IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.28576 of 2013
Date of Decision: March 08, 2017

Municipal Corporation, Ludhiana

...Petitioner

Versus

The State of Punjab & others

...Respondents

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

Present: Mr.Vishal Sharma, Advocate, for the petitioner.

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

Mr.Sherry K.Singla, Advocate, for respondent Nos.6 to 8.

Mr.G.P.S.Bal, Advocate, for respondent Nos.9 to 12.

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AMIT RAWAL, J. (Oral)

Municipal Corporation, Ludhiana is in writ petition against the order dated 9.3.2012 (Annexure P-5) passed by the Financial Commissioner on the premise that against the order dated 31.8.2010 (Annexure P-4) of the Financial Commissioner, the effected persons, i.e., the private respondents had come to this Court in Civil Writ Petition No.432 of 2011 and by moving Misc.Application No.10836 of 2011, withdrew the writ petition and thereafter moved an application for recalling of the order and, therefore, the Financial Commissioner, having no power to review, could not entertain the application and, thus, the order under challenge is not sustainable.

Copy of the application has not seen the light of the day, therefore, inference is liable to be drawn that the prayer was made by the applicants to avail the remedy and if such prayer is made and not recorded in the order, in view of the ratio decidendi culled out **Lal Singh Versus Ajit Singh & another, 2008 (3) RCR (Civil) 650**, the permission is deemed to have been granted.

The plea of Mr.Vishal Sharma, learned counsel for the petitioner regarding maintainability of the application before the Financial Commissioner, resulting into passing of the order Annexure P-5, is hereby repelled/rejected.

On merits, Mr.Sharma submitted that vide notification dated 26.11.1979 issued by the Government of Punjab, Department of Local Government Housing and Urban Development, the limit of the petitioner Corporation was extended and Village Bhaura with other areas was included within the limits of the petitioner Corporation. Earlier the land was belonging to the Gram Panchayat, Bhaura and the Shamlat land falling within the area of the said Gram Panchayat stood transferred to the petitioner Corporation. The mutation of the land was duly sanctioned in favour of the petitioner Corporation as per jamabandi for the year 2004-05.

He further submitted that the respondents moved an application before the Deputy Commissioner, Ludhiana praying that the mutation of the land in question be sanctioned in their names and on various reasons, the Deputy Commissioner, vide order dated 3.4.2003 (Annexure P-2), dismissed the application. The said order was challenged by filing an appeal before the Divisional Commissioner, Patiala, who, vide order dated 26.2.2004 (Annexure P-3) allowed the appeal, but no documentary evidence was produced on record regarding the alleged exchanged of land, much less any resolution of the Panchayat. No proof of possession by way of any document was produced by Ladha Ram and others. The land in question is of Municipal Corporation and as such the Revenue Department and the Rehabilitation Department have no authority to allot the land to Ladha Ram and others. Private respondents failed to produce any documentary evidence. The aforementioned order was challenged before the Financial Commissioner, who, vide order dated 31.8.2010 (Annexure P-4), allowed ROR No.376 of 2004. The review application, thus, was not maintainable.

He further submitted that even there was an inordinate and unexplained delay of about eight months in filing of the review application. The order under challenge is not sustainable in the eyes of law as the petitioner Corporation is the full owner of the land. The aforementioned notification has never been challenged by any body and, therefore, the respondents have no jurisdiction to re-open the matter.

Per contra, Mr.GPS Bal, learned counsel for respondent Nos.9 to 12 submitted that the order (Annexure P-5) is perfectly legal and justified. The grievance of the petitioner before the Commissioner was only with regard to the exchange of land. However, Financial Commissioner has re-opened the issue regarding allotment of the land to the respondents, which was not within the domain and power of the Financial Commissioner. It is in this backdrop of the matter, the application was moved and the Financial Commissioner realising that mistake, recalled the order and, thus, prays for dismissal of the writ petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Sharma as the order under challenge is perfectly legal and justified, for, it is the conceded position on record that the private respondents had been allotted the land in Village Bhaura, which was in possession of Ladha Ram. The prayer was for reflection of entry in the revenue record regarding the exchange.

The agreement of exchange was drawn on 5.12.1976. I do not deem it appropriate to comment on the exchange of the land as the respondents have not been able to prove on record the factum of exchange, but the fact remains that they have been allotted land prior to 9.7.1985, i.e., the cut off date in view of the ratio decidendi culled out in **Gram Panchayat of Village Kum-Kalan Versus The State of Punjab and others,** wherein it has been held that the evacuee share in the shamlat land would be of Gram Panchayat, but thereafter the State Government caused the amendment in the Punjab Village Common Land Regulation Haryana Amendment Act 1996 vide Act No.13 of 1996, whereby sub-clause (ii-a) after clause (ii) of Section 2(g) was incorporated and it was held that the shamlat deh, which has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985, would not be a shamlat deh. Thus, the Financial Commissioner was within its right to review the order.

In my view, the order dated 31.8.2010 (Annexure P-4) could not re-open the case in favour of the private respondents as their plea was with regard to the exchange of land. Resultantly, the order of the Financial Commissioner is modified to the extent that the allotment in favour of the respondents made way back in 1976 is upheld.

With regard to exchange, since the private respondents have failed to prove on record the same, their request for exchange is, therefore, not liable to be accepted and the same is hereby rejected.

The writ petition, while upholding the order of the Financial Commissioner qua allotment of land, is hereby dismissed.

March 08, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**