

CWP No. 11731 of 2012

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11731 of 2012
Date of Decision : 08.10.2015

Amritsar Improvement Trust

...Petitioner

Versus

Financial Commissioner Revenue and others

...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. G.S. Attariwala, Advocate for the petitioner.

Mr. S.S. Chandumajra, Addl. Advocate General, Punjab.

Mr. Veneet Sharma, Advocate for respondent No. 6.

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 09.03.2010 (Annexure P-16) passed by respondent No. 1 – Financial Commissioner (Revenue) and order dated 05.04.2006 (Annexure P-17) passed by respondent No. 2 – Commissioner, Jalandhar Division.

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Brief facts of the case, as averred in writ petition, are that Khasra No. 943 having area measuring 29 kanal 06 marlas situated within the revenue limits of Amritsar, belonged to Kashmiri Muslims, namely, Ghulam Jalani, Ghulam Mehmood, Abdul Deen and others, before partition of the country. The aforesaid Kashmiri Muslims sold land measuring 12 kanal 04 marlas out of the said khasra number by way of a registered sale deed in the year 1938 in favour of Bahadur Singh son of Sucha Singh, husband of Ajit Kaur for a sum of ₹12,000/- and mutation No. 3192 was sanctioned in favour of Bahadur Singh. Accordingly, Khasra No. 943 was split into two numbers i.e. Khasra No. 943/1 measuring 12 kanal 04 marlas and Khasra No. 943/2 measuring 17 kanal 02 Marlas. The same is reflected in the Jamabandi for the year 1951-52 (Annexure P-1). After the partition of the country, Khasra No. 943 measuring 29 kanal 06 Marlas was declared as evacuee property and ownership of Central Government through the Department of Rehabilitation was recorded in the revenue record. In this regard, reference can be made to Jamabandies for the years 1957-58, 1962-63, 1965-66 and 1967-68. Out of the total land measuring 29 Kanal 06 Marlas, the Managing Officer (Sales), Jalandhar sold in open auction and transferred 17 kanal 02 marlas in favour of Sujan Singh son of Nirmal Singh being highest bidder. Subsequently, a Certificate of Sale dated 03.04.1965 (Annexure P-4) was issued in favour of Sujan Singh.

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Similarly, remaining 12 kanal 04 marlas of land was also auctioned and it was purchased by Chaman Lal son of Uttam Chand and the sale deed was also executed to that effect. Chaman Lal further sold the land to Ann Amm Brothers, Amritsar. In 1963, the petitioner Improvement Trust issued a notification for acquisition of land measuring 25 acres, which included 17 kanal 02 marlas out of 29 kanals 06 marlas of Khasra No. 943 earlier purchased by Sujan Singh. The land acquisition claims were settled in accordance with law. Now the only dispute which survives is to identify the acquired part of land comprised in khasra No. 943 and the remaining part of this khasra number which has not been acquired.

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

Learned counsel for the petitioner vehemently contended that the mother of respondent-6 earlier filed a civil suit in which order dated 30.09.2005 (Annexure P-13) was passed and further contended that civil suit was perhaps filed in pursuance of the order passed by this Court in Civil Writ Petition No. 2563 of 2001 on 23.02.2001, which reads as under :-

“In this view of the matter, we dispose of this writ petition with the observations that the petitioner may file a civil suit for declaration claiming the title over the land in question according to law against the Improvement Trust. The petitioner is permitted to take all the pleas which have been taken up in the present petition.”

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Learned counsel for the petitioner further contended that actually this property was of Central Government and respondent No.6 has no right to dispute the title of the petitioner.

On the other hand, learned counsel for respondent No.6 vehemently contended that the property was purchased by Bahadur Singh in 1938 and mutation was also sanctioned, however, incorrect entries were effected in Jamabandi for the year 1951-52. For correction of the revenue record, a civil suit was filed by Ajit Kaur mother of respondent No.6 and widow of Bahadur Singh against the Central Government, wherein ex-parte decree was passed on 28.07.2000 (Annexure P-11) by the civil Court, whereby plaintiff Ajit Kaur predecessor-in-interest of respondent No.6 was declared to be owner in possession of Khasra No. 943/1 measuring 12 kanal 04 marlas and direction was also issued to effect correction in jamabandies for the years 1957-58, 1962-63, 1967-68 and subsequent jamabandies.

Learned counsel for respondent No.6 further contended that out of 29 kanals 06 marlas, total area of khasra No.943, petitioner has acquired only 17 kanals 2 marlas and 12 kanals 4 marlas remained with predecessor-in-interest of respondent No.6. The identity of acquired part of khasra No.943 and its remaining part can only be determined by way of demarcation. The revenue authorities have rightly ordered demarcation for identifying the area of respondent No.6, which was

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never acquired.

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

Admittedly, the rights of the petitioner flow from the notification issued in 1963, whereby 17 kanal 02 marlas out of total 29 kanals 6 marlas of Khasra No. 943 have been acquired by the petitioner. The petitioner can only claim his right and title over 17 kanal 02 marlas which is acquired part of Khasra No. 943. It needs to be emphasized here that Civil Court decree against the Central Government determines the rights of respondent No.6. There is no dispute regarding the ownership of 12 kanals 4 marlas which were purchased by Bahadur Singh in 1938. The same were inherited by Ajit Kaur widow of Bahadur Singh and after death of Ajit Kaur, respondent No.6 being her daughter has inherited the property in question. This Court is not required to give declaration in this writ petition with regard to ownership and that can be agitated by the parties in appropriate proceedings. So far as decree dated 28.07.2000 (Annexure P-11) is concerned, it is clear declaration in favour of Ajit Kaur widow of Bahadur Singh that she was owner of land to the extent of 12 kanal 04 marlas out of Khasra No. 943 which was numbered as 943/1. Respondent No.6 is stepping into the shoes of her mother Ajit Kaur. Ajit Kaur moved an application before the authorities for demarcation of the area which vested in her as declared by a Civil

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Court decree dated 28.07.2000 (Annexure P-11). Now the petitioner has a right to get it demarcated and establish its identity.

In view of the above, I do not find any illegality or perversity in the order dated 05.04.2006 (Annexure P-16) passed by the Commissioner, Jalandhar and affirmed by the Financial Commissioner vide order dated 09.03.2010 (Annexure P-17). He has only directed the Deputy Commissioner and Tehsildar-I, Amritsar to demarcate the property i.e. Khasra No. 943/1 situated at Court Road-Tailor Road, Amritsar. Otherwise also the rights of the petitioner will not be affected by the impugned orders. It is merely a direction for demarcation, whereby the identity of Khasra No. 943/1 would be established. This Court has no doubt in its mind that if any person is in illegal possession of the land, the owner has a right to proceed in accordance with law for taking possession. Thus, impugned orders are upheld.

Accordingly, the writ petition is dismissed.

No order as to costs.

October 08, 2015.
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(PARAMJEET SINGH)
JUDGE