(2018) 04 P&H CK 0487

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9446 Of 2018

Sadhu Singh And Others APPELLANT

Vs

Financial Commissioner, Punjab And Others RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Citation : (2018) 3 RCR(Civ) 23

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Abhishek Singla, Suresh Singla

Final Decision : Disposed Off

Judgement

Daya Chaudhary, J

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing impugned order dated 12.03.2018 (Annexure P-12),

passed by the Financial Commissioner, Punjab, whereby order dated 14.01.2015 (Annexure P-10), passed by the Commissioner, Faridkot Division,

Faridkot has been affirmed and orders dated 08.08.2013 and 30.09.2014 (Annexures P-8 and P-9, respectively), passed by the Assistant Collector 1st

Grade, Bathinda and the Collector Bathinda, respectively, have been set aside.

Briefly, the facts of the case as made out in the present petition, are that the land in dispute measuring 488 Kanals was the joint ownership of co-

sharers namely Raj Kaur widow of Hira Singh and Narain Singh in 1/2 equal shares. Raj Kaur and Narain Singh were not related to each other.

Petitioners are stated to be natural/legal heirs of deceased Narain Singh, whereas private respondents claimed themselves to have inherited the

property in dispute from deceased Raj Kaur by way of oral sale deed. On the basis of affidavit dated 11.11.2011/12.11.2011 filed by Sadhu Singh

(petitioner No.1), mutation of inheritance of deceased Narain Singh was entered in favour of the petitioners, who are the natural heirs. On the basis of

natural succession, the mutation was sanctioned and verified after verification by Naib Tehsildar, Bhucho Kalan vide order dated 16.11.2011.

Objections were raised by the private respondents against the sanction of the mutation. The District Collector, Bathinda vide order dated 12.09.2012

ordered for revision of mutation and for that, file was sent to the Tehsildar, Bathinda. In pursuance of said order, Tehsildar Bathinda forwarded the

mutation file to the Naib Tehsildar for necessary compliance. Thereafter, mutation was revised/reviewed. Petitioner No.1 Sadhu Singh filed one

application before the Assistant Collector IInd Grade for declaring the mutation to be contested and file was sent to the Assistant Collector 1st Grade,

before whom the objections raised by the private respondents were contested. The Collector, Bathinda vide order dated 30.04.2013 transferred the

mutation file to the Assistant Collector 1st Grade. During pendency of that proceedings, petitioners filed one application dated 10.06.2013 claiming that

private respondents have no locus standi to contest the mutation as they do not claim inheritance of deceased Narain Singh. The Assistant Collector

1st Grade passed order dated 08.08.2013 after hearing the parties and by considering the evidence specially the judgment of Civil Court. Thereafter,

mutation was sanctioned in favour of the petitioners.

Being aggrieved by the order of entering mutation, the private respondents filed appeal before the Collector but he affirmed order dated 08.08.2013

passed by the Assistant Collector 1st Grade. The appeal filed by the respondents was dismissed. Thereafter, revision was filed before the

Commissioner, which was allowed on 14.01.2015. Said order dated 14.01.2015 was challenged in appeal filed before the Financial Commissioner but it

was dismissed vide order dated 12.03.2018.

Order dated 12.03.2018 passed by the Financial Commissioner, Punjab is the subject mater of challenge in the present petition.

Learned counsel for the petitioners submits that the impugned order is totally non-speaking and same has been passed without taking into consideration

the grounds of appeal and same is without any application of mind. Learned counsel also submits that the private respondents are neither the legal heirs of deceased Narain Singh nor they purchased the land from him. They did not inherit any right from deceased Narain Singh and as such they

have no locus standi to contest the mutation. Learned counsel also submits that none of the contentions raised by the petitioners were taken into

consideration while passing the impugned order. Learned counsel also submits that learned Financial Commissioner has failed to consider that the

respondents filed counter claim in the suit for permanent injunction qua the property in dispute filed by petitioners before learned Civil Judge (Senior

Division), Bathinda, wherein they sought declaration to the effect that the order passed by the Assistant Collector 1st Grade be set aside and mutation

be rejected. Learned counsel also submits that respondents cannot claim the same relief before two different courts. Once they have challenged

setting aside of orders whereby mutation was sanctioned in favour of the petitioners by the Civil Court, they cannot claim the same relief before the

revenue authorities.

Learned counsel also submits that the judgment of Civil Court is binding upon the revenue Court. At the end, learned counsel for the petitioners

submits that learned Financial Commissioner has not given any specific finding by considering the grounds of appeal raised by learned counsel for the

petitioners.

Heard arguments of learned counsel for the petitioners and have also perused impugned order dated 12.03.2018 (Annexure P-12) passed by learned

Financial Commissioner, whereby order dated 14.01.2015 (Annexure P-10) passed by the Commissioner has been affirmed and orders dated

08.08.2013 and 30.09.2014 (Annexures P-8 and P-9, respectively), passed by the Assistant Collector 1st Grade, Bathinda and the Collector Bathinda,

respectively have been set aside.

On perusal of the impugned order passed by learned Financial Commissioner, it is apparent that the same is reproduction of the order passed by the

Commissioner and in the end of the order, it has been mentioned that the order passed by the Commissioner, Faridkot is detailed one and the

Commissioner after considering the facts, rejected the mutation in question and that there was no reason/ground to interfere with the order of the

Commissioner. It is apparent that no specific findings have been recorded by learned Financial Commissioner and the grounds of appeal have not been taken into consideration. Only the order passed by the Commissioner has been reproduced. Accordingly, the order passed by learned Financial

Commissioner is totally non-speaking and is without any application of mind. The principles of natural justice are required to be followed as it is

necessary to give reasons while reaching to a conclusion.

Moreover, the Financial Commissioner is the final and last authority in the hierarchy of revenue officers and he is supposed to pass an order accepting

or rejecting the contentions. Financial Commissioner is not only the highest revenue court but a quasi judicial authority under law, but non-considering

the legal contentions of the petitioners and non-recording of reasons for disagreement, has resulted into passing of an illegal and prejudicial order. It

appears that the order has been passed with predetermined mind and without any application of mind. Moreover, the mutation of inheritance has to be

sanctioned in favour of either of the party and the same cannot be kept in abeyance as inheritance never remains in abeyance. Name of a dead

person cannot be kept pending while reflecting in the revenue record. The same issue was there before Division Bench of this Court in case titled as

Jagjit Singh Vs. Divisional Commissioner, Patiala and others 2012 (13) RCR (Civil) 96 as to whether the mutation of inheritance can be kept in

abeyance specially when the mutation does not confer any title and is entered with a view to update the revenue record. It is also settled principle of

law that mutation proceedings cannot be kept in abeyance even during the pendency of the dispute before the Civil Court and as such, the revenue

officers are duty bound in terms of statute to enter mutations in exercise of their administrative functions. In a latest judgment, in case Rajinder Singh

Vs. State of Haryana and others 2017 (4) RCR (Civil) 153, this Court has held that the natural succession cannot be kept in abeyance.

In the present case, the respondents neither claim to be legal heirs of deceased Narain Singh nor they are claiming to be vendees of deceased Narain

Singh, rather they were not having any relation and even are not remotely inheritance of deceased Narain Singh.

Accordingly, it can safely be said that the learned Financial Commissioner while passing impugned order has failed to appreciate that he was deciding

the first appeal of the petitioners and for that, the entire evidence was to be appreciated in proper prospective and passing a copy-paste order of learned Commissioner, has defeated the very purpose of filing the appeal. The impugned order passed by learned Financial Commissioner is totally

non-speaking and without any application of mind and same is liable to be set aside.

For the foregoing reasons, impugned order dated 12.03.2018 (Annexure P-12) is hereby set aside with the direction to respondent No.1 to reconsider

the appeal afresh and pass a fresh well reasoned and detailed order after considering the contentions/grounds raised by the petitioners as well as facts

of the case in accordance with law.

It is also directed that respondent No.1 while reconsidering the appeal is not to be influenced by the earlier order.

The writ petition is disposed of with said directions.

