

CWP No.10107 of 2006

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10107 of 2006 (O&M)

Date of decision: 21.01.2015

Balwant Singh and others

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Onkar Rai, Advocate, for the petitioners.
Mr. B.S. Cheema, DAG, Punjab.
Mr. Harsh Bunker, Advocate, for respondent No.2.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the order dated 20.12.2005 (Annexure P-4) passed by Financial Commissioner, Punjab whereby the order dated 31.03.2004 (P-3) passed by Commissioner, Jalandhar Division, Jalandhar has been set aside as well as for quashing the orders dated 29.11.2002 (Annexure P-2) and 04.09.2001 (Annexure P-1) passed by Collector and Assistant Collector Ist Grade, Hoshiarpur, respectively.

Brief facts of the case are that father of petitioners No.1 to 4 and husband of respondent No.5 purchased 14 marlas of land in village Naloyian, which formed suburb of Hoshiarpur Town, out of which 4 marlas of land was acquired by the State Government to provide paths to

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the neighbouring residents and father of petitioners No.1 to 4 was left with 10 marlas of land. After the death of their father petitioners constructed a house on the southern side of 10 marlas which is existing till date and sold 5 marlas of land to Sarwan Kumar, who later exchanged the same with respondent No.2. Partition proceedings were initiated with regard to the land in question. Authorities have passed the impugned orders and the matter went upto LPA Bench.

Relevant extract of the order passed on 02.05.2011 by the LPA Bench reads as under: -

“It is not in dispute, rather admitted before us that respondent No.2 is the owner of five marla of land out of the land in dispute. It was specific case of the appellants, as was noticed by this Court when notice of motion was issued on 11.7.2006, that the appellants had constructed their house in khasra No.18/3/2 on its southern side, whereas the Assistant Collector Ist Grade has allotted them land measuring five marla on northern side of that khasra no. When this matter came up for hearing before the learned Single Judge on 2.2.2011, a very fair stand was taken by respondent No.2 by stating that the appellants may choose five marla of land, out of the land in dispute, of their choice, may be on any side of the plot in question. We feel that the stand taken was very fair and on the basis of that statement made, the writ petition should have been disposed of, however, the writ petition was admitted on 2.2.2011 and only the interim order passed in favour of the appellants was vacated.

There is no dispute that respondent No.2 is entitled to get 5 marla of land in the land falling in khasra No.18/3/2. If that is so, the appellants cannot be permitted to defeat respondent

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No.2's right by taking frivolous and technical objections. This Court is not supposed to give relief to such like litigant while exercising the powers under Articles 226/227 of the Constitution of India. Otherwise also, the appellants have failed to show as to how the partition ordered by the authorities below and the arrangement accepted by the learned Single Judge, will cause any inconvenience to them. The appellants are in possession of the entire land and they, in a very unjustifiable manner, wants to retain the same.

No case is made out for interference.

Dismissed.

The Registry is directed to put up CWP No.10107 of 2006 for regular hearing which shall be disposed of in view of the order passed by us today."

I have heard and considered the contentions raised by learned counsel for the parties.

During the pendency of this writ petition parties have effected compromise and have agreed that respondent No.2 is entitled to 5 marlas of land and only issue remains with regard to side which he should be given as per his entitlement. On 14.01.2015 the parties were directed to file their respective site plans. Petitioners have filed a site plan along with affidavit, which is taken on record. In the site plan land shown in green colour has to be given to respondent No.2 and his area of 5 marlas shall be completed after taking into consideration equal front on the mettle road and towards the street side the area equivalent to 5 marlas shall be given to the petitioners. In this manner, area of petitioners will be touching on both streets as well as the mettle road. Parties agree to

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this settlement, however, site plan placed on record does not appear to be correct.

In view of settlement between the parties, impugned orders are set aside. Assistant Collector Ist Grade shall frame a specific site plan, indicating 5 marlas of petitioners and 5 marlas of respondent No.2 as shown in site plan Ex.-CA attached with affidavit of petitioner-Balwant Singh dated 21.01.2015 i.e. respondent No.2 shall be given land towards northern side (shown in green colour) and petitioners will be given land shown in blue colour. It is made clear that petitioners shall be at liberty to remove the construction from the portion shown in green colour within one month from today and respondent No.2 shall be deemed to be in possession of 5 marlas of land (shown in green colour). In case construction is not removed, same shall also be deemed to be of respondent No.2 and petitioners will have no claim. Any sale made by the petitioners shall be adjusted towards their share. Actual possession shall be delivered to respondent No.2 by Assistant Collector Ist Grade by 10.03.2015.

Disposed of.

(Paramjeet Singh)
Judge

January 21, 2015
R.S.