

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 26, 2017

1. CWP No.7029 of 2014

Jaljit & others

...Petitioners

Versus

State of Haryana & others

...Respondents

2. CWP No.7085 of 2014

Manoj Ahlawat & others

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Sanjay Majithia, Senior Advocate with
Mr.Inderjeet Singh, Advocate,
for the petitioners in both the petitions.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.Rakesh Nehra, Advocate,
for respondent Nos.5 to 10 in CWP No.7029 of 2014 &
for respondent Nos.5 to 8 in CWP No.7085 of 2014.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Civil Writ Petitions bearing No.7029 and 7085 of 2014 as the common questions of law and fact are involved. The facts are being taken from CWP No.7029 of 2014.

The filing of the writ petitions has arisen owing to the orders passed by the Assistant Collector, assailed before the Collector, Commissioner and the Financial Commissioner. The revenue record in

respect of the property in dispute, under the column of ownership, reveals the land to be 'Shamlat Thola Karnachi Hasb Rasad Raqba'. As per the Punjab Land Revenue Act (for short "the Act"), if the land is of such nature, it is not in common use for the village and, therefore, vests in the proprietors. As per the jamabandi (Annexure P-3) for the year 1944-45, Gokul, Gopal, Duli Chand and Ghasi were also reflected alongwith Kesho, Chandagi and Bhan Singh. In August, 2008, private respondent Nos.5 to 9, who are represented by Mr.Rakesh Nehra, Advocate in this Court, moved an application before the Assistant Collector 2nd Grade, Beri for correction of khasra girdawari. The Assistant Collector passed the following order on 27.10.2008:-

"I have examined the case file and also carried out spot inspection of the above mentioned land on 23.10.2008. Keeping in view the statements and spot inspection report, I have reached on the conclusion and order that the girdawari of Khewat number 1469, 1470/1400, Khatuni No.2085, Mustquill Killa No.280/6 (7-4), 7/1(1-10), 15(7-12), Kitta 3, total measuring 16 kanal 6 marlas in village Dhigal, Tehsil Beri, district Jhajjar be corrected from today kharif 2008 in the name of Shamlat Thola Karnachi in cultivation possession. The file be consigned to record room."

The contention of Mr.Sanjay Majithia, learned Senior Counsel assisted by Mr.Inderjeet Singh is that in those proceedings, the petitioners, who have been reflected in column No.6 to be in occupation of the land alongwith other persons, were never sent any summons and the alleged report of refusal could not be recorded as a satisfaction of service, in essence there is no compliance of the provisions of Section 20 of the Act. An obligation was/is cast upon the authorities to effect service either

through munadi or through registered post, but respondent No.4 straightway

ordered the service by way of publication in a Newspaper, which is not in wide publication in District Jhajjar. In fact, it is basically in circulation in District Bhiwani.

Aggrieved of the aforementioned order and having acquired the knowledge of the ex-parte proceedings, an appeal was moved before the Collector, who dismissed the same vide order dated 27.7.2009 and the matter was taken before the Commissioner, who, vide order dated 27.5.2011 (Annexure P-8), found that the private respondents could not get the khasra girdawari corrected in the absence of any documentary evidence, whereas on the contrary, the documents, i.e., jamabandi for the year 1944-45 and even after 2002-2003 (Annexure P-4) reflected the predecessors-in-interest of the petitioners, i.e., legal heirs of Ganesh and Duli Chand to be in possession and set-aside the order of the Collector, much less the Assistant Collector. The private respondents assailed the order before the Financial Commissioner, who, in the operative part of the order, without assigning any reasons, much less cogent reasons, has set-aside the order of the Commissioner. He has drawn the attention of this Court to para 5 of the order of the Financial Commissioner, which reads thus:-

“5. I have gone through the record of the lower courts and arguments of both the parties. The impugned land is the ownership of shamlat Thola Karnachi. The respondents have not shown in which capacity they are cultivating the land. The Assistant Collector 2nd grade rightly has ordered the khasra girdawari in the name of shamlat thola owner of the land. Collector Jhajjar has passed a well reasoned and cogent order dated 27.7.2009. This order is upheld and order of Commissioner Rohtak dated 27.5.2011 is set aside.”

He further submits that if at all the private respondents were

aggrieved, they have an independent remedy to seek the declaration of ownership by filing a civil suit, but not in the manner and mode as the proceedings for correction of khasra girdawari cannot assume the character, role and decision of the title.

Per contra, Mr.Rakesh Nehra, learned counsel representing the private respondents, with vehemence, has drawn the attention of this Court to the vernacular copy of the khasra girdawari to reflect that neither the legal heirs of Gokul, who died long time back, much less that of the other occupants have come forward except the legal heirs of Ghasi and Duli Chand. This itself is a pointer for creating suspicious regarding the entry in the khasra girdawari. The applicants before the authorities are the proprietors and, therefore, had the cause of action to seek the correction and rightly so, the Assistant Collector simply ordered for correction of khasra girdawari to be reverted back to Thola and, therefore, no prejudice has been caused to the petitioners in assailing the order. The refusal itself is a sufficient satisfaction of having not decided the matter. It was basically an intention to create impediment and hindrance in execution of the lis and, thus, prays for dismissal of the writ petitions with exemplary costs.

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

On conjoint reading of the observations given by the Assistant Collector and the Financial Commissioner, I am of the view that the Financial Commissioner is under obligation to give cogent and sufficient reasons while deciding the revision petitions. The findings noticed above do not fall within the touchstone of reasonability. All the quasi judicial authorities in applications seeking correction of khasra girdawaries have to

decide the possession and not the title, in essence could not deviate the extent of scope of the application in the manner and mode as indicated above. If at all the private respondents were aggrieved, they could have, at the best, taken the aid of the provisions of Section 45 of the Act and not in the manner and mode. Be that as it may, since the order of the Financial Commissioner does not fall to the touchstone of reasonability, I deem it appropriate to set-aside the order and remand the matter back to the Financial Commissioner to decide the controversy keeping in view the evidence placed on record by respective parties, much less the observations given herein above. Ordered accordingly.

This Court is sanguine of the fact that the Financial Commissioner shall decide the matter in a most objective and pragmatic manner within a reasonable time. Let the ROR be decided within a period of four months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before the Financial Commissioner on 8.5.2017.

Writ petitions stand allowed in the aforementioned terms.

April 26, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No