

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

CWP No.25978 of 2017

Date of Order: 14.11.2017

Harjinder Singh and Ors.

....Petitioners

Versus

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Arun William, Advocate for the petitioners.

RAKESH KUMAR JAIN, J (ORAL)

This petition is filed for seeking a writ in the nature of Mandamus directing the Sub Divisional Magistrate, Kapurthala-respondent No.6 not to sanction the mutation regarding the suit land in favour of private respondents without affording an opportunity of hearing to the petitioners.

The petitioners No.2 & 3 are allegedly the owners in possession of the land measuring 24 kanal 06 marla situated in Village Hazipur, Tehsil Sultanpur Lodhi, District Kapurthala. Petitioner No.3 is the father of petitioner No.1 as attorney. It is alleged that in September 2017, the petitioners were in need of money, therefore, they approached respondent Nos.4 & 5 for taking loan. However, respondent Nos.4 & 5 have allegedly got prepared an agreement to sell dated 06.9.2017 in lieu of the amount required by the petitioners and also got executed and registered the sale deed on 08.09.2017. The petitioners came to know that respondent Nos.4 & 5 are trying to get an entry in the register of mutation on the basis of sale

deed and filed an application under Section 34 of the Punjab Land Revenue Act, 1887 (for short “the Act”) to the Halqa Patwari. The Halqa Patwari made the entry and placed the same before the A.C, II Grade for perusal and sanction. The petitioners appeared before the A.C II Grade and disputed the right of respondent Nos.4 & 5 qua the entry in the mutation register. The A.C, II Grade passed the order on 10.10.2017 to the effect that “today vide deed No.545 dated 08.09.2017 was submitted. Ravdeep Singh S/o Harjinder Singh and Harjinder Singh S/o Kewal Singh submitted an application dated 27.09.2017 for staying the Inteqal. Since the Inteqal is disputed, so it is beyond my jurisdiction, therefore, present Inteqal is being sent to the Court of Sub Divisional, Sultanpur Lodhi.”

Accordingly, the matter is now placed before the A.C, Ist Grade. In the meantime, the petitioners also filed a suit for declaration in order to challenge the sale deed, which is pending and in the application for interim injunction, though notice has been issued but no ex parte stay has been granted. The petitioners have alleged that they are in possession and are being pressurized by the S.D.M-respondent No.6 as well as the police for delivery of possession of the property in question alleged to have been sold by them to respondent Nos.4 & 5.

I have heard learned counsel for the petitioners and perused the record. The prayer made by the petitioner for issuance of a writ in the nature of Mandamus cannot be accepted.

As per Section 34 of the Act, as soon as any person acquires a right in an estate as a land-owner, assignee of land-revenue or tenant having a right of occupancy, reports his acquisition of the right to the halqa patwari, the same is entered in the register maintained by him. If there is no

contest to that right, the matter is placed by the Halqa Patwari before the A.C II Grade for sanctioning the mutation. However, in case of any dispute, the A.C II Grade would not exercise its jurisdiction as the jurisdiction then vests in the A.C Ist Grade to decide the dispute between the parties, in terms of Section 36 of the Act. This is what exactly has happened in this case because the A.C II Grade has placed the matter before the A.C, Ist Grade because of the dispute between the parties over the property in question. Now, the A.C Ist Grade has to pass the order in terms of Section 36 of the Act wherein he has to hold an inquiry, which cannot be held without giving an opportunity of hearing to the petitioners.

Consequently, the present petition is disposed of with the observations that the S.D.M, Kapurthala-respondent No.6, who is seized of the matter, pertaining to the sanction of mutation, initiated at the instance of respondent Nos.4 & 5, disputed by the petitioners, shall decide the same in terms of Section 36 of the Act.

November 14, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No