

(2016) 05 P&H CK 0234
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22515 of 2013

Suresh Kumar and others

APPELLANT

Vs

Financial Commissioner, Revenue, Department, Haryana and others

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Punjab Land Revenue Act, 1887 — Section 114, 117

Citation : (2016) 4 PLR 682 : (2016) 4 RCRCivil 19

Hon'ble Judges : Paramjeet Singh Dhaliwal, J.

Bench : Single Bench

Advocate : S.S. Antal, Advocate, for the Appellant; Rajneesh Chadwal, DAG, Haryana and Mahavir Sandhu, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Paramjeet Singh Dhaliwal, J. (Oral) - Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 05.11.2012 (Annexure P-7) passed by learned Financial Commissioner, Revenue Department, Haryana whereby order dated 13.08.2010 (Annexure P-5) and order dated 22.03.2011 (Annexure P-6) passed by the Collector, Panipat and Commissioner, Rohtak Division, Rohtak, respectively, have been set aside.

2. In brief, the facts relevant for disposal of the present petition are to the effect that respondent Nos.5 to 9 filed application for partition of land measuring 214 kanals 05 marlas, situated in village Jorasi Sarf Khas, Tehsil Samalkha, District Panipat. After completing formalities, Naksha Bey was called and objections were invited. The petitioners filed objection that Naksha Bey has not been prepared as per mode of partition dated 17.04.2001 (Annexure P-1). It is specifically mentioned in clause 3 of mode of partition that land under partition is situated in four separate taks, therefore, the parties be given land in each of the four taks as per their shares. The petitioners raised an objection that the private

respondents herein have been given the valuable land in three taks situated near to road and village abadi, however, the petitioners have been given land of less value. It is also the case of the petitioners that the partition has not been done in accordance with the mode of partition and even objections have been disposed of in a casual manner by passing a non-speaking and sketchy order vide impugned order dated 23.06.2010 (Annexure P-3), passed by respondent No.4- Assistant Collector Ist Grade, Samalkha. Being dissatisfied, the petitioners preferred appeal before respondent No.3-Collector, who set aside the order dated 23.06.2010 (Annexure P-3) and remanded the case to respondent No.4-Assistant Collector-Ist Grade with a direction to pass a speaking order afresh, vide order dated 13.08.2010 (Annexure P-5). Feeling aggrieved, respondent Nos.5 to 9 preferred appeal before the Commissioner, Rohtak Division, Rohtak, who dismissed the same vide order dated 22.03.2011 (Annexure P-6). Feeling aggrieved, respondent Nos.5 to 9 preferred revision before Financial Commissioner, Haryana who set aside the orders dated 22.03.2011 (Annexure P-6) and dated 13.08.2010 (Annexure P-5) and remanded the matter to the Collector to decide the case afresh, vide impugned order dated 05.11.2012 (Annexure P-7). Hence, this writ petition.

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

4. Vide order dated 12.05.2016, record produced by the Patwari concerned, was sealed with the seal of the Court and handed over to learned State counsel with a direction to produce the same on the adjourned date and Assistant Collector Ist Grade was also directed to be present in Court.

5. In pursuance of the order dated 12.05.2016, learned State counsel has produced the record and Mr. Manoj Kumar, Tehsildar-cum- Assistant Collector Ist Grade, Samalkha is present in Court. The record has been opened in Court. Mr. Manoj Kumar, Tehsildar has inspected the record to find out as to whether Naksha Bey is available or not.

6. After perusing the record, Mr. Manoj Kumar states that Naksha Bey is available on record, but there is no order with regard to approval/sanction of the same. It is not signed by the Assistant Collector-Ist Grade. Otherwise also, detailed objections filed by the petitioners, have not been dealt with by the Assistant Collector Ist Grade in a proper manner. There is no finding on the objections raised by the petitioners. The case has been remanded to the Collector by respondent No.1-Financial Commissioner whereas the case is required to be remanded to respondent No.4-Assistant Collector-Ist Grade for calling fresh Naksha Bey after affording opportunity to raise objections to the respective parties and then decide the objections by passing a speaking order. There is only zimni order of sanctioning of Naksha Bey (site plan), but the Naksha Bey which has been approved is not signed, as stated by Sh. Manoj Kumar, Assistant Collector Ist Grade. He also stated that there is no custom to sign all the documents in Samalkha Tehsil and only zimni orders are passed and signed. Such a practice cannot be accepted in the eyes of law. There is complete

procedure mentioned in Chapter 18 of the Punjab Land Records Manual with regard to partition. Once Naksha Bey is called, Assistant Collector-Ist Grade is required to sign all the khatonis, field book as well as site plan and on the site plan, A.C-Ist Grade is required to pass a specific order sanctioning the Naksha Bey.

7. In view of above discussion, the impugned order dated 05.11.2012 (Annexure P-7) is modified and matter is remanded to respondent No.4-Assistant Collector Ist Grade instead of the Collector with a direction to dispose of the partition application, in accordance with law, within three months.

8. Parties through their counsel are directed to appear before respondent No.4-Assistant Collector Ist Grade on 21.06.2016.

9. Original record has been handed over to A.C-Ist Grade.