(2012) 07 SHI CK 0131

In the High Court Of Himachal Pradesh

Case No : CWP No. 2410 of 2008

Sh.Ramesh Chand and Sh.Sher Singh APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0131

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : R.K. Gautam, with Ms. Archana Dutt, for the Appellant; P.K. Sharma, Additional Advocate General with Mr. R.P. Singh, Assistant Advocate General and Mr. Bhuvnesh Sharma, Advocate, For Respondents No. 2 to 7, 11, 15 and 16, for the Respondent

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—The petitioner has approached this Court challenging the order passed by the Financial Commissioner (Appeals) in Revision Petition No. 67/2007 (34/2003), decided on 19.8.2008 (Annexure P-7) by which, order passed by Assistant Collector Ist Grade, Nadaun, was set aside and a direction issued for decision of the matter afresh within six months. Prior to the present petition, CWP No. 1184 of 2006 was instituted by the petitioners in this Court challenging the orders passed by the Financial Commissioner (Appeals) on 30.5.2006 and 5.9.2006.

2. This Court in its judgment records that:-

Revision Petition No. 34 of 2003 filed by respondents 2 to 4 herein was pending before the Financial Commissioner (Appeals). The petitioners herein were arrayed as respondents 4 & 5 in the said Revision Petition. It appears that a compromise was entered into between the respondents 2, 3, 4 (petitioners before the Financial Commissioner) and some of the private respondents other than the petitioners and such compromise deed was presented in the Court of

Financial Commissioner (Appeals) on 16.5.2006. The case was then adjourned to 30.5.2006. On that date one Sh.Aman Deep Prasher, Advocate appeared vice counsel for respondents, 1, 2, 3, 4, 5, 8 to 10 before the Financial Commissioner. In fact the petitioners herein were represented by Sh.B.C. Verma before the Financial Commissioner. The Financial Commissioner on the basis of the compromise entered into between the other parties disposed of the matter, allowed the Revision Petition and directed that the parties could seek re-partition on the basis of Jamabandi for the year 1991-1992.

Thereafter, the petitioners herein moved a Review Petition No. 8 of 2006 before the Financial Commissioner and stated that neither they had instructed their counsel to enter into any compromise nor any statement was made by them or their counsel that they had entered into a compromise. The Financial Commissioner (Appeals) rejected this Review Petition vide the impugned order dated 5th September, 2006 and the reasoning given by her is as follows:

I have perused the case file No. 34/2003 and have duly considered the arguments advanced by the ld.counsel for the petitioners. A perusal of the case file reveals that Shri B.S. Verma, Advocate who had duly filed his Power of Attorney on behalf of both the present petitioners was present before this court on 16.5.2006 when the compromise deed was presented and was fully aware of the contents of the compromise deed. Thereafter, when the matter was decided on 30.5.2006 the vice-counsel for the respondents (present petitioners) in the revision petition was present. Though the present petitioners have not signed the compromise, the fact that the ld. Counsel for the present petitioners was present when the compromise deed was presented before this court and he had not objected to the same, and also that the present petitioners were duly represented by the vice counsel when the matter was decided. Hence when the compromise was presented in presence of the counsel for the present petitioners and the order was announced in pursuance to the said compromise in presence of their vice counsel, the plea that the present petitioners had issued no such instructions to their counsel cannot be accepted. Besides vide the order passed in revision petition No. 34/2003 on 30.5.2006 the parties have been given the liberty to reseek partition if they so desire. Hence, no material prejudice seems to have been caused to the present petitioners.

The reasoning of the Financial Commissioner is not at all sound. Cases being pursued in courts of law or before quasi-judicial authorities which affect the rights of the parties cannot be decided on the basis of presumptions. The Financial Commissioner has presumed that since the counsel for the petitioners in the writ petition had not objected to the presentation of the compromise deed on 16.5.2006 therefore it has to be presumed that they had consented to the compromise. The law is just the opposite. Any compromise deed requires signatures of the parties or at least their counsel. The compromise must in unambiguous terms have been accepted by the parties. A compromise entered into between some of the parties cannot be enforced upon other parties to the litigation who have not consented to the same.

In view of the above discussion we are of the considered view that both the orders under challenge Annexures P-1 and P-2 are liable to be set-aside. The said orders are accordingly struck down and Revision Petition No. 34 of 2003 is remitted to the Financial Commissioner (Appeals) who shall decide the same on its merits after hearing the parties. Petition is disposed of. No costs.

3. The Court thereafter proceeds that the reasoning of the Financial Commissioner is not sound. The order was based on presumption, that the compromise deed requires signatures of the parties or their counsel, it must in unambiguous terms which have been accepted by the parties. Since the order did not pay attention to these facts or make any adjudication, it was set aside.

4. The case was taken up afresh by the learned Financial Commissioner. After hearing the parties, the order notes that the objection of the petitioners (before the Commissioner) was that there was unequal allotment of land along the side of the road besides allotment of inferior land. The order of partition dated 16.1.1998 notes that the petitioners did not appear on the spot despite being called etc. in which eventuality another notice should have been sent to them and they should have been heard before passing any order. More importantly, the Commissioner notes that from the Tatima (spot map) attached, it is not possible to make out which Khasra Numbers are adjoining and abutting the road side as even the road has not been depicted in the Tatima. The findings of the Collector that he visited the spot and found that the land abutting the road stands allocated to the petitioners is greater than their share, but this order is a nonspeaking order and does not deal the contention of the petitioners. There was no mention of the Khasra numbers etc. In this eventuality, the Commissioner concludes that it is a non-speaking order which requires to be set aside and the matter be considered afresh in accordance with law. For that purpose, direction was issued to the Collector to decide the case afresh within six months.

5. Annexure P-1 is the order of the Collector. I have gone through that order and what I find is that he only mentions the Khasra numbers etc.

6. Learned counsel appearing for the petitioners submits that the order of the Collector is a detailed order giving the exact details of the land allotted equally to the parties, there is no ambiguity and every party has been allotted a specific portion of the land as mentioned therein.

7. I am unable to accept this contention after having gone through the order of the Collector as also that of the Financial Commissioner. What I find is that the Commissioner is right in observing that besides mentioning Khasra numbers, there is nothing on the record to indicate as to how the partition proceeding has been settled. Rather, as noted, there is nothing to show/indicate which portion of the land abuts the road. There is no Tatima showing the land abutting the road etc. In any event, what the Commissioner notes is that the order should and ought to be in greater detail accompanied by reasons as to why a particular

portion is being allotted to a party. From the previous order of this Court, I notice that some terms had also been set up as being binding upon the parties. In these circumstances, I do not find any illegality in the order passed by the Commissioner. All that he decides in the revision is the fact that the order requires to be supported by reasons. It is now well settled that it is not the volume, but the quality which matters and in this eventuality the order cannot be faulted with. Voluminous writing is not required. What is required is that the Collector should indicate with clarity the situation of the land and the reasons for its allotment to the other party. I need not reiterate the later that reason forms the very backbone of our quasi judicial/statutory order which requires to be supported by sound reasons based on the record and not incorporated as the personal whim of the officer. There is, thus, no merit in this writ petition. The writ petition is dismissed. No order as to costs. The Collector shall dispose of the case as directed by the learned Financial Commissioner.