

218

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

CWP-20479-2015

Date of decision : 22.05.2017

Om Parkash and another

... Petitioner(s)

Versus

Financial Commissioner, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana.

Mr. R.D. Bawa, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned order dated 06.07.2015 (Annexure P-9), whereby the Financial Commissioner/ respondent No.1 has allowed the revision petition bearing ROR No.353 of 2013-14 filed at the instance of Municipal Corporation/respondent No.4, by setting aside the orders dated 13.03.2012 (Annexure P-5) and 07.02.2014 (Annexure P-8) passed by the Collector and Commissioner, respectively.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Varun Parkash, learned counsel appearing on behalf of the petitioners submits the petitioners had purchased a plot measuring 100' x 49'-5" compromised in Khasra No.183/1/1/1 situated at Tigaon Road near Aggarwal College,

Bhallabgarh, vide registered sale deed dated 24.02.1983 from Parduman Singh. A civil suit for injunction was filed by the petitioners, which was dismissed on 24.12.2005. However, an appeal filed against the same before the First Appellate Court, was allowed vide judgment and decree dated 17.02.2007. A regular second appeal preferred by the Municipal Corporation, Faridabad/respondent No.4 before this Court vide order dated 04.04.2011 was dismissed, even the SLP vide order dated 09.01.2015 was also met with the same fate. However, on 28.03.2008, the Assistant Collector allegedly cancelled the mutation and the appeal preferred there upon before the Collector, was allowed. Against the order of the Collector, an appeal filed by the respondent(s)/Municipal Corporation before the Commissioner, was dismissed vide order dated 07.02.2014, but the Financial Commissioner, vide order dated 06.07.2015 (Annexure P-9), set aside the orders of the Collector and Commissioner, with the following observations:-

"I have perused the file, revenue record and gone through the arguments of both the consels. Jamabandi of 1966-67 shows Khasra No.183 as Shamlat Deh Hasab Rasad Kabza Jamin in the column of ownership. Jamabandi of 1971-72 shows Khasra No.183 as Shamlat Deh Hasab Rasad Kabza Jamin in the column of ownership. In the column of cultivator name, Makbuja Washindagan Deh has been shown. Jamabandi of 1976-77 shows Khasra No.183 as Shamlat Deh Hasab Rasad Kabza Jamin in the column of ownership and in the column of cultivator name, Makbuja Washindagan has been shown. Sub-Section (g) of Section 2 of the Punjab Village Common Land Act 1961 clearly mentions that vacant land situated in Abadi Deh or Gorah Deh not owned by any person is Shamlat Deh. Sub-Section (1)(g) of Section 161 of the Haryana Municipal

Corporation Act 1994 mentions that shamlat deh shall vest in and be under the control of the Corporation.

From the revenue record mentioned above, it is clear that the impugned land is Shamlat Deh and this land vests in Municipal Corporation Faridabad as per provision of Section 161 of the Haryana Municipal Corporation Act 1994. Therefore, the revision petition is allowed and the order dated 13/03/2012 passed by the Collector, Faridabad, and order dated 07/02/2014 passed by the Commissioner, Gurgaon Division, Gurgaon are set aside and the order dated 28/03/2008 passed by the Assistant Collector, 1st Grade, Ballabgarh is upheld."

The conceded position on record, according to him, is that the land has now vested in Municipal Corporation, Faridabad and the remedy, if any, for the Municipal Corporation for claiming the ownership would be through Civil Court, in essence, the ownership could not have been decided in the mutation proceedings by taking the aid of the Punjab Village Common Land Act, 1961 (for short 'the 1961 Act').

He further submits that in the aforementioned proceedings, the ownership of the property was also in dispute, which has been decided in favour of the petitioners, therefore, the Municipal Corporation should not be given any right, even in the Civil Court. He has drawn the attention of this Court to the relevant portion of para 11 of the judgment and decree dated 17.02.2007 of the lower Appellate Court, which reads as under:-

"I am of the view that the learned trial Court has failed to appreciate the evidence on record in its true perspective while deciding issues Nos.1 and 2 against the plaintiff and, therefore, the findings recorded by the learned trial Court on issues No.1 and 2 are hereby reversed and it is held that the

plaintiffs are the owners in possession of the disputed plot and, therefore, they are entitled to the relief of permanent injunction restraining the defendants from interfering into their peaceful possession and from dispossessing them from the disputed plot in any manner. Plaintiff Om Parkash in his affidavit Ex.PW1/A has stated that the defendants have forcibly constructed one four wall towards southern side upto 6/7 feet in height without any right despite the status quo order granted by the Court and, therefore, the same is liable to be demolished by way of mandatory injunction as the defendants were having no right to raise the construction of the said wall upon the disputed plot owned and possessed by the plaintiffs/appellants and, therefore, it can not be said that they have no cause of action to file the suit which is not bad for non joinder and misjoinder of necessary parties whose names have not been disclosed and consequently the judgment and decree dated 24.12.2005 passed by the learned trial Court is not sustainable in the eyes of law which is, therefore, quashed and set aside."

The aforementioned findings have been affirmed by this Court in the regular second appeal which reads as under:-

"As per Exhibit P3 mutation was sanctioned in favour of the plaintiffs qua Khasra No.183/1/1/1(1-0) on the basis of sale deed dated 24.02.1983. The sale deed executed by Parduman Singh in favour of the plaintiff is Exhibit P2. In the revenue record placed on the file, the suit property is not described to be in possession of the Gram Panchayat or the Municipal Corporation. Rather the suit property is described to be in possession of the plaintiffs. The plea of the appellant that Khasra No.183 was gora deh is not fortified by the revenue record on the file. In these circumstances, the suit of the plaintiff was liable to be decreed.

No substantial question of law arises in this appeal.

Dismissed."

thus, urges this Court for setting aside the impugned orders, under challenge.

Mr. R.D. Bawa, learned counsel appearing on behalf of the Municipal Corporation/respondent No.4, does not dispute the decision of the regular second appeal and dismissal of the appeal, but submits that yet the Civil Court would have a remedy for adjudication of the *lis* in view of the provisions of the 1961 Act.

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

On joint reading of the findings given by the trial Court and affirmed by this Court, it reveals that once the issue of ownership and possession has already been held, there was no question of deciding the same in the mutation proceedings, in essence, the Assistant Collector did not have any jurisdiction to decide the mutation in favour of the Municipal Corporation, Faridabad/respondent No.4 as by that time, there was already a decree dated 17.04.2007 of the lower Appellate Court, in favour of the petitioners and that has been upheld, as indicated above. This fact was noticed by the Collector and the Commissioner, vide which, the order of the Assistant Collector has been set aside. In my view, the Financial Commissioner has exceeded the jurisdiction in trying the question of title in the mutation proceedings. It was a simple case of sanctioning the mutation on the basis of decree.

Keeping in view the aforementioned facts, the impugned order dated 06.07.2015 (Annexure P-9) passed by the Financial Commissioner is not sustainable in the eyes of law and the same is hereby set aside being

vitiated in law, erroneous, much less, opaque and that of orders dated 13.03.2012 (Annexure P-5) and 07.02.2014 (Annexure P-8) of the Collector and Commissioner, respectively, are restored/upheld.

Resultantly, the present writ petition stands allowed in the aforementioned observations.

22.05.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No