

114

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22027-2017
Date of Decision :15.10.2018

Suraj Mal and Others

.....Petitioners

Versus

State of Haryana and Others

.....Respondents

CORAM : HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Ms. Loveleen Dhaliwal, Advocate
for the petitioners.

Mr. Harish Bhardwaj, Advocate
for respondents No.2 to 4.

GURVINDER SINGH GILL, J. (ORAL)

Reply has been filed on behalf of respondents No.2 to 4, which
is taken on record.

The petitioner aggrieved by order dated 18.05.2017 passed by
learned SDM, Safidon has assailed the same by way of filing this petition.
A few facts necessary to notice for disposal of this petition are that the
petitioners claim to be owners in possession of land bearing Khasra
no.44/1,8,9,10,11,12,13, 3,6/11, 12,20, 21/1, 47/15,16,17,18,19,20,
22/2,23/1, 16/1, 2/1, 9/2, 10, 162/5, 6, 629, 637, 692 total parts 36
measuring 214 kanal 8 marlas, which was initially owned by three brothers
namely Surajmal, Raja and Wazeer. Subsequently Wazeer sold his
undivided share to the extent of 9 acres out of total 27 acres to one Harish
Chand. The land measuring 9 acres further changed hands and ultimately it
is respondent No.2 to 4 who got the sale deed registered in the name of their
wives.

However, since a dispute arose as regards possession, proceedings under Section 145 Cr.P.C. were initiated and the learned SDM, Safidon also ordered for appointment of a receiver for the entire 27 acres. The matter came up to the High Court, wherein vide order dated 06.12.2016 passed in CRM-M-30470, the following directions were issued:-

“Thus, subject to the decision or decree in the civil Court, the matter is required to be sent back to SDJM, Safidon to ask the petitioners which 18 acres of land out of 27 acres of total land, they would like to be in possession and then to give in possession the remaining 9 acres of land to respondents No.2 to 4. The petitioners will have to be given the preferential treatment because respondents No.2 to 4 with open eyes endeavoured to purchase 9 acres of land held jointly and which was undivided. In that view of the matter, following order is inevitable:-

ORDER

- (i) CRM-M-30470 of 2011 is partly allowed;*
- (ii) Impugned orders dated 12.07.2011 (P-9) passed by the Sub Divisional Judicial Magistrate, Safidon (for short ‘SDJM, Safidon) and dated 13.09.2011 (P-10) passed by the Additional Sessions Judge, Jind, Haryana are quashed and set aside;*
- (iii) The proceedings before the learned SDJM, Safidon in case No.7/EX, instituted on 16.06.2011, are remitted to the learned SDJM, Safidon for giving in possession 18 acres of land out of 27 acres of land to the petitioners as per their choice and thereafter, to give in possession of 9 acres of land to respondents No.2 to 4 after hearing all the concerned parties;*
- (iv) Learned SDJM, Safidon, thereafter, shall be entitled to fix a date of handing over of possession of the land as*

stated in the earlier part of the order looking to the crops etc. in the land and till then, the Receiver shall continue in possession;

(v) In any case, the exercise stated in the present judgment shall be completed before 28.02.2017. The entire exercise shall be subject to the ultimate adjudication in the suit in the civil Court and without prejudice to the rights of any of the parties to the litigation;

(vi) The parties shall appear before the SDJM, Safidon on 23.01.2017 and shall abide by the further instructions from the learned SDJM, Safidon who shall expeditiously deal with the matter;

(vii) No order as to costs.”

Pursuant to passing of the aforesaid order the petitioners moved an application (Annexure P-3) before the learned SDM, Safidon, wherein the petitioners gave their preference in respect of 18 acres of land. The learned SDM, Safidon vide impugned order instead of handing over 18 acres of land which had been opted by the petitioners, proceeded to give some land out of each of the five chunks in which the entire 27 acres were comprised on the ground that each and every chunk has a different market value and that in case the petitioners are given the chunks of their choice, the same would lead to injustice to the other party.

Learned counsel for the petitioner while assailing aforesaid impugned order dated 18.05.2017 has submitted that the learned SDM, Safidon has virtually disobeyed the order dated 06.12.2016 passed by this Court and has gone beyond the order and has himself chosen to decide as to which of the land is to be given to the petitioners despite a clear direction having been issued by this Court vide order dated 06.12.2016 that 18 acres

out of the 27 acres are to be given to the petitioners as per their choice.

On the other hand, the learned counsel for the respondents has submitted that since the petitioners and respondents No.2 to 4 are co-sharers and in such capacity each of the co-sharers is deemed to be owner of every chunk of the joint land, therefore, propriety demands that the petitioners be given land on *pro rata* basis out of each of the five chunks, since the market value of each of chunk is different.

Learned counsel for the respondent has further submitted that the petitioners are not cooperating in the partition proceedings and are unnecessarily trying to delay the matter and that in these circumstances they have no right to seek the land which is more valuable and that each of the co-sharers has an equal right.

Having considered rival submissions addressed before this Court, I find that the present proceedings arose out of the proceedings initiated under Sections 145 and 146 of Cr.P.C. which are in the nature of emergent proceedings so as to arrest a situation which could lead to breach of peace.

Since in the present case specific directions had been issued by co-ordinate Bench of this Court vide order dated 06.12.2016, wherein it was clearly and in unambiguous terms directed that the petitioners are to be given those 18 acres of land which they choose, as respondents No.2 to 4 had purchased the land with “open eyes” and the said order having not been set aside till date, there was no occasion for the SDM, Safidon to have chosen to adopt different yardstick for giving land to the parties. In any case, such arrangement for giving 18 acres of land of the petitioners is only till the Civil Court or the Revenue Authorities finally decide the rights of

the parties qua the pieces of land to which they are entitled.

Accordingly, the impugned order is hereby set aside and the matter is remanded back to the learned SDM to pass a fresh order strictly in compliance of directions issued earlier by this Court vide order dated 06.12.2016, expeditiously preferably within two weeks from 31.10.2018 when both the parties shall appear before SDM, Safidon. A copy of this order be sent to SDM, Safidon to do the needful.

The petition stands accepted in above mentioned terms.

(Gurvinder Singh Gill)
Judge

October 15, 2018

Sunil Devi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No