

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

CWP No.11523 of 1998
Date of decision : 08.05.2017

Chander Bhan and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sudhir Hooda, Advocate for the petitioners.

Mr. Indresh Goel, Addl. A.G. Haryana.

AMIT RAWAL, J. (Oral)

This is writ petition challenging the order dated 29.09.1993 (Annexure P-3), whereby appeal filed by Munsiram and others against the order dated 18.05.1992 (Annexure P-1) of Assistant Collector, Ist Class, Naib Tehsildar, Rohtak, has been allowed.

Daya Nand and Rameshwar respondent Nos.1 and 2 in the revision petition before the Commissioner had filed an application on 17.10.1989 for partition of the land measuring 358 kanals 4 marlas alleging themselves to be co-sharers in it. Purni, Jai Singh, Chand Ram and Main Pal as respondents were impleaded. They filed objection on 25.01.1990 against the "Naksha Ka" raising the question of title. The Assistant

Collector, Grade-I vide order dated 02.02.1990 accepted the objections and kept the proceedings pending and relegated parties to seek adjudication of the title in the first instance and by granting liberty to seek restoration of the partition proceedings.

An application dated 29.11.1991 on behalf of one Daya Nand for restoration of partition proceedings was moved. The Assistant Collector without issuing notice of the application to the concerned parties restored the partition proceedings and completed the proceedings on 18.05.1992 which was impugned by the Munshi Ram and others by way of an appeal before the Collector which was dismissed, and, thereafter, preferred revision petition before the Commissioner. The Commissioner vide order dated 29.09.1993 accepted the revision petition and partition proceedings were held to be null and void. Pith and substance of the order was regarding the proof of the disputed land being shamlat deh or not and further held that partition proceedings in the absence of the notice to the Gram Panchayat being shamlat deh was illegal. It is a matter of record that predecessor-in-interest of the petitioner on 09.05.1994 filed suit for declaration challenging the order dated 29.09.1993 (Annexure P-3) passed by the Commissioner being illegal and void and during the pendency of the suit, petitioner had purchased the land from Surat Singh and Sajjan Kumar vide registered sale deed dated 12.08.1996. However, the suit was dismissed vide judgment and decree dated 17.11.1997 and appeal preferred therein was accepted by the Lower Appellate Court vide judgment and decree dated 09.03.1998 but it was held that order of the Revenue Court cannot be challenged before the Civil Court and the plaint was ordered to be returned for presentation before

the Court of competent jurisdiction. It is in this aspect of the matter, the present writ petition has been filed.

The grievance of the petitioner in the present writ petition is that Commissioner had no original jurisdiction to try the question of title and revision petition came before the Commissioner challenging only the orders dated 18.05.1992 (Annexure P-1) and 19.05.1993 (Annexure P-2). The orders are vague and self-contradictory. It does not make any head and tail. The Commissioner had misconstrued and misinterpreted the conditions mentioned in Shart-Wajib-Ul-Arj of Village Jassia and thus findings that the land is apparently of shamlat deh, is based on surmises and conjectures, much less, without basis. Even the alleged Shart-Wajib-Ul-Arj clarified that the land in cultivation will not be used for grazing cattles and, therefore, challenge to the order dated 29.09.1993 (Annexure P-3) cannot be held to be hit by doctrine of delay and latches, owing to the filing of the suit.

The stand of the respondent No.2 in the written statement is that Punjab Village Common Lands (Regulation) Act, 1961 has been amended and Section 13(b) has been provided wherein remedy has been provided to file suit for declaration regarding title. The partition proceedings can only be initiated after having obtained the declaration qua the title.

Since, there is dispute between Gram Panchayat proprietor of Panna regarding declaration of title, remedy would be under Section 13(b) of 1961 Act and land has been left out for 'charand' and being shamlat deh under Section 2(g)(1). The petitioners have failed to attach the copy of the jamabandies as alleged in para No.2 of the writ petition and thus urges this

Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that order of the Commissioner is perfectly legal and justified and do not call for interference, for, concededly land in the jamabandi is reflected as shamlat deh. There is no entry in the revenue record of any common use.

The petitioners have not been able to establish the ownership of the land, until and unless such fact is not established whether it is of shamlat deh or of proprietors, the partition of the same could not have been done. It is also matter of record that proprietor or non-proprietor have objected to the partition proceedings. There is no proper service of the proceedings. Shart-Wajib-Ul-Arj Ex.R1 referred to by the Commissioner reveals that in the year 1909-10, entire land except cultivating land was left open for grazing the cattle of the whole village and the same very entry was repeated in Shart-Wajib-Ul-Arj of 1958-59, thus, in the absence of the decision of the title, there was no occasion for Assistant Collector, Ist Grade to restore the partition proceedings without issuing notice to other parties. This fact has not been noticed. Even otherwise, the order of the Commissioner is assailable before the Financial Commissioner. Be that as it may but the fact remains that once Assistant Collector, Grade-I in the earlier proceedings had ordered for keeping the partition proceedings pending with liberty to restore them until and unless the question of title is decided, no occasion had arisen contrary to what has been noticed above. The application seeking restoration of the proceedings was not maintainable.

Keeping in view the aforementioned facts and circumstances of

the case and the reasoning assigned by me, I do not find any illegality in the order of the Commissioner and cannot be said to be vitiate in law or cannot be said to be falling within the realm of judicial review.

Resultantly, same is upheld.

Resultantly, writ petition is dismissed.

08.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No