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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17574-2013
Date of decision : 27.02.2017

Naurata Singh

... Petitioner(s)

Versus

Financial Commissioner (Revenue) Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the petitioner.

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

Mr. R.S. Chauhan, Advocate
for respondent Nos.4 to 6 and 12.

Mr. Jaideep Verma, Advocate
for respondent No.7.

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AMIT RAWAL, J. (ORAL)

The petitioner being applicant in a petition under Section 111 of the Punjab Land Revenue Act (for short 'the Act') is aggrieved of the order dated 27.09.2012 (Annexure P-9) of the Financial Commissioner (Revenue), Punjab, whereby the ROR bearing No.704 of 2110 at the instance of affected parties i.e. Baldev Singh and Bakshish Singh has been allowed on the premise that the mode of partition has been violated.

Mr. Vijay Lath, learned counsel appearing on behalf of the petitioner submits that no reasoning for the alleged finding has been given. In fact *sanad taksim* had already been passed and the remedy to the affected party was straight away to go to the Financial Commissioner in a revision petition under Section 16 of the Punjab Land Revenue Act, but there has to be a categoric finding for setting aside the order under challenge.

Per contra, Mr. R.S. Chauhan, learned counsel appearing on behalf of respondent Nos.4 to 6 &12, submits that during the pendency of the writ petition, the property had exchanged hand which has been reflected as per the sale deed annexed with the replication. The order of the Financial Commissioner is based upon the preponderance of the evidence and therefore, does not call for interference, thus, urges this Court for dismissal of the present writ petition.

Similar argument is of Mr. Jaideep Verma, learned counsel appearing on behalf of respondent No.7.

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

For the sake of brevity, the finding given by the Financial Commissioner reads as under :-

> *"I have gone through the written arguments submitted by counsel for both the parties and the orders of the lower Courts. It transpires that the petitioners are in possession of the land in question on the basis of family partition. Moreover, it was proposed in the mode of partition that possession of the parties will be kept in tact while partitioning of the land in the question. The respondent in his application for partition of the land, before the Assistant Collector, 1st Grade had categorically mentioned that his possession be kept in tact. If his possession is to be kept in tact, then the petitioner's possession is also to be kept in tact. Contention of the respondent that after issuance of Sanad Takseem no revenue*

authority can intervene is not tenable. In numerous judgments, the Hon'ble Punjab a nd Haryana High Court has held that the Financial Commissioner can use his powers under Section 16 of the Punjab Land Revenue Act, 1887 even after sanad takseem has been issued. In the present case, conditions of Mode of Partition has been violated by disbursing the possession of one party, making it necessary for intervention at this stage. Accordingly, the revision petition is partially accepted to the extent that no possession of any parties will be disturbed. The parties are to remain in possession of their respective khasra numbers."

On going through the aforementioned finding, it is evident that no sufficient reasoning has been assigned as to how the mode of partition had been violated. There has to be a specific finding viz-a-viz the violation by comparing it with the mode of partition, much less, by *sanad taksim*. This exercise at least was required to be done by the Financial Commissioner. The Financial Commissioner was/is enjoined upon an obligation to decide the matter in a most pragmatic and reasonable manner, but not in the manner and mode as indicated above. The order under challenge is not confirming to the principles of reasonableness, thus, liable to be interfered by invoking the *doctrine akin* to '*Judicial Review'*.

Resultantly, the order under challenge is hereby set aside and the matter is remitted back to the Financial Commissioner (Revenue) Punjab to decide the controversy afresh as expeditiously as possible preferably within a period of four months from the receipt of the certified copy of this order.

Learned counsel for the parties and as well as the parties are directed to appear before the Financial Commissioner on 27.03.2017.

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

(AMIT RAWAL)
JUDGE

27.02.2017
Yogesh Sharma

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