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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14746-2015

Date of decision : 16.05.2017

Basakha Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Cheema, Advocate
for the petitioner.

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

Mr. Samrat Saggar, Advocate
for respondent No.5.

Ms. Harleen Kaur, Advocate
for respondent No.6(a).

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner-Basakha Singh, in the present writ petition, is that in pursuance to the remand order dated 28.11.2008 (Annexure P-2) of the Collector, Mukerian, no doubt the appeal at the instance of respondent No.5 was accepted and the order of the Assistant Collector, Grade-I dated 24.03.2008 was set aside, but equally so, the direction was issued to decide the controversy afresh, therefore, passing reference qua entitlement of the respondent No.5, herein and appellant therein, qua to the extent of 23 karam was just an observation. However,

the Tehsildar-cum-Assistant Collector 1st Grade, vide order dated 16.04.2009 (Annexure P-3), which reads as under:-

File perused. Counsel for the parties present. File was considered. Hon'ble Collector Mukerain vide his order dated 28.11.2008 had set aside order of this Court dated 24.03.2008 with the direction appellant Harbans S/o Ram Saran is entitled to 23 Karams front, but he has been given 14 Karams front and his possession has also been disturbed. A separate letter is issued to filed Kanungo, that all the parties be given front along side road in Khewat No.246, rectangle No.8, 9, 10 & 23 by disturbing the possession according to their share. The trees of Mango, Lichi which come to the share of other party, the person who planted it shall be himself responsible and the other party shall not compensate. Khewat No.247 shall not be disturbed. The maps be made afresh and sent to this Court before 23.04.2009. Kurrahs of all the parties shall be made separately."

has not undertaken the task and exercise of hearing the matter afresh and without taking into consideration the shortfall of the frontage of one tak of land, which according to Mr. Chemma, his client is entitled to 53 karam instead of 33 karam, in essence, he submits that while determining the shortfall of all the parties, the Collector was required to look into the respective shares of all the co sharers with regard to the frontage and should have distributed the land equally/proportionately keeping in view the potentiality and the quality of the land.

He further submits that the original memorandum of partition contained the element of payment of compensation with regard to the Mangoes trees and tube-well bore of Harbans Lal, but on remand, the Collector had written a letter to the Kanungo not to pay the compensation,

thus, the impugned order is without jurisdiction, much less, against the memorandum of partition, which was not the scope of the remand.

Mr. Samrat Saggar, learned counsel appearing on behalf of respondent No.5 submits that the order dated 28.11.2008 (Annexure P-2) has not been challenged, therefore, the petitioner cannot be permitted to rake up the issues afresh, in the absence of the challenge to the same. He can only impugn at the best the order of the Collector with regard to the non-payment of compensation. There has been an equally distribution of land. The matter is hanging since long and therefore, the whole purpose is to delay the adjudication of the partition proceedings, thus, urges this Court for affirming the impugned orders, under challenge.

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

It would be apt to reproduce the operative part of the remand order dated 28.11.2008 (Annexure P-2), which reads as under:-

"On perusal of partition papers it was found that the appellant is entitled to 23 Karams front but he has been given 14 Karams. Appellant possession has also been disturbed. Keeping into consideration the above, the appeal is accepted, order of Assistant Collector 1st Grade, Mukerain dated 24.03.2008 is set aside with the direction that case be decided afresh after hearing the parties. File be consigned to record room. File of Lower Court may be sent back."

On perusal of the aforementioned findings, the direction of the Collector, was, to decide the partition application afresh with a passing reference to the entitlement of some karam of the land in favour of respondent No.5. The Assistant Collector 1st Grade should have decided the

application for partition afresh keeping in view the principles of natural justice, much less, the provisions of Punjab Land Revenue Act, but not in the manner and mode indicated above. He has, in my view, exceeded the jurisdiction in addressing letter to the Kanungo for non-payment of compensation, which is not the scope of the reference, much less, in terms of memorandum of partition, as the conceded position with regard to the existence of the trees of Mango and Tube-well bore, has not been denied by any of the parties, therefore, ought to have taken into consideration the frontage and the share of all the co-sharers keeping in view the area i.e. two taks, should have been partitioned proportionately, much less, equal distribution, so that no person is deprived of the superior quality of land, but having not addressed to the aforementioned aspects, I am of the view that the grievance of the petitioner is wholly justified.

Keeping in view the aforementioned facts, the impugned orders dated 24.09.2014 (Annexure P-5) passed by the Commissioner and order dated 04.03.2010 (Annexure P-4) passed by the Collector and order dated 16.04.2009 (Annexure P-3) passed by the Assistant Collector 1st Grade, Mukerian, are not sustainable in the eyes of law, the same are hereby set aside and the matter is remitted to the Tehsildar-cum-Assistant Collector 1st Grade, Mukerian to decide the controversy afresh by keeping in view the observations made hereinabove as expeditiously as possible preferably within a period of four months from the date of the receipt of the certified copy of this order.

The parties and as well as through their counsel are directed to appear before the Tehsildar-cum-Assistant Collector 1st Grade, Mukerian

on 02.06.2017.

Disposed of, accordingly.

16.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No