IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 12764 of 2011
Date of decision : July 11, 2017

Birender Singh and others
.... Petitioners
Versus

Financial Commissioner (Appeals-1) Punjab and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Anish Setia, Advocate
for the petitioners.

Ms. Deepali Puri, Addl. A.G.Punjab.

Mr. Munish Gupta, Advocate
for respondent Nos. 4 to 6.

Mr. Amit Jain, Advocate
for respondent No.15.

Mr. Harjot Singh Bedi, Advocate
for respondent No.26.

Mr. Naginder Singh Vashist, Advocate
for respondent Nos. 113,213, 408 & 455.

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<u>RAKESH KUMAR JAIN, J (oral).</u>

This petition has been filed seeking to quash the order of the Financial Commissioner dated 2.8.2007 (Annexure P-4) and dated 8.9.2010 (Annexure P-10) passed by him dismissing the review application of the petitioners.

In short, the predecessors-in-interest of the petitioners and respondent Nos. 4 to 8 and 11 to 16 were owners of 836 bighas and 9 biswas of land situated within the revenue estate of Village Bhambuan, Sub Tehsil Dudhan Sadhan, Tehsil and District Patiala.

The petitioners filed an application under Section 111 of the Punjab Land Revenue Act, 1887 (hereinafter referred as 'the Act') for separation of the khewat as the land was joint of the co-sharers. At the time when preliminary objections were raised, reply was filed and it was stated that the land has already been partitioned by way of private partition in the year 1995, therefore, the application for partition is not maintainable. However, the A.C. Ist Grade, vide his order dated 8.12.2000, proceeded with the partition and held that the question of title does not arise and passed the order and on 11.1.2001 dismissed the objections of the respondents and asked for preparation of naksha. The respondents filed an appeal before the Collector which was dismissed and also filed revision petition before the Commissioner, Patiala who affirmed the order of the Collector and then the respondents filed revision petition before the Financial Commissioner (Appeals), Patiala bearing No.197 of 2006. The said revision was allowed by the Financial Commissioner accepting the plea of the respondents that the land already stood partitioned by way of family partition in terms of Section 123 of the Act. The review was filed against the said order which was allowed by the Financial Commissioner on 7.2.2008 by a short order. The respondents challenged that order dated 7.2.2008 by way of CWP No. 4411 of 2008. The said writ petition was allowed on 14.5.2009 and directions were issued but since there was some error, the respondents filed LPA No. 789 of 2009 in which it was clarified that the review shall be heard by the Financial Commissioner-Sh. V. K. Srivastava, IAS. Accordingly, the review application was heard but it was heard by somebody else. It is submitted that since Sh. V. K. Srivastava was posted as Director, Institute of Administration, therefore, Romila Dubey, Financial Commissioner assigned this matter to Gurinderjit Singh Sandhu, Financial Commissioner, who has passed the impugned order dated 8.9.2010.

Counsel for the petitioners has submitted that the Financial Commissioner has committed an error in dismissing the review application only on the ground that he has jurisdiction to entertain the application for review if there is a clerical mistake or some new facts have been brought. It is submitted that the power of review is that the authority could review the matter on the basis of evidence after exercise of due diligence which was within their knowledge or could not be produced by them earlier. The whole case of the petitioners is based upon a copy of mutation dated 24.3.1995 and the order passed on mutation rejecting the mutation applied by the respondents on the basis of rapat No. 203 dated 14.3.1995. It is submitted that since the mutation was not sanctioned, therefore, there was no evidence that there was private partition between the parties in terms of Section 123 of the Act.

On the other hand, counsel for the respondents has submitted that though the Financial Commissioner recorded in his order that he can only correct the clerical mistake but has also taken into consideration the mutation which is sought to be brought to his notice. In this regard, the observations made by the Financial Commissioner in his order are also relevant which read as under:-

> *"Even otherwise, I have also seen the mutation sheet where mutation has been entered on the basis of Rapat No.203 of 14.3.1955. On this sheet, the Tehsildar has passed order on 23.5.1955 rejecting the mutation, however no orders rejecting the 'Rapat; per se has been passed by the Tehsildar. Thus existence of 'Rapat' is not under dispute and Financial*

> *Commissioner (Appeals-I) vide his order dated 2.8.2007 has considered this 'Rapat' and passed order based on the facts before him. No cause for review is made out and accordingly, the review petition is dismissed."*

It is also submitted by counsel for the respondents that the co-sharers are multiplied in huge number with the passage of time and they have disposed of most of the land inherited by them or otherwise, with specific khasra numbers. In this regard, the respondents have referred to some mutations which are made part of the reply as per which the co-sharers have transferred specific khasra numbers by way of gift etc. It is also submitted that with the passage of time the nature of land in question has been changed from agricultural to residential etc. and that could become possible when the land has been sold by the co-sharers by way of specific khasra numbers otherwise the purchaser would not have purchased the shares for the purpose of raising construction.

In this view of the matter, I do not find any reason to differ with the original order passed by the Financial Commissioner dated 2.8.2007 (Annexure P-4) as also the order dated 8.9.2010 (Annexure P-10) passed in review application.

Accordingly, the writ petition stands dismissed.

(RAKESH KUMAR JAIN)
JUDGE

July 11, 2017
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Whether speaking/reasoned **Yes/No**
Whether Reportable **Yes/No**