IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6962-2019
Date of Decision: 14th March, 2019

Hardial Singh & another

...Petitioners

Versus

Financial Commissioner, Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Aakash Singla, Advocate,
for the petitioner.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 06.11.2017 (Annexure P-4) passed by the Financial Commissioner, Punjab – respondent No.1, whereby, order dated 16.09.2015 (Annexure P-3) passed by the Divisional Commissioner, Patiala Division, Patiala – respondent No.2 and the order dated 30.04.2013 (Annexure P-2) passed by the District Collector, Patiala – respondent No.3, have been upheld.

2. It is the contention of the learned counsel for the petitioners that the petitioners came into possession of the land in question on the basis of an agreement to sell in the year 1980. On the basis of the said agreement to sell, they are continuing in possession of the said land. The owner of the land has sold the property in question vide sale deed dated 17.05.2012 in favour of the private respondents. He contends that sale deed bearing

vasika No.3038 dated 17.05.2012 when presented before the Assistant Collector 1st Grade, Patiala, the same was adjourned *sine die* to await the decision of the Civil Court, however, on an appeal preferred by the private respondents, the Collector accepted the same ignoring the civil suit, which was pending and passed an order dated 03.04.2013 (Annexure P-2) ordering the mutation to be sanctioned in favour of the private respondents. The said order was challenged before the Divisional Commissioner and then before the Financial Commissioner, Punjab, without any success merely on the ground that the revenue authorities are bound to proceed with the mutation and sanction the same on presentation of registered sale deed. Counsel contends that when the petitioners came to know about the land having been sold in favour of the private respondents by the original owner of the property, who wanted to dispossess the petitioners, a suit for permanent injunction was preferred by them, which has been decreed *ex parte* by the learned Additional Civil Judge (Senior Division), Patiala, vide judgment and decree dated 29.11.2014 (Annexure P-5) restraining the private respondents from dispossessing the petitioners from the suit land except in due course of law. He, on this basis, contends that the mutation should not have been sanctioned in favour of the private respondents and therefore, the orders as passed by the revenue authorities cannot sustain and deserve to be set aside in the light of prohibition in Chapter 7.17 of the Punjab Land Records Manual, on entering mutation if possession has not been delivered.

3. I have considered the submissions made by the learned counsel

for the petitioners and with his assistance have gone through the impugned orders and records of the case.

4. Perusal of the impugned orders especially the order dated 06.11.2017 (Annexure P-4) passed by the Financial Commissioner, Punjab, which order is based upon the Division Bench judgment of this Court in **Bimal Kumar & others Vs. Divisional Commissioner, Patiala Division & others** 2013 (1) LAR 400, relevant portion whereof has been reproduced, clearly covers the arguments which have been raised by the learned counsel for the petitioners, against him. On the basis of the said judgment, the conclusions as has been drawn by the Financial Commissioner, Punjab, cannot be faulted with. It has rightly been observed that in the proceedings in mutation cases, which is summary in nature, *prima facie* rights are granted by the parties and they are always left with appropriate remedy in the Civil Court in matters of serious disputes regarding the title etc., mutation can be sanctioned even if the possession is not transferred.

5. The order passed by this Court in *Bimal Kumar*'s case (supra) can be reproduced here for ready reference as regards the arguments which have been raised by the learned counsel for the petitioners, which reads as follows:-

> "Admittedly, as a civil suit is pending adjudication inter parties, the legality of the sale deeds would be finally decided by the civil Court. A mutation is a mere fiscal entry recorded by a revenue officer to update revenue record and, therefore, neither confers nor

divests a party of title. A revenue officer has no jurisdiction, whether conferred by Punjab Land Revenue Act,1887 (hereinafter referred to as “the 1887 Act”) Act or by instructions contained in the Punjab Land Record Manual to opine as to the legality of a registered sale deed. While recording a mutation, a revenue officer merely makes a summary inquiry to satisfy himself, particularly, where rights have been transferred by a registered instrument as to the names of parties, the date of execution and registration, the ownership of the vendor, the extent and nature of the land and the correctness of field numbers, in accordance with powers conferred by Sections 34 and 36 of the 1887 Act, read along with Chapter 7.16 of the Punjab Land Record Manual. The Punjab Land Record Manual, is a compendium of administrative instructions, issued by the Financial Commissioner, in the exercise of administrative powers conferred by the 1887 Act, and must, therefore, confirm to the statutory powers conferred and prohibitions enacted by the 1887 Act. If any administrative instructions prescribe a prohibition, that is not set out in a statute, such a prohibition would be contrary to the statute and, therefore, illegal. Chapter 7.17 of the Punjab Land Record Manual, prohibits a revenue officer from entering a mutation, if possession has not been delivered. The question that arises is the source of the power to prescribe this prohibition and whether such a prohibition can be enforced in law. Sections 34, 36 and 37 of the 1887 Act, deal with power of revenue officer to sanction a mutation but do not enact any provision prohibiting a revenue officer from sanctioning/attesting a mutation, if possession is not delivered. Sections 34 and 36 of the 1887 Act merely empower a Revenue Officer to conduct a summary administrative inquiry. Chapter 7.17 of the Punjab Lands Record Manual, notified by the Financial Commissioner, in the exercise of his administrative powers, is in excess of the prohibitions prescribed by Sections 34 to 37 of the 1887 Act and, therefore, cannot be read into statute, to restrict the power of a revenue officer to sanction/attest a mutation if possession is not delivered. Section 36(2) of the 1887 Act, in fact, empowers a revenue officer, to deliver possession to the party, so entitled. The legality of Chapter 7.17 of the Punjab Land Record Manual, was considered, by a Single Bench, in Supreme Singh versus The Financial Commissioner, Revenue Punjab, and others (Civil Writ Petition No.9692 of 2008), decided on 8.3.2010 and it was held that Chapter 7.17 of the Punjab

Lands Record Manual, cannot be invoked to prohibit a revenue officer, from entering a mutation merely because possession has not been delivered. We find no reason to differ with the opinion recorded in the above judgment.

A sale deed, once registered, has to be reflected in the revenue record but where its legality is pending adjudication before a civil court, a note shall be appended in the 'remarks' column, of the jamabandi, setting out the particulars of the civil suit and if a stay order is in operation, the particulars of the stay order and if possession has not been delivered, an entry to that effect so as to rule out any confusion as to the rights transferred by the sale deed."

6. In view of the above, this Court does not find any error or illegality in the orders which have been impugned herein. The writ petition being devoid of merit, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

14th March, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No