

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

**CWP No.22571 of 2016
Date of decision: 27.10.2016**

Soma and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.N. Saini, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 04.07.2016 (Annexure P-12) passed by Financial Commissioner, Haryana, whereby he upheld the order dated 06.10.2015 (Annexure P-10) passed by Assistant Collector IInd Grade, Indri, District Karnal-respondent No.2, thereby finalizing the partition proceedings between the parties, petitioners have approached this Court, by way of present writ petition under Article 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Heard learned counsel for the petitioners.

It is a matter of record that in the earlier round of litigation, ROR No.673 of 2006-07 was allowed by the Financial Commissioner vide his order dated 01.08.2011 (Annexure P-8), remanding the matter to Assistant Collector IInd Grade, Indri and the operative part of this order, which deserves to be noticed here, reads as under: -

“.... Keeping in view the above, I set aside the order dated 21.6.2007 passed by Commissioner, Rohtak Division, Rohtak, order dated 22.12.2004 passed by District Revenue Officer-cum-Collector, Karnal and order dated 9.3.2004 passed by Assistant Collector II Grade, Indri. Hence I accepted the Revision Petition and the case is remanded back to Assistant Collector II Grade with the direction to given an opportunity to produce their evidence to both the parties and after making on the spot inspection to pass the orders on merits. Both the parties are directed to appear before the Assistant Collector II Grade, Indri on 22.04.2013.”

Reading of the abovesaid order would show that Financial Commissioner issued two directions to Assistant Collector IInd Grade. First direction was to give an opportunity to produce their evidence to both the parties and the second direction was to carry out the spot inspection before passing the fresh order on merits.

In compliance of the abovesaid order passed by the Financial Commissioner, Assistant Collector IInd Grade, Indri passed as many as 10 zimini orders, which have been produced by the petitioners on record vide Annexure P-9 and the same read as under: -

“Copy of interim orders

26/5/2015 File was presented, the counsel for the petitioner and respondent were present in the Court. The order of the Financial Commissioner was carefully perused. The Financial Commissioner has set aside the order passed on Naksha 'Be'. So the file be presented for

arguments on Naksha 'Bey' on 23.6.2015.

*Sd/-
AC II Grade
26/5/2015*

The counsel for the petitioner and Sh. R.K. Kamboj, Advocate filed his Power of Attorney on behalf of respondent. The counsel for the petitioner presented an application on behalf of Ram Kishan and the respondent No.10 has died and their LR's may be brought on record.

Filed be presented on 07.07.2015

*Sd/-
AC II Grade
23/6/2015*

Present counsel for the petitioner, respondent are also present, respondent No.10 has died an application to implead the LR's of respondent No.10 had already been filed on which the applicants have also no objection. The amended title has also been received. In this case for spot inspection case is fixed for 16/7/2015. The file be presented for spot inspection for arguments on 21/7/2015.

*Sd/-
AC II Grade
7-7-2015*

Counsels for the parties are present. The file may be fixed for evidence and spot inspection on 27/7/2015.

*Sd/-
AC II Grade*

21/7/2015

File was presented. Counsels for the parties are present. Spot was inspected, now the file be presented for evidence and arguments on 28-7-15.

*Sd/-
AC II Grade
27-7-2015*

File was presented. Counsels for the parties are present. File be presented on 4-8-15 for evidence and arguments.

*Sd/-
AC II Grade
28-7-2015*

File was presented. Counsels for the parties are present. File be presented on 14-8-15 for evidence and arguments.

*Sd/-
AC II Grade*

File was presented. Counsel for the parties are present. The arguments of counsel for Naksha 'Be' were heard. Counsel for the petitioner in his arguments submitted that the objections raised by Om Parkash regarding a tubewell and poplar trees on the passage of 2 karam towards north of Khasra No.16//19 he referred to the report of Halqa Kanungo regarding Khasra No.16//17-18-19 regarding the spot demarcation. Keeping in view arguments of the counsel for the parties. The case is fixed for 28-7-

2015 to await the report of Halqa Kanungo.

*Sd/-
AC II Grade
14-8-2015*

File was presented. Counsels for the parties are present. The demarcation report from the Halqa Kanungo has not been received to await the file may be presented on 4-9-15.

*Sd/-
AC II Grade
28/8/2015*

File was presented. Counsels for the parties are present. The demarcation report from the Halqa Kanungo has been received. Taken on record now the file be presented for arguments on 6.10.15.

*Sd/-
AC II Grade
4/9/2015”*

In spite of the abovesaid numerous interim orders having been passed by Assistant Collector IInd Grade, learned counsel for the petitioners submits that no opportunity of being heard was granted to the petitioners. This argument raised by learned counsel for the petitioners has been found wholly misplaced and not worth acceptance, for the reason that it does not appeal to reason and also runs counter to the abovesaid official record.

It is not even pleaded or argued case on behalf of the petitioners that they, as a matter of fact, sought to place on record some additional material or evidence, which was not accepted either by the office of Assistant Collector IInd Grade, Indri or by the Presiding Officer, during the course of hearing.

Having said that, this Court feels no hesitation to conclude that Assistant Collector IInd Grade has ensured strict compliance of the abovesaid directions issued by the Financial Commissioner and the impugned order dated 06.10.2015 (Annexure P-10) passed by Assistant Collector IInd Grade, Indri deserves to be upheld.

A reading of the abovesaid interim order dated 04.09.2015 passed by Assistant Collector IInd Grade would show that demarcation report from Halqa Kanungo had been received on 04.09.2015. Even thereafter, the case was adjourned for 06.10.2015 and the parties, including the present petitioners, had enough time to file their objections, if any, to the demarcation conducted and report furnished by the Halqa Kanungo. However, they did not do so for the reasons best known to them. Still further, Assistant Collector IInd Grade heard learned counsel for the parties on 06.10.2015 before passing the impugned order (Annexure P-10), discussing each and every relevant aspect of the matter for recording his cogent findings, which have been found supported by sound reasons. Under these circumstances, it can be safely concluded that Assistant Collector IInd Grade did not commit any error of law, while passing the impugned order (Annexure P-10) and the same deserves to be upheld, for this reason also.

Again, the matter was reconsidered by the Financial Commissioner and the operative part of the impugned order dated 04.07.2016 (Annexure P-12), reads as under: -

“I have heard the arguments of the counsels of both the parties and perused the relevant records available on the file. I have also perused the impugned orders passed by the courts below. It is

evidence from the record that the AC 2nd Grade, has himself inspected the site on 22.07.2015 after duly serving the notices. After spot inspection, arguments were also heard on 'Naksha Bey'. The objections of the petitioners were duly considered by the AC 1st Grade and same were rejected in view of the sanctioned mode of partition. It is also evidence that demarcation was carried out by the field Kanungo on 31.08.2015 and the demarcation report bears the signatures of the petitioners. As per this report, there are no tubewell or trees on the khasra No.16//17, 18, 19. Therefore, I do not find any infirmity or illegality or material irregularity in the impugned orders of lower courts. Accordingly, the present Revision Petition is hereby dismissed being devoid of merit.”

A bare perusal of the abovesaid order passed by Financial Commissioner would make it clear that he was well within his jurisdiction to pass the said order. None of the impugned orders have been found suffering from any patent illegality or perversity nor any such patent illegality or perversity has been pointed out by learned counsel for the petitioners, during the course of hearing, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

In addition to the above, learned counsel for the petitioners drawn the attention of this Court to Aks Sizra (Annexure P-13). Perusal of this document would also show that as many as nine fields of the petitioners, including seven full killa numbers, are abutting or touching the passage, which is best suited for the land of the petitioners. It is not even pleaded or argued case

on behalf of the petitioners that they have not been granted their due share in the joint land. Further, no prejudice, of any kind whatsoever, has been shown, which might have been caused to the petitioners, while passing the impugned orders.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.10.2016
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No