

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

CWP No.14880 of 2003
Date of decision : 15.03.2017

Banta Singh

...Petitioner

Versus

Financial Commissioner Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Ms. Lavanya Paul, Assistant A.G. Punjab.

Mr. Sanjiv Gupta, Advocate for respondent Nos.8 to 10.

AMIT RAWAL, J. (Oral)

The petitioners have approached this Court seeking indulgence of this Court for issuance of writ in the nature of certiorari for quashing the impugned orders (Annexure P-9 and P-10) on the premise that land measuring 6 kanals 4 marlas situated in revenue estate of Samana, Tehsil Samana, District Patiala on 06.06.1957 was allotted to one Kharak Singh son of Dulla Singh, by the Rehabilitation Department, who sold the same to the petitioner vide registered sale deed dated 06.06.1957 (Annexure P-1). Mutation thereafter was duly sanctioned. The name of the petitioner was incorporated and reflected in the jamabandi for the year 1962-63.

Mr. Amit Jain, learned counsel appearing on behalf of petitioner submits that respondents, on the basis of some Sale certificate purportedly issued by the Managing Officer-cum-Tehsildar Sales dated 10.10.1969 after almost 20 years, moved an application for sanctioning the mutation which was sanctioned on 29.08.1990 at the back of the petitioners. Having left with no other option, two appeals were filed, one under Section 8 of the Punjab Package Deals Properties (Disposal) Act, 1976 before the Sales Commissioner, Samana as was then applicable by challenging the sale certificate, as sale certificate did not bear signature of Managing Officer-cum-Tehsildar Sales and one regarding the mutation. Ultimately, though one matter was decided in favour of the petitioners but with regard to sale certificate against the petitioners and ultimately vide impugned orders, both the appeals, aforementioned, have been dismissed.

He submits that principles of natural justice have blatantly been violated. If at all the mutation was to be effected, petitioners in whose name mutation has been sanctioned and reflected in jamabandi ought to have been given a notice. The findings given by the authority is that the allotment in favour of Kharak Singh stood cancelled and, therefore, registered sale deed would pale into insignificance.

He submits that such an action on the part of authority without affording opportunity is not assailable in the eyes of law.

Per Contra, Mr. Sanjiv Gupta, learned counsel appearing on behalf of respondent Nos.8 to 10 submits that sale certificate could not have been challenged after a period of 24 years and rightly so, has been upheld and has been held to be valid one and urges this Court for upholding the

orders as there is no question of law, much less, any point of determination has arisen for invoking the doctrine akin to judicial review.

I have heard learned counsel for the parties and appraised the paper book.

The fact remains that mutation rightly or wrongly though have been sanctioned in favour of respondents cannot remain in abeyance as it does not confer title. The aforementioned view of mine is derived from judgment rendered by Division Bench of this Court in *Jagjit Singh Vs. Divisional Commissioner, Patiala and others, 2012(13) RCR (Civil) 96*. I am of the further opinion that petitioners should have gone to the Civil Court to establish the right of ownership by leading direct and cogent evidence, much less, challenging the sale certificate as cause of action accrued to petitioners only in 1990 and not in 1969 as it had not seen the light of the day.

I am of the view that instead of pondering on the issues, this Court would not be having the jurisdiction to deal with the evidence as it would be domain of the Civil Court as parties have to lead evidence to establish ownership by placing on record the documents and in terms of provision of Code of Civil Procedure, Evidence Act etc.

However, in case petitioners chose to file the suit within a period of three months from today, period spent herein shall deemed to be condoned, in essence, cause of action would arise from today.

The Civil Court shall decide the matter uninfluenced with the findings rendered by the quasi judicial authorities and equally so, the respondents shall also take up all the pleas.

With the aforementioned observations, present writ petition stands disposed of.

15.03.2017
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**