

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26985-2015 (O&M)
Date of decision : 31.05.2017

Surinder Kaur

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Bains, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for respondent Nos.7 to 12.

Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The petitioner has approached this Court seeking the following
relief:-

*"Petition under Article 226/227 of the Constitution of India
praying for issuance of an appropriate writ, order or
directions to respondents 1-5 to maintain the rule of law by
restraining respondents 6 to 12 in their attempt to forcibly
encroach upon the plot of the petitioner with the connivance
of the official respondents by abusing the public offices of
Municipal Councilor and their proximity to member of
Parliament and other politicians under the pretext of*

installation of Nishan Sahib and Ravidas Chowk on the plot of the petitioner which has been purchased by the petitioner through a registered sale deed dated 24.09.2015 (Annexure P-1/T) and the mutation.

It is further prayed that during the pendency of the present writ petition, interim direction may kindly be issued to protect the property of the petitioner from open and direct take over by display of force in the presence of the police and no interference is caused in the petitioner's enjoyment of its property.

Any other writ order or direction which this Hon'ble Court may deem fit, may kindly be passed in favour of the petitioner."

Mr. R.S. Bains, learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to the order dated 20.01.2016 passed by this Court, which reads as under:-

"The parties appearing before me are ad-idem that the land in question may be demarcated because according to the learned counsel for Municipal Council, Phillaur, the petitioner is the owner of only one marla of land, whereas the land at the spot is over three marlas. It is suggested that the Tehsildar, Phillaur, may be directed to demarcate the land segregating the land of the petitioner as per the sale deed and make a report to this Court.

In view of the aforesaid, the Tehsildar, Phillaur, is directed to demarcate the land in question while associating the petitioner as well as other stake holders/ Executive Officer of respondent No.2.

The Registry is directed to send a copy of this order to the Tehsildar, Phillaur, for compliance along-with complete copy of the writ petition.

Adjourned to 10.2.2016."

In pursuance to the aforementioned order, the Tehsildar had demarcated the area and submitted his report (Annexure T-1) by enclosing the jamabandi for the year 2012-13. The relevant portion of the report reads as under:-

*"Possession of PWD 1182/355 1-4 (0-6-7.03)
non cultivable road"*

As per the jamabandi for the year 2012-13 of Village Ramgarh, Hadbast No.131, Tehsil Phillaur, District Jalandhar, there are two khasra numbers bearing 1183/355 measuring 3 kanals 5 marals and 1182/355 measuring 1 kanal 4 marals. The area of khasra No.1183/355 measuring 3 kanals 5 marals is in possession of the many co-shareholders and the petitioner had derived the interest from Manjit Kaur widow of Amarjit Singh, whereas the area of khasra 1182/355 1 kanal 4 marals is in possession of the PWD. On conjoint reading of the report and the jamabandi, it is revealed that the petitioner has been held to be a co-sharer to the extent of 0-1 maral, having 1/65th share and remaining shares of the co-shareholders is 64/65th.

Concededly, during the pendency of the writ petition, a civil suit (Annexure A-11), seeking partition of the aforementioned property, wherein the petitioner has been arrayed as defendant No.19, is pending for adjudication.

The contention of Mr. Bains, is that by virtue of the sale deed dated 24.09.2015, the petitioner was put into exclusive possession of the shops, where Nishan Sahib and Ravidas Chowk has been erected. The contents of the sale deed is a self-serving statement suffered by the vendor,

which is not confirming to the revenue record showing his exclusive possession. In a joint ownership, every co-owner is a owner of every each of land, until and unless, its partition by the meats and bounds.

Ms. Monica Chhibber Sharma, DAG, Punjab submits that after the order passed by this Court, there is no new incidence and further raising of construction, status quo shall be maintained till the adjudication of the partition proceedings.

I have considered the appreciable submissions and of the view that that the case of the petitioner would have been a better-footing, had any revenue record, much less, been relied or placed along with report of the Tehsildar, showing exclusive possession, on the contrary, it is a joint ownership of many co-shareholders.

In view of such situation, the grievance of the petitioner sought in the present writ petition, cannot be vindicated, until and unless, the suit for partition is decided and preliminary decree, resulting into, final decree is drawn.

The petitioner shall be at liberty to seek the vindication of his grievance on the adjudication of the pending civil suit seeking partition, in accordance with law.

While exercising the powers under Article 226 of the Constitution of India, I deem it appropriate to direct the trial Court to decide the suit seeking partition, after affording 4-4 effective opportunities to the parties, as expeditiously as possible preferably within a period of one year from the date of the receipt of the certified copy of this order.

With the aforesaid observations, the writ petition stands disposed of.

31.05.2017

Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasonedYes/ No

✓

Whether ReportableYes/ No