

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

Date of Decision: March 29, 2017

1. **CWP No.961 of 2010**

Preeto (since deceased) through L.Rs

...Petitioner

Versus

Financial Commissioner, Punjab & others

...Respondents

2. **CWP No.962 of 2010**

Preeto (since deceased) through L.Rs

...Petitioner

Versus

Financial Commissioner, Punjab & others

...Respondents

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

Present: Mr.Sandeep Jain, Advocate
for the petitioner in both the petitions.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.Amarjit Markan, Advocate,
for respondent Nos.5 & 6 in both the petitions.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Civil Writ Petitions bearing No.961 and 962 of 2010 as the common questions of fact and law are involved in both the cases.

Petitioner Preeto, being respondent No.5 in a petition filed under Section 111 of the Punjab Land Revenue Act, is aggrieved of the

order of the Financial Commissioner dated 23.10.2009 (Annexure P-8), order dated 9.1.2001 (Annexure P-2) of the Collector and order dated 30.4.2001 (Annexure P-3) passed by the Assistant Collector Ist Grade.

Mr.Sandeep Jain, learned counsel representing the petitioner in both the petitions submits that the title regarding some portion of the property was in dispute in Regular Second Appeal bearing No.2432 of 1997. The Assistant Collector Ist Grade, vide order dated 31.8.2000 (Annexure P-1), adjourned the proceedings sine-die. The aforementioned order was assailed by respondent Nos.5 and 6 in the present writ petition by filing an appeal before the Collector, who, vide order dated 9.1.2001 set-aside the order and directed the Assistant Collector to proceed with the partition proceedings. The Assistant Collector proceeded with the partition proceedings and passed the final order on 30.4.2001 (Annexure P-3). However, in the meantime, the order dated 9.1.2001 had been challenged before the Commissioner after having acquired the knowledge of the order of the Assistant Collector, who, dismissed the appeal vide order dated 23.1.2002 (Annexure P-4). The matter was taken up before the Financial Commissioner in ROR No.201 of 2002, but the same was dismissed in limine on 12.8.2002 (Annexure P-5), but liberty was given to assail the order dated 30.4.2001 in the competent court of jurisdiction and, in fact, the order of 9.1.2001 of the Collector resulting into dismissal of the revision by the Commissioner was question of debate. In compliance of the aforementioned order, the petitioner approached the Collector by filing an appeal. The Collector, vide order dated 28.3.2003 (Annexure P-6) remanded the matter back to the Assistant Collector to pass a final order after affording opportunity of hearing to all the parties. The private respondents

preferred the appeal before the Commissioner, who, vide order dated 14.6.2005 (Annexure P-7) dismissed the same and ROR No.625 of 2005 was preferred before the Financial Commissioner, who, vide order dated 23.10.2009 (Annexure P-8) accepted the revision. The orders under challenge are not sustainable as the Collector failed to appreciate the fact that since the matter is pending in this Court, the partition proceedings could not be initiated. The order adjourning the proceedings sine-die was legal and justified. The Collector should not have set-aside the order at the back of the petitioner.

He further submits that the mode of partition was to be kept intact while delivering the possession, but the same has been ordered to be disturbed. The parties are still in possession of their respective share. Only a paper transaction has been done and, thus, urges this Court for setting aside the impugned orders.

On the contrary, Mr.Amarjit Markan, learned counsel representing respondent Nos.5 and 6 in both the petitions submits that way back in the month of August, 2001, the order dated 30.4.2001 had attained finality as the partition proceedings have culminated into handing over possession, which fact is evident from copies of possession proceedings dated 3.7.2001 (Annexure R-5) and 18.7.2001 (Annexure R-6), which read thus:-

“Possession proceedings dated 3.7.2001

Copy of Possession proceedings dated 3.7.2001

Village Kirpalpur Tehsil Phagwara

File No 9/dated 9.7.2001

village Kirpalpur

Date of decision 8.8.2001

Sir

Today, in pursuance to the orders passed by the Assistant Collector Gr I, Phagwara, I have reached the spot at village Kirpalpur in connection with proceedings regarding the delivery of possession. Shri Dharam Pal son of Sadhu Ram, Dakhal-garinda (to whom the possession is to be delivered), Shri Karma Ram Nambardar of the village, Shri Baldev Singh Sarpanch Vill. Bhan di, Shri Surinder Singh son of Udham Singh, resident of Darvesh Village, Shri Tej Ram son of Bakhshi Ram, Shri Kirpal Chand son of Husna Ram, Shri Madan Gopal son of Ratan Singh, resident of Kot Rani, Phagwara, Shri Malkit Singh son of Didar Singh, resident of village Mauli and Shri Major Singh, Patwari Halqa along with record, are present at the spot, The possession of Khasra Nos. 10/2 (4-10), 112/113/2 (2-0), 42/1 (3-17), 56/1 (4-14), 86 (3-4), 87(7-15), 89/1 (3-7), 93 (7-12), 95 (2-13), 96/2 (4-19), 98 (3-14), 82/1 (3-0), 70/1 (0-17), plots=13 measuring 52 kanals 2 marlas and Khasra No. 110/12 (3-16) and 96/2/1 (2-5), 96/1 (6-16), 97 (7-16), has been ordered to be delivered at the spot. The above mentioned khasra nos. have been established by keeping in view the permanent spots and which have been affirmed to be correct by the persons present at the spot and measuring with the help of measuring material and revenue records. Khasra Nos. 86, 87, 95, 96/2/2, 96/2/1, 96/1, 97, 82/1, 70/1, are lying vacant at present and the possession of above mentioned khasra Nos. is already with Shri Dharam Pal son of Shri Sadhu Ram, Dakhal-Garinda (to whom the possession is to be delivered). In Khasra No. 10/2, sugar cane is sown in 2 Kanal- 0 Marla and remaining 2 kanal 10 marla is lying vacant. In khasra No.113/13/2, sugar cane is existing in 2 kanals 0 marlas. In khasra No. 110/12, sugar cane exists in 2-0 and 1-16 is vacant. In these Khasra Nos.10/2, 112/113/2, 110/12, the crop of sugar cane in area measuring 6 kanals 0 Marlas, has been sown by Shri Tej Ram son of Bakhshi Ram. Shri Tej Ram son of Bakhshi Ram has no objection in handing over the possession of above said area to Shri Dharam Pal.

The persons present at the spot have determined the value of sugar cane crop standing in the said area measuring 6 kanals 0 marlas and same has been got paid to Shri Tej Ram son of Shri Bakhshi Ram at the spot itself and possession of area comprising in Khasra Nos.10/2, (4-10), 110/12 (3-16), 112/13/2 (2-0), has been delivered to Shri Dharam Pal son of Shri Sadhu Ram together with the existing crop of sugar cane by making a dig with spade. In Khasra Nos. 42/1 (3-17), maize crop has been Sown, which is in possession of Shri Kirpal Chand son of Husna Ram. The value of standing maize crop has been determined by the persons present at the spot and paid to Shri Kirpal Chand son of Shri Husna Ram at the spot by Shri Dharam Pal son of Sadhu Ram and possession of above said area has also been delivered to Shri Dharam Pal son of Sadhu Ram together with maize crop standing therein. In Khasra No. 56/1 (4-14) maize crop has been sown by Shri Kabul Ram son of Shama Ram, Non occupancy in an area measuring 1 kanal 14 marlas and remaining area measuring 3 kanals 0 marlas is lying vacant. The possession of vacant area has been delivered to Shri Dharam Pal, Dakhal-garinda by cultivating the said area with tractor No. PB-36A-1946, Make Swaraj 737. The value of standing maize crop in area measuring 1 kanals 14 marlas has been determined at Rs 500/- by the persons present at the spot. But Shri Kabul Ram son of Shama Ram has refused to accept the value of area measuring 1 kanal 14 marlas and he has obstructed in delivering the possession of above said area. He is creating a dispute at the spot. As such, the Dakhal-garinda has been asked to deposit the amount of determined value and a request is made to provide police assistance for the delivery of possession of area measuring 1 kanal 14 marlas. The halqa patwari has been directed that after making an entry in the Rojnamcha Wakiyati regarding the proceedings of delivery of possession in respect of area situated at village Kirpalpur, mushtri munadi be got made in the village. Rapat No. 511 dated 3.7.2001 has been got

entered in Rojnamcha. The report after proceedings of delivery of possession is submitted please. The parcha of information is enclosed herewith.

Sd/-

Hardip Kumar

Halka Girdawar

Phagwara

3.7.2001

Sd/- Major Singh Patwari Halqa Bhan di

Sd/- Dharam Pal Dakhal Garinda

Sd/- Karam Ram Nambardar

Sd/- Baldev Singh Sarpanch, Vill Bhan di

*Sd/- Surinder Singh son of Udham Singh
Resident of Vill Darvesh*

Sd/- Tej Ram son of Bakshi Ram

Sd/- Kirpal Chand son of Husna Ram

Sd/- Madan Gopal son of Lakha Ram

*Sd/- Des Raj son of Gurbachan Ram
R/o vill Bhano di*

*Sd/- Balwant Singh son of Ratan Singh
R/o Kot Rani Phagwara*

*Sd/- Malkit Singh s/o Didar Singh
R/o village Mauli”*

“Possession proceedings dated 18.7.2001

Copy of possession proceedings dated 18.7.2001

Village Kirpalpur Tehsil Phagwara

File No 9/dated 9.7.2001

village Kirpalpur

Date of decision 8.8.2001

Sir

Today, in pursuance to the orders passed by the Assistant Collector Gr I, Phagwara, I have reached the spot at village Kirpalpur in connection with proceedings regarding the delivery of possession. Shri Dharam Pal son of Sadhu Ram

Dakhal-garinda (to whom the possession is to be delivered), Shri Tej Ram son of Bakhshi Ram, Shri Madan Gopal son of Ratan Singh, resident of Mann, Shri Baldev Singh Sarpanch Vill Bhan di, Shri Surinder Singh son of Udham Singh, resident of Darvesh Village and Shri Major Singh, Patwari Halqa along with record, are present at the spot. With the help of measuring material and Revenue Record, khasra No. 56/1 (4-14) has been established. In the above said khasra No. possession of area measuring 3 kanal 0 marla was earlier given to Dakhal-garinda on 3.7.2001. In the remaining area measuring 1 kanal 14 marlas. maize crop has been sown by Kabul Ram son of Shama Ram, value of which was determined at Rs.500/-. Shri Kabul Ram son of Shama Ram has furnished an affidavit duly sworn in to the effect that after having received the determined value of his crop @ Rs 500/- from Sh. Dharam Pal son of Sadhu Ram, Dakhal-garinda, he has handed over the possession of above said area measuring 1 kanal 14 marlas to Shri Dharam Pal son of Sadhu Ram, Dakhal-garinda at the spot. As such, the possession of khasra No. 56/1, area measuring 1 kanal 14 marlas together with maize crop standing therein has been delivered in favour of Dharam Pal son of Sadhu Ram etc Rapat No. 534 dated 18.7.2001 regarding the above proceedings of possession has been entered in the Rojnamcha Wakiyati and Mutation No. 209 thereof has been got entered on 18.7.2001. Mushatri Munadi in respect of the above mentioned proceedings has been got made through the Chowkidar of the village. The report after completing the possession proceedings is submitted.

Sd/-

Hardip Kumar,

Halka Girdawar,

Phagwara

18.7.2001

Sd/- Major Singh, Patwari Halqa Bhan di

Sd/- Dharam Pal son of Sadhu Ram

Sd/- Tej Ram son of Bakshi Ram

Sd/- Madan Gopal son of Lakha Ram

Sd/- Baldev Singh, Sarpanch, Vill Bhan di

Sd/- Surinder Singh son of Udham Singh,

R/o village Darvesh”

He further submits that even otherwise, the order of the Financial Commissioner has been passed by taking into consideration the factual and legal position on record as all the parties have to be distributed the land of equal value/potentiality and for that purpose, the possession has to be disturbed, therefore, mode of partition cannot be said to be erroneous.

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

On reading of the reports dated 3.7.2001 and 18.7.2001 (supra), the parties have already been given respective possession, in essence after preparation of Sanad Takseem, final proceedings have already been executed. There was no interim stay by this Court as on 21.1.2010, this Court had only ordered interim stay in case the Sanad Takseem had not been implemented, but that order would be inconsequential in view of the reports, *ibid*. The law with regard to disturbance of the possession is no longer *res integra*, for, all the co-sharers have a right in every inch of land *de hors* of the fact whether it is valuable or invaluable and for the purpose of partition, every inch of the potential land having more value has to be equally distributed, thus, the possession has to be disturbed. There cannot be any grievance of the petitioner on this ground.

In my view, the order of the Financial Commissioner and the other authorities are preferably legal and justified. No ground for interference is made out. They cannot be said to be without jurisdiction and

vitiated in law.

Accordingly, writ petitions stand dismissed.

March 29, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No