

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

CWP No. 22285 of 2013(O&M)

Date of decision : 18.04.2017

Sewak Singh and others

..... Petitioners

versus

Financial Commissioner, Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Anil Khetarpal, Sr. Advocate with
Mr.Ivneet Singh Pabla, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana.

Mr, Hemraj Bhardwaj, Advocate
for respondents No. 5 to 12.

AMIT RAWAL, J.

The grievance of the petitioners is that all possible efforts have been made to stall and delay the application for partition submitted way back in the year 1979 in respect of the land measuring 3471 kanals 03 marlas situated in village Roshanpur, Tehsil and District Ambala.

Mr.Anil Khetarpal, Senior Advocate assisted by Mr.Ivneet Singh Pabla, Advocate submits that on many occasions the order of the Assistant Collector had been set aside, in essence the matter was remanded back to decide the controversy afresh while taking into consideration various points regarding service upon the tenants to be effected ; the nature of the land being Charand or not, whether the Gram Panchayat would be in possession muchless, filing any objection; and vide order dated 16.04.1993 (Annexure P-2) partition proceedings were finalised taking into

consideration the objections of concerned persons, yet the aforementioned order was set aside and a fresh order dated 28.2.2002 (Annexure P-4) came to be passed. The aforementioned order was set aside by the Commissioner and upheld by the Financial Commissioner on the premise that no sincere effort has been made to show the process of remand which emerged into reiterating order dated 16.04.1993 (Annexure P-2). He submits that it is no body's case that the part of the property is Charand and belongs to Gram Panchayat in view of the contents of para 13 of the written statement. In effect it is no body's case that part of the land sought to be partitioned belongs to the Panchayat. Even the Sarpanch suffered a statement that the land does not belong to Gram Panchayat. The order under challenge is bereft of reasoning, muchless how and in what manner the order of the Assistant Collector is wanting. Revision petition contained a specific ground which had not been taken care of by the Financial Commissioner. Thus there is a fallacy muchless illegality. Thus, learned counsel prayed for setting aside the impugned order dated 25.7.2006 (Annexure P-7) rendered by the Commissioner and order dated 15.5.2012 (Annexure P-9) passed by Financial Commissioner.

Per contra, Mr. Rajbir Singh, learned AAG, Haryana assisted by Mr. Hemraj Bhardwaj, learned counsel appearing for respondents No. 5 to 12 submit that the orders under challenge are perfectly legal and justified and do no call for interference as no illegality or misconception muchless any jurisdictional error has been pointed out. The scope of interference under Article 226 of the Constitution of India is limited. Stating that none of the grounds fall under the purview of judicial review and sought for dismissal of the writ petition.

I have heard learned counsel for the parties and perused the paper book and am of the view that as both Commissioner and Financial Commissioner have not assigned any reason as to in what manner the order of the Assistant Collector dated 28.02.2002 (Annexure P-4) of remand is not in consonance with the directions of the previous order dated 24.11.1995. In order to substantiate the view of mine, I deem it appropriate to extract the relevant portion of the order of the Commissioner which is as follows:-

“But in this case, Assistant Collector, IInd Grade, Ambala in his order dated 28.2.2002, while deciding this case not complied with order passed by Appellate Courts, but restore and upheld the partition dated 16.4.93 by his predecessor, he has also decided that no land belonging to panchayat was included in panchayat and, whereas order dated 16.4.1993 passed by Assistant Collector was already set aside by Collector, Ambala vide its order dated 24.11.1995 and remanded back with the direction to consider the partition case in view of order passed by appellate courts. Against this order passed by Collector applicants filed appeals which was dismissed by this court vide its order dated 17.11.1999. After that Hon'ble Finance Commissioner, Haryana also dismissed the appeals vide its order dated 3.10.2000. Pursuant of these orders it is clear at that time Assistant Collector, IInd Grade, Ambala passed the orders of partition ignoring the direction passed by appellate authorities, whereas upheld the order dated 16.4.1993 which was already set aside by appellate authorities. In addition to that Collector Ambala ignoring the facts available on record dismissed the appeal preferred by parties vide its order dated 8.11.2004. In my considered view I find irregularities in order passed by courts below, I accepted the revisions filed by present applicants and set aside the order passed by courts below.”

The order of the Financial Commissioner is also to the similar effect. In effect no reason has been assigned for the same. The relevant portion of the order of the Financial Commissioner dated 15.5.2012 (Annexure P-9) is as under:-

“ Arguments in this case were heard from both the sides. I have referred to the relevant record and have also gone through the order dated 25.7.2006 passed by Commissioner, Ambala, order dated 8.11.2004 passed by Collector Ambala and order dated 28.2.2002 passed by AC 2nd Grade Ambala. Taking the grounds as given in the petition, the Ld. Counsel for the petitioner argued that the order dated 25.7.2006 passed by Commissioner Ambala observes to set aside. On the other hand Ld. Counsel for the respondents argued that the order dated 25.7.2006 passed by Commissioner is well-reasoned and therefore may be sustained. A perusal of the Commissioner order dated 25.7.2006 reveals that he has minutely discussed the facts of the case and law applicable in this case. Commissioner has pinpointed that after the FC's order dated 3.10.2000, Assistant Collector while passing his orders dated 28.2.2002 sustained the order dated 16.4.1993 passed by his predecessor, whereas order dated 16.4.1993 was already set aside by Collector, Divisional Commissioner and Financial Commissioner.

The Ld. Counsel for the respondents drew my attention to para 5 of the Divisional Commissioner's order, where it has been clearly established that after AC 2nd Grade's order dated 16.4.1993 was set aside by the higher Courts right up to Financial Commissioner, Assistant Collector while passing the order dated 28.2.2002 did not comply with the orders passed by higher courts. Finding deficiencies in order dated 16.4.1993, Collector vide his order dated 24.11.1995 had remanded the case. Commissioner vide his order dated 17.11.1999 had upheld the Collector's order. Finally the Financial

Commissioner vide his order dated 3.10.2000 had dismissed the revision petition. While agreeing with the arguments advanced by Ld. Counsel for the respondents at this stage, I find that interfering with the Commissioner's order dated 25.7.2006 is not warranted and the same is upheld. The preset petition is therefore dismissed.”

After a cumulative reading of the aforementioned orders, I am of the view that the authorities at the helm of affairs though obliged to pass reasoned and speaking order yet have not resorted to and such orders have frustrated the purpose of the application for partition. They should be very wary and circumspect in dealing with the matter particularly must assign a cogent and pragmatic reason as to how and in what manner the order under challenge is not sustainable. Mr.Khetarpal at this stage has requested this Court that on many occasions the matter has been remanded back and the entire purpose of getting the partition done has been defeated. I am in agreement with learned counsel for the petitioner and of the view that order Annexure P-9 is not sustainable and is set aside. The matter is remanded back to the Financial Commissioner to decide the same in a most reasonable and pragmatic manner. I deem it appropriate to fix a time line of a period of four months. Parties through counsel are directed to appear before the Financial Commissioner on 1.5.2017.

The petition stands disposed of in the above terms.

(AMIT RAWAL)
JUDGE

April 18, 2017
sunita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No