

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 05, 2017

1. CWP No.18131 of 2013

Brijlal & another

...Petitioners

Versus

State of Haryana & others

...Respondents

2. CWP No.18156 of 2013

Brijlal & another

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr.S.S.Sahu, Advocate,
for the petitioners in both the petitions.

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

Mr.Hitesh Verma, Advocate,
for respondent No.5 in both the petitions.

Mr.Arvind Rajotia, Advocate,
for respondent No.6 in both the petitions.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Civil Writ Petitions bearing No.18131 and 18156 of 2013 as common questions of law are involved in both the cases.

The grievance of the petitioners in short is that in pursuance to

the application filed by respondent No.5 seeking partition of the land of three khasra Nos.35, 36 and 95, memorandum of partition was not prepared according to the quality and potentiality of the land. Objections were dismissed in a most erroneous and cryptic manner without assigning any reasons. Appeal was preferred before Collector within the period of limitation, yet despite having summoned the record, Assistant Collector IInd Grade ordered for preparation of Naksha-Kh, much less Sanad Takseem and on this ground, i.e., its maintainability, the Collector dismissed the appeal.

Two revision petitions were filed before the Commissioner against Naksha-Kh and as well as other order. However, one of the revision petition on behalf of the other co-sharers had been allowed by the Commissioner, Hisar Division Hisar vide order dated 21.5.2013 holding the order of the Assistant Collector IInd Grade to be non-speaking one, whereas the other revision has been dismissed. Both the parties preferred revision petitions before Financial Commissioner. The revision of the petitioners has been rejected and that of the respondent allowed. It is in this backdrop of the matter, partition proceedings are pending before the Assistant Collector IInd Grade. This fact has not been appreciated by the Commissioner while dismissing the revision of the petitioners and as well as by the Financial Commissioner.

Per contra, Mr.Hitesh Verma, learned counsel for respondent No.5 and Mr.Arvind Rajotia, learned counsel for respondent No.6 submit that there is apparent collusion in the mind of the Assistant Collector IInd Grade. Once the revision vis-a-vis of other co-sharers (present petitioners) has been dismissed, whether he could continue with the partition proceedings in pursuance to the order of the Commissioner dated 21.5.2013

titled as “Vinod Versus Hari Singh & others” or not. On merits, they submit that no documentary evidence has been placed on record to prove the quality and potentiality of the land. This was only, for the sake of it, to delay the partition proceedings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the order of the Commissioner dated 21.5.2013 (Annexure P-11) is not in dispute. The quasi-judicial authorities are enjoined upon an obligation to be consistent in the orders. On one side, some other Commissioner dismissed the revision preferred by petitioners Brij Lal and others against the order of the Collector regarding the non-consideration of the objection qua the memorandum of partition. The proceedings before the Assistant Collector IInd Grade are pending adjudication. It would be a total farcical exercise in upholding the orders, for, the order of the Assistant Collector IInd Grade dismissing the objection of the present petitioners and that of the other co-sharers was in the same manner, i.e., without giving any reasons and, therefore, has to be treated as cryptic. This was the core question to be noticed by the quasi-judicial authorities.

Resultantly, the impugned orders Annexures P-3, P-5, P-6 and P-7 in CWP No.18131 of 2013 and orders Annexures P-5, P-7, P-8 and P-9 in CWP No.18156 of 2013 are not sustainable and hereby set-aside.

Since the matter is pending before the Assistant Collector IInd Grade in pursuance to the order dated 21.5.2013 of the Commissioner, let the proceedings of the partition, while considering the objection of the petitioners regarding the potentiality and quality of the land, be considered afresh preferably within a period of six months from the date of receipt of

certified copy of this order.

Writ petitions stand allowed in aforesaid terms.

April 05, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No