

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 18880 of 2015

Date of Decision: September 08, 2015

Madhu Sharma and others

... Petitioners

Versus

Financial Commissioner (Animal Husbandry), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Satbir Rathore, Advocate,
for the petitioners.

Paramjeet Singh, 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 order dated 08.08.2014 (Annexure P/14) passed by respondent no.1 – Financial Commissioner (Animal Husbandry) Punjab, order dated 29.11.2004 (Annexure P/10) passed by respondent no.2 – Commissioner, Jalandhar Division, Jalandhar, order dated 23.09.2003 (Annexure P/9) passed by respondent no.3 – Sub Divisional Magistrate-cum-Collector, Dasuya, District Hoshiarpur, and order dated 25.04.2003 (Annexure P/8)

passed by respondent no.4 – Assistant Collector Ist Grade, Dasuya,

District Hoshiarpur.

Brief facts of the case are that an application for partition was moved by the respondents, which was resisted by the petitioners on the ground that earlier application for partition was filed and the partition has become final. It is averred in the petition that possession has already been delivered in pursuance of earlier alleged partition between the parties and reliance has been placed upon rapat roznamcha No. 216, dated 23.02.1984 (Annexure P/2). It is also mentioned in the writ petition that in pursuance of partition, a mutation No. 1558 (Annexure P/3) was entered, but it was rejected. Vide order dated 25.04.2003 (Annexure P/8), the Assistant Collector Ist Grade, allowed the application for partition filed by the respondents. Thereafter, the petitioners preferred an appeal, which has been dismissed by the Collector vide order dated 23.09.2003 (Annexure P/9). Against that order, revision petition has been preferred, which has also been dismissed by the Commissioner vide order dated 29.11.2004 (Annexure P/10). Thereafter, ROR has been preferred and the same has been allowed by the Financial Commissioner vide order dated 27.12.2007 (Annexure P/11). Against that order, respondents no. 5 to 7 preferred a C.W.P. No. 5752 of 2008 before this Court. Vide order dated 14.12.2010 (Annexure P/13), a Co-ordinate Bench of this Court allowed the writ

petition and case was remanded to Financial Commissioner for fresh decision. In pursuance of order dated 14.12.2010 (Annexure P/13), the Financial Commissioner has dismissed the revision petition filed by the petitioners with the observation that the partition application filed by Darshan Singh and others, pending before Assistant Collector Ist Grade be decided notwithstanding the alleged order of partition dated 15.02.1983. Hence, this writ petition.

I have heard learned counsel for the petitioners.

Learned counsel for the petitioners vehemently contended that once the partition application titled “Goverdhan Lal vs. Tarlok Chand and another” moved in the year 1983 and the same has become final and even possession was delivered vide rapat roznamcha (Annexure P/2) and mutation (Annexure P/3) was entered on that basis, second application for partition is not maintainable. Learned counsel further contended that 10 kanals of land has been acquired by the State Government from the allotted share of respondents no. 5 to 7. Learned counsel for the petitioners relied upon a judgment of this Court in **Swaran Singh vs. Punjab State and others, 2014(5) R.C.R. (Civil) 3.**

I have given anxious thought to the contentions raised by learned counsel for the petitioners and perused the paper-book.

No document has been placed on record to show that the

partition has actually been effected by the Assistant Collector Ist Grade at the relevant point of time. The only relevant document for that purpose is instrument of partition in view of Section 121 of the Punjab Land Revenue Act, 1887, which reads as under:

“121. Instrument of partition - When a partition is completed, the Revenue-officer shall cause an instrument of partition to be prepared and the date on which the partition is to take effect to be recorded therein.”

Since, instrument of partition has not been placed on record either before the Assistant Collector or even before other revenue authorities or even before this Court, it cannot be presumed that partition in pursuance to earlier application moved in the year 1983 was completed. Even from the perusal of mutation No. 1558 and order dated 20.12.1985 passed by the Assistant Collector 2nd Grade it transpires that the same stands rejected as partition could not be verified at that time too. The authority **Swaran Singh (supra)** cited by learned counsel for the petitioners is not applicable in the present case. In that case partition was actually effected and sanad taksim was prepared. Here, in the present case, no document with regard to earlier completion of partition i.e. instrument of partition (sanad taksim) is available. So, it cannot be presumed that earlier partition was between the co-sharers/parties.

In view of above, there is no merit in the instant writ petition, the same is dismissed.

September 08, 2015
vkd

[Paramjeet Singh]
Judge