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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18744-2014

Date of decision : 15.02.2017

Tarsem Singh and another

... Petitioners

Versus

Financial Commissioner Appeals, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the petitioners.

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

Mr. Gagandeep Singh, Advocate for
Mr. A.S. Manaise, Advocate
for respondent Nos.5 and 6.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned order 24.10.2013 (Annexure P-9) passed by the Financial Commissioner (Appeals), whereby the petition bearing ROR No.869 of 2008 preferred by the private respondent(s), namely, Chain Singh and Labh Singh filed against the order dated 08.10.2008 rendered by the Commissioner, Jalandhar Division, Jalandhar, dismissing the revision petition against the order dated 29.08.2008 passed by the Collector, Gurdaspur, has been allowed and the matter has been remanded back to the Assistant Collector, 1st Grade, Gurdaspur for deciding the matter afresh.

Mr. R.S. Chauhan, learned counsel appearing on behalf of the petitioners submits that the finding recorded by the Financial Commissioner is totally against the settled law. The respondent(s) were the petitioner(s) before the Financial Commissioner, who through registered sale deed purchased a specific khasra number. They are in possession of the same, but the tube-well had been allotted jointly, thus, these facts need to be verified by the Assistant Collector and only on this account, the matter has been remanded back which is totally perverse. The Financial Commissioner lost the sight of the fact that the controversy whether the co-sharers while purchasing the khasra number can claim the right on the same khasra number in view of the judgment rendered by the Full Bench of this Court in "Ram Chander V/s Bhim Singh" 2008 (3) RCR (Civil) 685, thus, the order, under challenge, suffers from lack of 'application of judicial mind'.

On the contrary, Mr. Gagandeep Singh, Advocate for Mr. A.S. Manaise, learned counsel appearing on behalf of private respondents Nos.5 and 6 submits that the findings rendered by the Financial Commissioner with regard to the determination of the share of the respondent(s) in lieu of having purchased the khasra number is required to be determined. In fact the mode of partition has to be drawn in view of the aforementioned facts as there is no order with regard to the tube-well. The order, under challenge, was passed on 24.10.2013 and there was no stay with regard to the proceedings. Perhaps the proceedings before the Assistant Collector must have culminated into final order, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised

the paper book.

For the sake of brevity, the order dated 24.10.2013 (Annexure P-9) reads as under:-

"After going through the arguments put forth by counsel for the petitioner, I have reached to the conclusion that the petitioners have purchased some of the specific khasra numbers through registered sale deed and they are in the possession of the same. Similarly, the tubewell which has been installed by the petitioners has been allotted to the petitioners and respondent No.1 jointly. Both the above mentioned facts need to be verified by the Assistant Collector 1st Grade, Gurdaspur. Accordingly, the case is remanded back to the Assistant Collector 1st Grade, Gurdaspur who shall pass the orders afresh after examining both the above mentioned facts and objections of both the parties, if any. The parties are directed to appear before the Assistant Collector 1st Grade, Gurdaspur on 12.06.2014. Announced. File be consigned to record room."

The aforementioned order is most innocuous, it does not affect the right of the petitioners, who have unnecessarily challenged the order of the remand. In fact the proceedings reached to the Court of the Financial Commissioner in pursuance to the partition application preferred by respondent No.1 and vide order dated 07.03.2008, final partition was sanctioned. No harm and prejudice would be caused to the petitioners in view of the remand order. This Court while issuing notice of motion had not stayed further proceedings. It is too late in a day to assail the order. This Court has not been apprised of the subsequent proceedings being held by the Assistant Collector 1st Grade.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order, under challenge, much less, no ground for interference is made out and accordingly, the present writ petition is dismissed.

15.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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