(2016) 03 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : CWP-18737-2014 (O&M)

Sukhdev Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 03 P&H CK 0129

Hon'ble Judges : Paramjeet Singh, J.

Bench : Single Bench

Advocate : Raj Kumar Chug, Advocate, for the Appellant; S.S. Chandumajra, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—CM-3441-CWP-2016

1. Allowed, as prayed for. Annexure P-19 is taken on record.

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2. Instant petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 09.07.2014 (Annexure P-15) passed by respondent No. 1-Financial Commissioner, Punjab whereby revision petition has been dismissed and the order dated 29.08.2012 (Annexure P-13) passed by respondent No. 2-Divisional Commissioner, Patiala whereby revision petition filed by respondent No. 5 against the order dated 19.06.2012 (Annexure P-11) passed by the Collector, has been allowed.

3. Brief facts of the case are to the effect that the petitioners filed application before Assistant Collector, Ist Grade (Tehsildar), Jagraon for partition of land measuring 59 kanals 05 marlas as per jamabandi for the year 2003-04, situated at village Gureh, Tehsil Jagraon, District Ludhiana on the plea that they are co-sharers in the land in dispute and land be partitioned between the parties. After

considering objections of respondent No. 5, Assistant Collector-Ist Grade, Jagraon vide order dated 13.11.2006 had stopped the partition proceedings as civil suit was pending between the parties regarding land in dispute. Against that, the petitioners filed appeal before the Collector, Jagraon, who vide order dated 30.05.2007, accepted the appeal and remanded the case back to the Assistant Collector-Ist Grade, Jagraon for fresh hearing. Thereafter, on the application of respondent No. 5-Mukhtiar Singh, Collector, Ludhiana transferred the case from the Court of Assistant Collector-Ist Grade, Jagraon to the Court of Assistant Collector-Ist Grade, Payal. The Assistant Collector Ist Grade, Payal approved the ''Mode of Partition'' vide order dated 30.04.2009 which was proposed on 24.12.2008 and partition was to be done by keeping in view the possession of land. Thereafter, A.C-Ist Grade, Payal approved the Naksha ''Arra'' and ''Irri'' vide order dated 12.10.2009 and ''Sanand Taksim'' was also issued. Against that, respondent No. 5 filed appeal before the Collector, Jagraon who vide order dated 17.06.2010 dismissed the appeal by holding that if Mukhtiar Singh was having any objection regarding partition, he should file an appeal against ''Mode of Partition'', which was not filed. Against that, respondent No. 5 filed revision petition before learned Divisional Commissioner, Patiala Division, which was dismissed vide order dated 14.06.2011 by holding that once ''Sanad Taksim'' is issued, further adjudication is beyond its purview and remedy lies before the Financial Commissioner or this Court. Aggrieved by these orders, respondent No. 5 approached this Court and filed CWP No. 13993-2011 which was accepted vide order dated 04.08.2011 and matter was remanded to A.C-Ist Grade, Payal for fresh decision. Thereafter, A.C. Ist Grade, Payal accepted the partition application of the petitioners vide order dated 16.11.2011 holding that Naksha Arra and Irri have been rightly prepared as per ''Mode of Partition''. Against that, respondent No. 5 filed an appeal before the Collector, Sub Division, Jagraon who vide order dated 19.06.2012 dismissed the appeal. Against that, respondent No. 5 filed revision before the Divisional Commissioner, Patiala Division who vide order dated 29.08.2012 accepted the revision and remanded the case to the Assistant Collector Ist Grade, Payal for fresh orders after hearing all the parties and a direction was issued that fresh Naksha ''arra'' be prepared wherein respondent No. 5 be given entitled share on the main Ludhiana to Moga road which falls in khasra No. 9//5, 6, 15. Against that, the petitioners filed CWP No. 21987-2012 which was disposed of on 25.03.2013 in view of restoration of the powers of the Financial Commissioner under Section 16(1) of the Punjab Land Revenue Act with liberty to the petitioners to approach the Financial Commissioner within 30 days. Thereafter, the petitioners filed revision before the Financial Commissioner, who dismissed the same vide impugned order dated 09.07.2014 (Annexure P-15). Hence, this writ petition.

4. I have heard learned counsel for the parties and perused the record.

5. It is settled principle of law that every co-sharer is entitled to land as per the valuation of land. Vide impugned order dated 29.08.2012 (Annexure P-13), Commissioner, Patiala Division, Patiala has rightly accepted the revision filed by

respondent No. 5-Mukhtiar Singh holding that Mukhtiar Singh is entitled to land as per his due share on the main Ludhiana to Moga Road which falls in khasra Nos. 92//5, 6 and 15. The said order has been affirmed by respondent No. 1-Financial Commissioner vide impugned order dated 09.07.2014 (Annexure P-15).

6. In fact, although no notice of motion was issued by the Coordinate Bench of this Court, but the case was straight way referred to the Mediation and Conciliation Centre of this Court, as respondent No. 5 had filed caveat. However, just to settle the dispute amicably, this Court called respondent No. 5 and persuaded him to strike a compromise. On 15.10.2015, following order was passed by this Court:

"I have heard the parties in Chamber.

Parties have agreed that they will explore the possibility of amicable settlement.

Respondent No. 5-Mukhtiar Singh states that out of rect. No. 92//5 and 6, he is entitled to 1/4th share and he will not claim in other kilas adjoining this rectangle, however, area which will be given to him from rect. no.92//5 and 6, equivalent of the same shall be deducted from my other tak consisting of rect. no.37 to complete the area of the petitioners. The total land of the parties shall remain as per their respective shares. However, the land which will come in the passage will be deducted according to the respective shares of the parties.

Adjourned to 06.11.2015.

A.C-Ist Grade is directed to be present in Court along with relevant record."

On 06.11.2015, following order was passed by this Court:

"In pursuance of order dated 15.10.2015, Mr. Sukhjinder Singh Tiwana, Assistant Collector Ist Grade, Payal, along with Mr. Sant Singh, Patwari, is present in Court.

The only objection raised by the learned counsel for the petitioners is that passage part of Khasra No. 183 has been encroached upon by respondent No. 5. Learned counsel for the petitioners submits that in the land, respondent no.5 has also constructed a house by encroaching upon the passage which is to be left. In this regard, the Assistant Collector Ist Grade is directed to depute the kanungo and patwari, who will inspect the spot and submit a report on or before the adjourned date. In the report, they will also specify whether there is any encroachment on khasra no. 183 by respondent no.5 and to what extent that passage is to be extended for the purpose to approach the land of the petitioners.

Adjourned to 01.12.2015."

On 01.12.2015, following order was passed by this Court:

"In compliance of order dated 15.10.2015, Assistant Collector Ist Grade-cum-Tehsildar, Payal got inspected the spot through Circle Kanungo and Patwari. In this regard, additional affidavit dated 30.11.2015 of Sh. Sukhjinder Singh Tiwana, Assistant Collector Ist Grade-cum-Tehsildar, Payal, filed in Court today, is taken on record.

Learned counsel for respondent No. 5 after seeking instructions from respondent No. 5 states that respondent No. 5 will remove the obstruction/encroachment as has been pointed out in the aforementioned additional affidavit dated 30.11.2015.

Arguments heard in part.

Adjourned to 08.02.2016."

7. On 08.02.2016, learned counsel for respondent No. 5 stated that respondent No. 5 had removed the encroachment and was ready to proceed with exchange of land. On the other hand, learned counsel for the petitioners stated that the petitioners would cut their trees and thereafter hand over and exchange the possession.

8. Today, concerned Tehsildar, Kanungo and Patwari are present in the Court. At this stage, learned counsel for the petitioners after seeking instructions from petitioner No. 4-Manjit Singh states that order dated 15.10.2015 is not acceptable to the petitioners. It appears that there is no end to the greed of the petitioners for restraining the major part of the land touching the metalled Ludhiana Moga main road. However, in pursuance of the order dated 01.12.2015, respondent No. 5 has demolished the constructed portion of his house, the same is clear from the photographs placed on record. Respondent No. 5 has complied with the order of this Court and thereby he has suffered a loss. However, as a matter of right, he is entitled to his due share on the Ludhiana-Moga main road. Earlier the petitioners accepted before this Court that land should be given on the main road as per entitlement of the parties as the same is valuable and deficiency should be made up in rect. No. 37, but now they are resiling from the said proposal and plead for decision on merit.

9. So far as the case on merit is concerned, the perusal of approved mode of partition (Annexure P-4) reveals that partition of the land shall be made keeping in view the possession and in case of necessity possession can be disturbed. It is settled principle of law that the partition of the land is required to be made keeping in view the valuation of the property specifically the property situated near the abadi and touching the metalled roads. The respective parties are required to be given land according to the share of the parties. In the present case, admittedly, the land which touches the Ludhiana-Moga main road, is a valuable piece of land and every share-holder is required to be given his/her share proportionately. In the present case, vide Naksha Bey, the entire land touching the Ludhiana-Moga main road has been given to the petitioners by A.C-Ist Grade, however, the Commissioner and the Financial Commissioner set aside the order observing that respondent No. 5 is entitled to his share on the Ludhiana-Moga metalled main road which is certainly a valuable piece of land. In view of this, I do not find any illegality or perversity in the impugned orders passed by the Commissioner and Financial Commissioner. The impugned orders are well-reasoned and justified. Respondent No. 5 has 1/3rd share in the total

land, as observed in the impugned orders. In view of this, out of khasra Nos. 5, 6 and 15 of rect. No. 92, which touches the Ludhiana-Moga main road, respondent No. 5 is certainly entitled to the land as per his share.

10. During the pendency of writ petition, an attempt was made to settle the dispute amicably between the parties. Respondent No. 5, who is uncle of the petitioners, even agreed to settle the dispute amicably and in compliance of the order passed by this Court, as referred to above, he has demolished his house and cleared the alleged encroachment, but after that the petitioners backed out and prayed that the matter be heard on merit. To settle the dispute amicably, this Court directed the senior revenue officials i.e. Naib Tehsildar, Kanungo and Patwari to do the needful as per the order passed by this Court and they had to attend this Court leaving other works just to comply with the orders of this Court. While making attempt for amicable settlement, this Court took the equitable view so that litigation between the close relatives may come to an end. But the conduct of the petitioners is highly deplorable and their greed to retain the valuable part of land did not stop.

11. In view of above, this Court, being court of equity, deems it fit and appropriate to impose exemplary costs. Accordingly, the petitioners are burdened with costs of Rs. 2 lacs which shall be paid to respondent No. 5 as damages for the demolition carried out in pursuance of the order dated 01.12.2015 at the spot. The petitioners are burdened with further costs of Rs. 50,000/-, to be deposited with the District Legal Services Authority, Ludhiana, for resiling from the proposal earlier agreed to by them and in the light of the fact that the revenue officials have been called thrice for settlement of dispute in pursuance of the orders of this Court. It is made clear that if the amount of costs is not paid/ deposited within one month, Tehsildar concerned shall effect the recovery of the same as arrears of land revenue and make the payment to respondent No. 5 and the District Legal Services Authority, Ludhiana, as stated above.

12. Dismissed with the aforesaid observations.

13. Partition shall be carried out as early as possible preferably within two months from today.

