final order in the partition proceedings; order dated 21.7.2008 was challenged by the petitioner before the Collector in an appeal; the Collector vide order dated 30.1.2009 allowed the appeal and has remanded the matter to the Assistant Collector, 1st Grade, Fatehgarh Sahib to decide partition case afresh after hearing the petitioner; order dated 30.01.2009 setting aside the order dated 21.07.2008 and remanding the matter to the Assistant Collector, 1st Grade, was challenged before the Commissioner by respondents No. 5 to 9 in an appeal; during the pendency of the appeal before the Commissioner against the order dated 30.01.2009, an application was moved before the Assistant Collector on 21.10.2009 along with an affidavit asserting that order dated 21.07.2008 passed by the Assistant Collector, 1st Grade is still intact, therefore, partition Sanad be issued; as per learned counsel for the petitioner, since order dated 21.7.2008 was set aside by the Collector vide order dated 30.1.2009, therefore, contents of the application dated 21.10.2009 were wrong, false and incorrect on the face of the record; during the pendency of the appeal before the Commissioner, the Assistant Collector, 1st Grade was absolutely not authorized to issue partition Sanad pursuant to the application dated 21.10.2009; the Collector vide Annexure P-17 has called report from the Assistant Collector, 1st Grade to show cause under what circumstance partition Sanad was issued vide order dated 21.7.2008, which was subsequently set aside by the Collector vide order dated 30.1.2009; the Assistant Collector, 1st Grade, Fatehgarh Sahib has submitted his report that contents of the application dated 21.10.2009 were incorrect and partition Sanad ought not to have been issued; learned counsel for the petitioner has vehemently argued that thereafter, appeal pending before the Commissioner was got dismissed on 26.04.2011 saying partition Sanad had already been issued; he has further asserted that during the pendency of the appeal before the Commissioner and in view of the setting aside of the order dated 21.07.2008 by the Collector vide order dated 30.01.2009, there was no question of issuing partition Sanad in compliance of the order dated 21.07.2008.

Notice of motion for 11.8.2011.

Meanwhile, parties shall maintain status quo on the spot.

The Collector shall file his personal affidavit before the next date of hearing, meeting out every paragraph of the petition. He shall also initiate action against the guilty officials who issued partition Sanad despite the setting aside of the order dated 21.07.2008. The Collector shall clearly mention the names of all the officials who have issued partition Sanad.

Learned Deputy Advocate General, Punjab has accepted notice on behalf of respondents No. 1 to 4.

A copy of this order be furnished to the learned State counsel under the signatures of the Bench Secretary.

4. During the course of hearing, Shri Harphool Singh, Tehsildar, was also impleaded as respondent No. 14 and was served with a notice. The Deputy Commissioner, Fatehgarh Sahib, filed his affidavit dated 21.10.2013 according to which, departmental action has been taken against Harphool Singh by issuing him warning to be careful in future. It is also submitted that appropriate action would also be taken against the other guilty officials who had issued Sanad Taqsim despite the fact that the order dated 21.07.2008 was set aside.

5. In view of the peculiar facts and circumstances, the private respondents have not defended the impugned orders apparently because the impugned orders were passed on the basis of the order dated 21.07.2008 which was set aside in appeal on 30.01.2009. In view of the aforesaid discussion, the present writ petition is hereby allowed, impugned orders dated 22.12.2009 (Annexure P-12) passed by respondent No. 2 and dated 05.07.2011 (Annexure P-19) passed by respondent No. 3 are hereby quashed and the case is remanded back to respondent No. 3 to decide the application for partition afresh, in accordance with law. He is directed to issue notice to the concerned parties within one month from the date of receipt of certified copy of this order. Registry is directed to send a certified copy of this order to respondent No. 3 for compliance.