

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 22328 of 2014 (O&M)
Date of Decision: February 23, 2015

The Kakdoni Gram Khandsiri Industries

... Petitioner

Versus

Financial Commissioner, Revenue, Govt. of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. S.S.Dinarpur, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

CM-2400-CWP of 2015

Civil Misc. application is allowed subject to all just exceptions. Jamabandi for the year 2002-03 (Annexure P/8) is taken on record.

CWP No. 22328 of 2014

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 for quashing impugned order dated 29.05.2014 (Annexure P/7) passed by respondent no.1 - Financial Commissioner, Revenue, Haryana whereby the orders of the revenue authorities below commencing from the Assistant Collector 2nd Grade, Bilaspur, Collector, Yamuna Nagar and the

Commissioner, Ambala Division, Ambala, have been set aside and matter has been remanded to the Assistant Collector 2nd Grade for fresh decision.

Brief facts of the case are that petitioner filed an application for partition of land comprising in Khewat Nos. 83, 91, 93 and 112 situated in the revenue estate of Village Kakdoni. Vide undated order (Annexure P/1) consolidated all the applications and called Naksha “*Alif*”. Thereafter, vide order dated 13.10.2008 (Annexure P/3) approved Naksha “*Be*”. Vide order dated 25.11.2008 (Annexure P/4), the Assistant Collector 2nd Grade prepared the sanad takseem. Against that, respondent no.5 preferred an appeal before the Collector and the same has been dismissed by the Collector vide order dated 21.07.2009 (Annexure P/5). Thereafter, respondent no.5 filed a revision before the Commissioner, which has also been dismissed vide order dated 30.03.2010 (Annexure P/6). Against that, respondent no.5 filed R.O.R. before Financial Commissioner and the same has been allowed by the Financial Commissioner vide order dated 29.05.2014 (Annexure P/7) and the matter has been remanded to the Assistant Collector 2nd Grade for fresh decision. Hence, this writ petition.

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

Perusal of the record shows that separate partition applications have been filed as all the co-sharers are not the same in each of the khewats. The different khewats have different co-sharers. The

Financial Commissioner has recorded finding which reads as under:-

“I have examined the entire record placed before me. I have also carefully perused the orders passed by the ld. Collector and ld. Commissioner. I have also given careful consideration to the arguments advanced by the ld. Counsel on behalf of their respective parties. In this revision petition moved by Sh. Ram Pal through his ld. Counsel, it is contended that different khewats are involved in this partition matter. It is further contended that all co-sharers do not have share in each of the khewats. It is further contended that despite this fact, the AC IInd Grade, Yamunanagar choose to club all the khewats and conducted partition proceedings treating the entire land as one chunk. It is contended by the ld. Counsel moving the revision petition that due to this erroneous approach adopted by the ld. AC IInd Grade, Yamunnagar, co-sharers who did not have the shares in particular khewats got possession in those khewats. He contended that this is bad in law and is violative of the rights of co-sharers who were having specific possession in particular khewats and that these proceedings are not in consonance with the provisions of the Punjab Land Revenue Act. He further contended that partition proceedings should be held without clubbing the khewats and that partition proceedings in each khewat should be limited to the co-sharers in that khewat. I find merit in his contention of the petitioner and hence the revision petition is therefore allowed.”

This matter came up before this Court on 03.11.2014 and the following order was passed:-

“Learned counsel for the petitioner seeks time to place on record the jamabandi of the relevant year with regard to all the five khewats.

On request, adjourned to 18.11.2014.”

In pursuance of order dated 03.11.2014, jamabandi for the year 2002-03 of Village Kakdoni, Tehsil Jagadhri, District Yamuna Nagar has been placed on record as Annexure P/8.

Perusal of jamabandi for the year 2002-03 clearly indicates that in Khewat Nos. 83, 89, 90, 91, 92, 94, 95, 121 and 122 co-sharers are different. The perusal of all khewats clearly indicates that all the co-sharers which are mentioned in Khewat Nos. 83, 91, 93 and 112 are not the same. Every khewat has different co-sharers. In view of this, khewats cannot be consolidated and partition can not be done by consolidating all khewats. This could have only been possible if in all the khewats, the co-sharers would have been the same. It is settled law that if a co-sharer has no share in khewat, he cannot be given possession by clubbing the applications in other khewats. The co-sharers who are in possession of specific khasra number in particular khewat and have no share in other khewats if they are given possession in other khewat it would be certainly in violation of the provisions of Punjab Land Revenue Act.

In view of this, I do not find any illegality or perversity in the impugned order. The Financial Commissioner has rightly set aside the impugned orders of the revenue authorities below.

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Instant writ petition is dismissed. However, the petitioner will be at liberty to avail the remedy available to it in accordance with law.

February 23, 2015
vkd

[Paramjeet Singh]
Judge