IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16091 of 2019
Date of Decision: 09.08.2019

GURTEJ SINGH AND ANOTHER …... *Petitioners*

V/s.

DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB AT S.A.S. NAGAR, SECTOR 62, SAS NAGAR MOHALI AND OTHERS
…....*Respondents*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI.

Present: Mr. Gurbir Singh Sidhu, Advocate,
for the petitioners.

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RAKESH KUMAR JAIN, J. (Oral)

The petitioners have challenged the order dated 30.04.2019 by which the District Revenue Officer-cum-Consolidation Officer, Barnala has issued warrant of possession of the land in question in favour of respondent No. 3-Sant Saran Singh.

In brief, on 23.10.1992, the Consolidation Officer, SAS Nagar, Mohali passed an order under Section 21(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”) in favour of respondent No. 3 in respect of the land comprising Khasra No. 85//19/2 (2-4), 20(8-0), 21/2(2-8), 21/2(4-18), 86//16/1(5-4), 25(3-7), 627(7-1) measuring 34 Kanal and 12 Marla.

Respondent No. 3 filed an application under Section 23(2) of the Act of 1948 on 06.06.2011 submitting that out of the total land measuring 34 Kanal 12 Marla, situated in the area of Village Kot Duna, Barnala, possession of the land comprised Khasra No. 85//21/2 (4-18), 86//16/1(6-4), 25(3-7) measuring 14 Kanal 9 Marla is still with the petitioners, and prayed for the issuance of warrant of possession in respect of land measuring 14 Kanal 19 Marla. The said application was resisted by the petitioners on the ground that they had purchased the land in question from Shingara Singh, Jarnail Singh, Pritam Singh Sons of Sajjan Singh and Sukhdev Singh, Bhura Singh sons of Karnail Singh S/o Sajjan Singh resident of Kot Duna, Barnala on 02.06.2005. It was argued by the learned counsel for the petitioners that the application for seeking warrant of possession was time barred as it could have been filed within a period of three years from the date of partition in view of Section 122 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the Act of 1887"). However, the application was allowed by the learned Court below while referring to the judgement rendered by this Court in the case of ***Kartar Singh*** Vs. ***Lal Singh and others***; *1972 PLJ 268 (DB).*

Learned counsel for the petitioners has submitted that as per Section 23(2) of the Act of 1948, the Consolidation Officer, for the purpose of delivery of physical possession, has to exercise his powers of a Revenue Officer under the Act of 1887. He has then referred to Section 3(12) and Section 6 of the Act of 1887 which deals with definition of the Revenue Officers and also their Classes. Section 3(12) and Section 6 of the Act of 1887 are reproduced as under: -

> *Section 3(12) "Revenue-Officer"in any provision of this Act means a Revenue-Officer having authority under this Act to discharge the functions of a Revenue-Officer under that provision;*
>
> *Section 6*
>
> ***6. Classes of Revenue Officers and Powers -** (1) There shall be the following classes of Revenue-officers, namely : -*
>
> *(a) the Financial Commissioner ;*
>
> *(b) the Commissioner ;*

(c) the Collector;

(d) the Assistant Collector of the first grade; and

(e) the Assistant Collector of the second grade.

(2) The Deputy Commissioner of a district shall be the Collector thereof.

(3) The State Government may appoint any Assistant Commissioner, Extra Assistant Commissioner or Tehsildar to be an Assistant Collector of the first or of the second grade, as it thinks fit, and any Naib-Tehsildar to be an Assistant Collector of the second grade.

(4) Appointment under sub-section (3) shall be by notification and may be of a person specially by name or by virtue of his office or of more persons than one by any description sufficient for their identification.

(5) Subject to the provisions of this Act, the jurisdiction of the Financial Commissioner extends to the whole of the territories [-] administrated by the State Government of Punjab and of Commissioners and of Collectors and Assistant Collectors to the divisions and districts, respectively, in which they are for the time being employed."

He has also referred to Section 122 of the Act of 1887 which deals with the delivery of possession of property allotted on partition and read as under:-

"122. ***Delivery of possession of property allotted, on partition:-*** *An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue-Officer shall, on application made to him for the purpose by any*

such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so far as it concerns the applicant as if it were a decree for immovable property."

The sum and substance of the arguments of learned counsel for the petitioners is that since it is a matter of partition of holdings, therefore, provision of Section 122 of the Act of 1887 would apply in which limitation of three years is prescribed.

We have heard learned counsel for the petitioners and perused the record with his able assistance.

Howsoever the argument raised by learned counsel for the petitioners may look attractive but has no legs to stand in view of the decision of this Court rendered in the case of Kartar Singh (Supra) in which a similar issue was involved as to whether the period mentioned in Section 122 of the Act of 1887 would be applicable when possession is to be delivered under Section 23(2) as well as Section 24(1) of the Act of 1948.

The findings recorded in the case of Kartar Singh are that *"in these circumstances we are of the opinion that Section 23(2) as well as Section 24(1) of the Consolidation Act merely confer on the Consolidation Officer the power to deliver possession which is otherwise vested in a Revenue Officer under Section 122 of the Revenue Act, but the procedure prescribed in Section 122 requiring an application for possession being made within a specified period of limitation is not applicable to proceedings under Section 23(2) or Section 24(1) of the Consolidation Act for delivery of possession."*

In view of the position of law explained hereinabove, the arguments raised by the learned counsel for the petitioners that the period of limitation is of three years as applicable under Section 122 of the Act of 1887 is hereby repelled and the writ petition is dismissed while upholding the impugned order.

[RAKESH KUMAR JAIN]
JUDGE

August 9, 2019
Ess Kay

[ARUN KUMAR TYAGI]
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No