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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27591 of 2013

Date of Decision: 09.11.2016

Dalip Singh

. . . Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Sr.DAG, Haryana.

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Rameshwar Singh Malik, J. (Oral)

Feeling aggrieved against the order dated 16.08.2013 (Annexure P-3), passed by the Financial Commissioner, Haryana, whereby revision petition filed by the State of Haryana by way of ROR No36/2006-07 was allowed, setting aside the order dated 23.05.2007 (Annexure P-2) of Commissioner, Rohtak Division, Rohtak, petitioner has approached this Court by way of instant writ petition, under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned order.

Notice of motion was issued vide detailed order dated 16.12.2013 and in compliance thereof, written statement was filed on behalf of respondent No.5. Thereafter, the writ petition was admitted for regular hearing vide order dated 11.08.2014. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

Facts necessary for disposal of the present writ petition are that respondent-State, vide notification dated 31.03.1978, acquired the land measuring 18 kanals 7 marlas, owned by the petitioner, by way of award No.304. Petitioner was paid the due compensation. However, the said award No.304 came to be amended by the competent authority, vide award No.304-A dated 21.09.1978, reducing the acquired area from 18 kanals 7 marlas to 5 kanals 5 marlas, probably for the reason that purpose of acquisition would be served only by the land measuring 5 kanals 5 marlas. Notice dated 29.01.1979 was issued to the petitioner, asking him to refund the excess amount of Rs.22597.50 paisa. It seems that petitioner proceeded on *bonafide* wrong impression and instead of refunding the above-said amount to the authorities of the respondent-State, he filed a suit for injunction against the above-said notice dated 29.01.1979. During the pendency of the civil suit, one Shri Harbans Lal, Sub Divisional Officer from Sub Division No.5, Rohtak, appeared in the Court with Shri G.D. Anant, Government Pleader, on behalf of the defendants on 16.05.1980. Statement was suffered by Shri Harbans Lal, SDO, which was followed by the statement made by the plaintiff and then the suit was dismissed as withdrawn on the same day i.e. vide order dated 16.05.1980, passed by the learned Sub Judge Ist Class, Rohtak.

Since the above-said statements suffered by both the parties and the order based on those statements, are very relevant for the decision of the present case, the same are being reproduced here, which read as under:-

> *"Statement of Shri Harbans Lal Chitkara S.D.O. J.LN Feedre Sub Dn No.5 Rohtak on SA and Shri G.D. Anant G.P. on behalf of the State defendant W/o*
>
> *The defendants will not realise any amount of compensation from the plaintiff. The defendant department is utilizing the land already acquired of the plaintiff produce the statement Ex.PX of the Executive Engineer*
>
> *RO&AC SD/- SJICR Rohtak 16.5.80*
>
> *Statement of Shri Jit Singh plaintiff on SA and Shri Satbir Singh Hada counsel for the plaintiff W/o*
>
> *I have heard the above statement and accept the same as correct. In view the said statement the suit be dismissed as withdrawn.*
>
> *RO&AC SD/- SJICR Rohtak 16.5.80*
>
> *Present: Plaintiff with Shri Satbir Singh Huda.*
>
> *Shri Harbans Lal Chitkara SDO with GP for the State*
>
> *In view of the above statements of the parties and their counsel which shall from part of the order, the suit is dismissed as withdrawn with no order as to costs. The statement of the defendant will be binding upon them the*

amount of the plaintiff if any attached by the defendant shall be released forthwith, in favour of the plaintiff.

Announced in open Court SD/- Sub Judge 1st Class
16.5.1980 Rohtak."

A bare reading of the above-said statements made, would make it crystal clear that neither the fact regarding amended award No.304-A dated 21.09.1978 was brought to the notice of the Court, nor it was sought to be clarified to the effect that the department was utilizing how much land of the petitioner, which was already acquired. Learned Civil Court was well justified in recording, that statement of the defendants will be binding on them.

It is also pertinent to note here that on the basis of original Award No.304 dated 31.03.1978, the land which came to be mutated in favour of the State was 18 kanals 7 marlas. Mutation No.5245-A dated 09.06.1986 was sanctioned. The revenue authorities never carried out any amendment in the above-said mutation, despite the second award having been announced in the form of Award No.304-A dated 21.09.1978, reducing the area of acquisition from 18 kanals 7 marlas to 5 kanals 5 marlas. Since the ownership of the total land measuring 18 kanals 7 marlas, was being shown in the revenue record, in favour of the State of Haryana, on the basis of original Award No.304, petitioner filed appeal before the Collector against the above-said Mutation No.5245-A dated 09.06.1986, but his appeal was dismissed by the Collector vide order dated 27.01.2006 (Annexure P-1), being barred by time.

Petitioner challenged the order passed by the Collector by way of his revision before the learned Commissioner, Rohtak Division, Rohtak, who accepted the revision filed by the petitioner vide order dated 23.05.2007 (Annexure P-2), setting aside the order dated 27.01.2006 and remanding the case back to Collector, Rohtak, directing the parties to appear before him on 03.07.2007. However, this order came to be challenged by the State, before the Financial Commissioner by way of ROR No.36/2006-07, which was allowed by the Financial Commissioner, vide impugned order dated 16.08.2013 (Annexure P-3). Hence, this writ petition.

Important question of law that falls for consideration of this Court is; whether the State can claim ownership qua any piece of land, without acquiring it after following due procedure.

In the instant case, as noticed hereinabove, State authorities themselves passed the supplementary/amended award dated 21.09.1978 vide award No.304-A, reducing the total acquired area from 18 kanals 7 marlas to 5 kanals 5 marlas. In this view of the matter, State would have no claim qua ownership of the remaining land beyond the land measuring 5 kanals 5 marlas, because said remaining area was abandoned by the State itself. Although the State authorities were duty bound to carry out said correction in the relevant revenue record, incorporating the material fact reflected from amended award dated 21.09.1978 vide award No.304-A, yet even if said correction was not carried out by the competent authority at the relevant point of time, petitioner cannot be made to suffer for none of his fault.

So far as the refund of the excess amount of Rs.22597.50 paisa was concerned, the State authorities were at liberty to recover the said amount from the petitioner, in accordance with law. It is also not in dispute that the excess land measuring 13 kanals 2 marlas had been in the actual physical possession of the petitioner throughout. No State authority ever sought possession of the said land from the petitioner, probably for the reason that ownership thereof was not being claimed by the State. Having said that, this Court feels no hesitation to conclude that Financial Commissioner fell in serious error of law, while passing the impugned order dated 16.08.2013 (Annexure P-3) and the same cannot be upheld.

In the peculiar facts and circumstances of the case, the only appropriate order that could have been passed, was passed by the learned Commissioner, Rohtak Division, Rohtak, vide Annexure P-2, because he appreciated the true facts as well as legal position in the correct perspective. Relevant observations made by the learned Commissioner, in operative part of the order passed by him, which deserves to be noticed here, read as under :-

> *"After hearing arguments from both the sides and perusing the relevant record bought on the file, I agree with the contention of the counsel for the petitioner that when Award No.304 was revised and amended through another Award No.304-A whereby the earlier acquired 18 kanals 7 marlas of land of the petitioner was reduced to 5 kanals 5 marlas only, there was major irregularity on the part of*

Circle Revenue Officer not to revise and rectify the contents of Award No.304 by the contents of Award No.304-A through both the mutations were disposed of by the C.R.O. together in General Public. Admittedly it was a clerical mistake which has continued to be repeated in the subsequent jamabandis. Counsel for the State has taken objection that since money paid extra to the petitioner has not been returned and since the said entries have already been incorporated in various jamabandis, it would beyond purview of the Revenue Officers and the petitioner should approach the civil court. However it is accepted practice that all such clerical or arithmetical mistakes are rectified though process of Nazarsani/Fard Badar and since it is a mistake of not rectifying the entries about actual acquired land through Award No.304-A therefore the Collector could have prepared a case for Nazarsani and correction of this mistake through Fard-Badar. The extra amount paid to the petitioner is a different issue for which the concerned department can initiate against the petitioner for depositing back the extra money as per provisions of Land Acquisition Act. Accordingly the case is remanded to the Collector with the direction that since the Circle Revenue Officers has responsibility of maintaining correct record he should move the case for rectification of mutation by correctly incorporating Khasra Nos. of the petitioner on the basis of *revised Award No.304-A by superseding entries made on the basis of Award No.304.*

Parties are directed to appear before the Collector Rohtak on 3.7.2007 for further proceedings."

Perusal of the statement suffered by Shri Harbans Lal, SDO of the department, before the learned Civil Court on 16.05.1980, reproduced hereinabove, would also leave no manner of doubt that he did not disclose anything about the factum of passing supplementary award dated 21.09.1978 i.e. award No.304-A, for the reasons best known to him. Either he was not aware about that factum or the relevant record was not available with him at that point of time.

However, it does not appeal to reason that why the revenue authorities did not carry out appropriate corrections, in Mutation No.5245-A on the basis of supplementary Award No.304-A dated 21.09.1978. It was the bounden duty of the revenue officers to ensure that relevant revenue record was updated, however, they failed to perform their duty in this regard. In this view of the matter, it can be safely concluded that answer to the question posed hereinabove is and has to be against the State and in favour of the petitioner. It is held that State can not claim ownership of any piece of land, until it is acquired in accordance with law.

So far the *bonafide* of the petitioner, for refunding the excess amount of Rs.22597.50 paisa is concerned, he has shown his *bonafide* by bringing the amount of Rs.1,04,000/- on 20.01.2014 by way of bank draft before this Court, in compliance of notice of motion order dated

16.12.2013. It was not only the principal amount of Rs.22597.50, but the said amount was being sought to be refunded by the petitioner, along with interest. On 20.01.2014, when the above-said amount by way of bank draft was brought by the petitioner and it was offered to the counsel for the State for acceptance, he sought time from this Court to seek instructions from the concerned authority.

It seems that said instruction has not been passed on to the learned counsel for the State till today, because learned counsel for the State made a request, today as well, for granting another adjournment to him, for seeking same instruction from the concerned authorities. After 20.01.2014, this case came to be listed on 10.02.2014, 06.03.2014, 08.05.2014 and 16.05.2014. On every date of hearing, learned counsel for the State sought and was granted time to seek instructions. However, the concerned authorities of the respondent department never passed on appropriate instructions to the learned counsel for the State for the reasons best known to them. At this stage, learned counsel for the State submits that no appropriate instructions were passed on to the office of Advocate General, Haryana, despite writing numerous letters to the concerned authorities of the respondent department.

Finally, on 16.05.2014, while granting another opportunity to the learned counsel for the State for seeking instructions, Deputy Commissioner, Rohtak, was also directed to file an affidavit. Accordingly, affidavit dated 19.07.2014 of Deputy Commissioner, Rohtak, was filed, but nothing was pointed out whether the authorities of respondent department were ready to accept the amount of Rs.1,04,000/- offered by the petitioner.

In view of what has been discussed hereinabove, this Court is of the considered opinion that petitioner had been treated by the respondent authorities in most arbitrary manner. Fault, if any, was with the revenue official/officer(s) of the revenue department, who did not carry out the necessary correction in the revenue record, on the basis of supplementary Award No.304-A dated 21.09.1978. For this serious omission on the part of the official/officer(s) of the respondent department, petitioner cannot be made to suffer.

It is also a settled proposition of law that mutation does not confer any title. In fact, mutation No.5245-A dated 09.06.1986 was based on original Award No.304 dated 31.03.1978, which was superseded by revised Award No.304-A dated 21.09.1978**,** reducing the acquired area from 18 kanals 7 marlas to 5 kanals 5 marlas. In this view of the matter, the ownership of remaining land measuring 13 kanals 2 marlas would be that of the petitioner and the respondent-State had no concern with said piece of land. Ordered accordingly.

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 the impugned order dated 16.08.2013 (Annexure P-3) passed by the Financial Commissioner, has been found suffering from patent illegality and perversity and the same is hereby set aside. Writ petition deserves to be accepted.

Consequently, the respondent authorities are directed to carry out the necessary correction in the relevant revenue record, on the basis of amended Award No.304-A dated 21.09.1978, without any further loss of time. Collector, Rohtak-respondent No.2 shall ensure that appropriate correction is carried out in the revenue record, qua Mutation No.5245-A dated 09.06.1986, on the basis of amended Award No.304-A dated 21.09.1978**,** at an early date, but in any case within a period of two months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.11.2016
mks

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No