

207

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6738-2013

Date of decision : 19.05.2017

Pahlad Singh

... Petitioner(s)

Versus

Financial Commissioner, Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mani Ram Verma, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Mohit, Advocate for
Mr. R.A. Sheoran, Advocate
for respondent Nos.14 & 36.

Mr. Ketan Antil, Advocate for
Mr. N.S. Shekhawat, Advocate
for respondent Nos.5 to 12 & 58 to 61

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner in the present writ petition is to the fact that even in the partition application moved by the private respondent(s), the petitioner's share is 2 kanals 14 marals out of 42 kanals 9 marals has been given at three difference places, therefore, he could not be able to utilize the land in a proper form, though, the quality of the land, in all the aforementioned holding, consists of *chahi*, *brani* and *nahri*. This fact had been agitated before the authorities, but was not successful and therefore, sought the quashing of the order dated 30.08.2011 (Annexure P-4) passed by the Financial Commissioner, 30.07.2007 (Annexure P-3) of

the Commissioner, 15.06.2007 (Annexure P-2) passed by the Collector and as well as 18.12.2003 (Annexure P-1) of the Assistant Collector.

Mr. Mani Ram Verma, learned counsel appearing on behalf of the petitioner submits that the grievance of the petitioner is demonstrated from the site plan (Annexure P-5). The area shown in blue colour had been given to the petitioner in one tak, but in 2nd tak, nothing has been given, though, superior quality of land is in 2nd tak, whereas in 3rd tak, given some fraction and in 4th tak, the entire land, which has fallen to his share, is *brani*, therefore, the potentiality and location of land has not been looked into, much less, the share of the petitioner, which is very fractional. There has to be a spot inspection with regard to the aforementioned fact, for, none of the parties have been able to establish the exclusive possession, in the absence of any revenue record or khasra girdawaries. The statements of villagers were required to be taken, before the passing the memorandum of partition. The amended *naksha be* is deviated from the stand taken in the application, thus, urges this Court for setting aside the impugned orders, under challenge.

Mr. Mohit, Advocate for Mr. R.A. Sheoran, learned counsel appearing on behalf of respondent Nos.14 & 36 and Mr. Ketan Antil, Advocate for Mr. N.S. Shekhawat, learned counsel appearing on behalf of respondent Nos.5 to 12 & 58 to 61, submits that there is no illegality and perversity in the orders, under challenge. Owing to the quality of the land, there is an equal distribution. Instrument partition, thus, cannot be interfered as the orders, under challenge, cannot fall within the realm of 'Judicial Review'. The order of the Commissioner passed in 2010 is most reasonable and consistent to the record. The filing of the writ petition is nothing, but it

is an attempt to delay the adjudication of the partition proceedings. Almost 7 years had elapsed. Much time had flown. The partition proceedings have already been finalized. It would be a farcical exercise, in case the matter is ordered to be revisited.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the order of the Commissioner, though apparently appears to be justified and in consonance with the record, but on bare perusal of the site plan, which is not disputed and rebutted by the other side, reveals that in 4th tak i.e. 4th portion, the land is shown as *barani*, whereas, in 3rd tak also the petitioner has been given very small fraction of land, but in the 2nd tak no such piece of land has been given. In fact, the authorities should have considered the point i.e. holding of the petitioner measuring 2 kanals 14 marals and could have been given his share in one piece of land/tak subject to the quality of land as much share would not be taken away from the good quality of land. If at all, such arrangement was not possible, the petitioner can always be called to be compensated in terms of money, so that, there is an actual utilization. This fact is required to be revisited/readdressed.

Instead of relegating the parties to the Assistant Collector, I deem it appropriate to remand the matter to the Commissioner, which shall decide the controversy afresh keeping in view the observations made hereinabove and after doing the spot inspection, much less, by taking into consideration the factual aspects i.e. nature, quality and share-holding of the petitioner as expeditiously as possible preferably within a period of three months from the date of the receipt of the certified copy of this order.

The parties or through their counsel are directed to appear

before the Commissioner on 06.06.2017.

Resultantly, the present writ petition stands disposed of, by
setting aside the impugned orders, under challenge.

19.05.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No