

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.18840 of 1998
Date of Decision: May 19, 2017

Sube Singh @ Sube & another

...Petitioners

Versus

Dharam Chand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Sunil Panwar, Advocate,
for the petitioners.

Mr.Kulvir Narwal, Advocate,
for respondent Nos.1 to 3.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (oral)

The challenge in the present writ petition is to the order dated 27.8.1998 rendered by the Financial Commissioner, Haryana on reference received from the Commissioner with regard to the change of khasra girdawari for the year 1988.

Mr.Sunil Panwar, learned counsel representing the petitioners submits that the petitioners are the landowners and the private respondents are claiming themselves to be occupancy tenants. The factum of possession by the respondents in favour of the petitioners has been accepted during spot inspection. All the authorities, except the Commissioner, have rendered a finding of fact in favour of the petitioners, but the fact noticed by the Financial Commissioner that the respondents were not intimated at all

before making the entry in the khasra girdawari, is not sustainable in view of the affidavit of the Chowkidar Annexure P-5 dated 25.11.1998, thus, the order is not sustainable and liable to be set-aside.

Per contra, Mr.Kulvir Narwal, learned counsel for respondent Nos.1 to 3 submits that there is no illegality or perversity in the order under challenge and the same is liable to be accepted. In case the petitioners were aggrieved, they would have gone to the Civil Court. The previous khasra girdawaries reflect the possession of the private respondents and, therefore, the solitary entry made at the back of the petitioners cannot be tinkered in the manner and mode as indicated above.

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

The order (Annexure P-1) regarding the spot inspection and the contents of the affidavit (Annexure P-5) read as under:-

“Order dated 15.11.1993

This application has been received with the order of the Collector that the above case be disposed. All evidence of both the parties recorded in accordance with law. Opportunity given for arguments. First party, in order to delay case, got adjournments mostly. On that account, arguments could not be heard. So case fixed at the spot. The spot was inspected. Spot inspection report is separately attached on the file.

On the spot inspection, I have reached the conclusion that at the spot, possession has been testified to be of the 2nd party, which has been conceded by counsel for the first party. Of first party, no.2 and 3 were present at the spot, who have admitted possession of 2nd party on disputed land. Correction of girdawari can be only in accordance with spot. Hence application given by applicant is dismissed.”

Contents of affidavit (Annexure P-5)

1. *That I got served notice of change of Girdawari from S.Sis Ram, Shankar sons of Kishan in favour of Attar Singh son of Bhole Mange son of Juglal, Bani Singh son of Neki etc.given to me on the same day, on which the patwari Halqa, Nogaon gave it to me, on the heirs Dharam Chand, Sube, Daya Nand sons of Sis Ram and Jai Lal son of Shankar, of Sis Ram and Shankar and gave information of the same to the patwari the same day.”*

Be that as it may, I need not ponder upon the causing of the entry in the khasra girdawari for the year 1988. It was incumbent upon the respondents to establish their possession by reflecting and placing on record the previous khasra girdawaries before the authorities below, much less in this Court by way of written statement. Copies of khasra girdawaries from 1988 to 1996 have been placed on record as Annexures P-11 to P-15 showing the possession of the petitioners.

In case, the private respondents are aggrieved of the same, they can claim independent rights under the Punjab Security of Land Tenures Act or Punjab Tenancy Act or by filing a civil suit under Section 45 of the Punjab Land Revenue Act as there is no limitation for claiming the title.

In my view, the impugned order is not sustainable and is hereby set-aside.

Writ petition stands disposed of in the aforementioned observations.

May 19, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No