IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25391 of 2016
Date of decision: 08.12.2016

Deva Singh and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.K. Agnihotri, Advocate
for the petitioners.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 04.04.2016 (Annexure P-7) passed by learned Financial Commissioner, Haryana, whereby he set aside the order of Assistant Collector 2nd Grade in a mutation matter, petitioners have approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned order.

Heard learned counsel for the petitioners.

Learned counsel for the petitioners rightly could not deny this material fact that order, whereby Assistant Collector 2nd Grade sanctioned the mutation, was an ex-parte order. No notice was issued to private respondents No.4 to 11 nor any opportunity of being heard was granted to them. Mutation was sanctioned behind their back. When the private respondents came to know about sanctioning of the mutation, they filed their appeal, which came to be dismissed by learned Collector, only on the ground of delay and not on merits. Similarly, the revision petition was dismissed by learned Commissioner, upholding the order passed by learned Collector, whereby the appeal of private respondents was dismissed on account of delay alone. Under these circumstances, this Court feels no hesitation to conclude that learned Financial Commissioner committed no error of law, while undoing the grave injustice done to private respondents by passing the impugned order and the order passed by learned Financial Commissioner deserves to be upheld.

Before arriving at just conclusion, learned Financial Commissioner discussed each and every relevant aspect of the matter and recorded cogent findings, which have been found based on sound reasons. Operative part of the impugned order dated 04.04.2016 (Annexure P-7) passed by learned Financial Commissioner, which deserves to be noticed here, reads as under: -

> *"I have heard the counsel for both the parties and perused the impugned orders as well as records placed on file. From the perusal of records, it is evident that the mutation in question was entered by the revenue official on the basis of fake affidavit submitted by the respondents. As per record, there is no signature or thumb impression of the petitioner affixed on the application and alleged affidavit. The date of purchase of the stamp papers used for the alleged affidavit was 18.01.2002 and by no stretch of imagination that could become the basis for exchange of land as mentioned in the mutation sanctioned on 09.10.2001. The*

Lambardar who identified the parties did not belong to the village where the disputed land is situated. Further, no notice was issued to the petitioner. It was the duty of the AC 2nd Grade to get the mutation sanctioned in question after verifying all the records but AC 2nd Grade did not take any pain while sanctioning the mutation in question. The AC 2nd Grade has sanctioned the mutation in a perfunctory and casual manner without verifying the records. Therefore, I allow the present revision petition and set aside the orders passed by all the Courts below. Separately, I am writing to FCR for taking stern disciplinary action against the Circle Revenue Officer who sanctioned this mutation."

A bare perusal of the abovesaid operative part of the impugned order would make it crystal clear that learned Financial Commissioner was well within his jurisdiction to pass the impugned order, with a view to do complete and substantial justice between the parties. It is so said because on the one hand, no notice was issued to the private respondents nor they were granted an opportunity of being heard before sanctioning of the mutation. On the other hand, as and when they came to know about the ex-parte order and filed appeal, the appellate as well as first revisional authority dismissed their appeal and revision not on merits but only on account of delay, thereby causing manifest injustice to them. Learned Financial Commissioner passed the impugned order, while setting aside the ex-parte order passed by Assistant Collector 2nd Grade and the same deserves to be upheld, for this reason as well.

During the course of hearing, when confronted with the abovesaid positive findings recorded by learned Financial Commissioner, learned counsel for the petitioners could not deny the same and rightly so, it being a matter of record. He also could not address any other meaningful argument referring to any prejudice caused to the petitioners, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

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 since the impugned order dated 04.04.2016 (Annexure P-7) passed by learned Financial Commissioner has not been found suffering from any patent illegality, the same deserves to be upheld. The writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

However, it is clarified that parties would be at liberty to get the mutation entered and let competent authority sanction the same, after issuing appropriate notice and granting an opportunity of being heard to all concerned, by passing an appropriate order, strictly in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

08.12.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No