

219

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

CWP-10535-2015

Date of decision : 17.04.2017

Gian Chand

... Petitioner(s)

Versus

Deputy Commissioner, Jalandhar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Singla, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the order dated 23.09.2014 (Annexure P-21) passed by respondent No.1/Deputy Commissioner, Jalandhar, whereby the mutation of the property, in dispute, has been sanctioned in the name of Gram Panchayat by relegating the petitioner to avail the remedy under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act'), much less, order dated 31.03.2015 (Annexure P-21), whereby the order of the Deputy Commissioner has been complied with by the Assistant Collector 1st Grade-cum-SDO (Civil), Phillaur/respondent No.2.

Mr. R.K. Singla, learned counsel appearing on behalf of the petitioner submits that before year 1900, the proprietors of Village Tooran, had given more than 80 kanals' land to Ram Dass Sadh Udasi. After his

death, Dharam Dass, his son, succeeded from the bandobast muafi, which remained in existence upto 02.11.1916. After death of Dharam Dass, mutation bearing No.1083 was sanctioned in favour of three sons namely, Devi Dass, Mathura Dass and Niranjan Dass in equal shares. Partpatwar pertaining to aforementioned village was obtained on 27.05.1999 and mutation was reflected in Annexure P-1 i.e. Copy of jamabandi partpatwar. The residents of proprietor Village Tooran and adjoining villages, started asserting the property, which compelled the petitioner to approach the Sikh Gurudwara Tribunal, Lahore under the provisions of Section 8 of the Sikh Gurudwara Act, 1925 (for short 'the 1925 Act) and vide order dated 09.05.1935 (Annexure P-2), it was held that place was not being used for public worship by Sikhs. Gurdas, Dharaman, Darshan and Hari Singh sons of Harnam Dass instituted a Civil Suit bearing No.96 of 1951 for possession of land measuring 16 kanals 7 marals, which was decreed vide judgment and decree dated 27.12.1952. The appeal preferred thereto was also dismissed on 26.11.1953 by making a modification to the effect that decree of possession of land as Sanjidar would stand in the name of Hari Dass eldest son alone. The appeal bearing RSA No.114 of 1952 preferred had been dismissed by this Court vide order dated 22.09.1958 (Annexure P-4). In fact respondent No.5 has no right and title in the property, yet started asserting the right. The land measuring 11 kanals 4 marals i.e. 2 kanals 4 marals and remaining land, was acquired by the State of Punjab, situated within the revenue limits of Village Tooran, for construction of road and the Sarpanch of the Village suffered a statement before the Collector that the Panchyat does not want any compensation of the aforementioned land and the Award, on such statement, was pronouncement on 20.12.1972

(Annexure P-6). However, Mathura Dass, during his life, executed a registered Will dated 18.05.2009 (Annexure P-7). After his death, the property was mutated in favour of the petitioner on 22.11.2012 in the *roznamcha* (Annexure P-10). The appeal preferred by respondent Nos.6 to 9 before the Collector was dismissed as withdrawn. The petitioner was astonished, to receive the notice of order of the Deputy Commissioner, reviewing the earlier mutation bearing No.1568 pertained to village vide Annexure P-14 and the consequential effect of the same by the Assistant Collector 1st Grade.

He further submits that the mutation does not confer any title and succession cannot be kept in abeyance, in essence, it is only for fiscal purposes. In case, anybody had a grievance to the same, the remedy is to file a civil suit by proving the ownership, much less, under the provisions of Section 45 of the Punjab Land Revenue Act. All these aspects have not been taken into consideration particularly the Deputy Commissioner could not have reviewed the mutation at the back of the petitioner.

This Court had already issued notice of motion to the State and as well as to the private respondents i.e. Respondent Nos.5 and 6. Today, there is no representation on behalf of the private respondents, even on 16.03.2017, much less, since 2015, they had not filed any written statement/reply.

Mr. Yatinder Sharma, Addl. A.G., Punjab submits that the act done by the Deputy Commissioner being the head of the revenue authorities is perfectly legal and justified and do not call for inference. The remedy given to the petitioner can always be availed, but did not dispute the possession of the petitioner. In this regard, he has drawn the attention of

this Court to the affidavit of Jasbir Singh, Sub-Divisional Magistrate, Phillaur/respondent No.2. For the sake of brevity, the relevant paragraph of the same reads as under:-

"That after making spot inspection, the Tehsildar, Phillaur has sent his report vide letter No.481/Reader-1 dated 20.08.2015 that Sh. Gain Chand s/o Mathura Dass resident of Village Tooran, Tehsil Phillaur, District Jalandhar is found to be in possession of land measuring 21 kanals comprising khasra No.861 min(3-11) Rice, (2-0), 866 min (2-0) Rice, 868 min (2-0) bajra chara (1-0), Har-har tootal (3-0), 869 min (2-0) Bajra chara (1-9) Arhar total (3-9). A copy of report sent by the Tehsildar, Phillaur is attached as Annexure 'A'."

I have heard the learned counsel for the parties and appraised the paper book and of the view that the law with regard to the mutation being having not kept in abeyance is no longer *res integra* in view of the *ratio decidendi* culled out by the Division Bench judgment of this Court rendered in '**Jagjit Singh V/s Divisional Commissioner, Patiala and others**' **2012 (13) RCR (Civil) 96**, as there was difference of opinion by two Courts. The mutation is only for fiscal purposes as it does not confer any ownership and title. The District Magistrate at least ought to have followed the principles of natural justice by calling upon the petitioner by reviewing the previous mutation. None of the members of the Panchayat. at any point of time, assailed the mutation, much less, respondent Nos.5 and 6 withdrew the appeal challenging the mutation in favour of the petitioner on the basis of the Will. If at all, anybody had a grievance with the Will, the remedy is to go to the Civil Court and get the adjudication. The revenue authorities, in my view, are oblivious of the aforementioned position of law.

Keeping in view the aforementioned facts, the impugned orders dated 23.09.2014 (Annexure P-14) passed by respondent No.1/Deputy Commissioner, Jalandhar and order dated 31.03.2015 (Annexure P-21) of the Assistant Collector 1st Grade, are not sustainable in the eyes of law being opaque and arbitrary and the same are hereby set aside.

The remedy, if any, for the aggrieved party is to go to the Civil Court and establish the ownership by leading direct and cogent evidence.

Resultantly, the present writ petition is allowed in the aforementioned terms.

17.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No