

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

CWP-20325-2021

Date of Decision:05.10.2021

Ombir and others

....Petitioners

VS

Financial Commissioner, Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Jasvir Yadav, Sr. Advocate with
Mr. Tarun Yadav and Mr. Nitish Sharma, Advocates
for the petitioners

SUDHIR MITTAL, J. (Oral)

Respondent No.4 Vijay Pal filed an application for correction of *khasra girdawari*. The application was rejected by the Assistant Collector 2nd Grade, which order was challenged by him by way of an appeal before the Collector. The appeal was allowed and the matter was remanded to the Assistant Collector 2nd Grade for a fresh decision.

The order of remand of the Collector was challenged by the petitioners by way of appeal. The Commissioner accepted the appeal of the petitioners and remanded the case to the Collector for deciding the appeal afresh, after considering record pertaining to allotment of surplus land. The relevant part of the order is reproduced below:

“8. Thus, this case is remanded with the direction that this case may be decided by Sub Divisional Officer (Civil), Charkhi Dadri, in the capacity as Prescribed Authority after examination of complete record of surplus and all the relevant decisions and then decide on following points:-

(i) Whereas on the land in dispute Neki Ram S/o Piranu was already a tenant of Category (A) or Category (BB) then why this land not being allotted to him, was allotted to the respondents, who was tenant of Category (CC), how and on what basis.”

The Collector has accordingly, passed order dated 28.03.2011 after examining available record pertaining to surplus area allotment. The appeal of respondent No.4 was allowed and it was directed that the *khasra girdwari* be corrected in his favour. Aggrieved, the petitioners approached the Court of the Commissioner by way of appeal but did not succeed. The appeal was dismissed vide order dated 18.11.2011. Revision filed before the learned Financial Commissioner has met with the same fate by virtue of impugned order dated 14.08.2018.

Learned Senior counsel for the petitioners has argued that the Collector was in error in allowing the appeal of respondent No.4. He has himself noted in his order that the original surplus record was not available, yet, he has proceeded to decide the matter on the basis of report of a Patwari. Report of the Patwari cannot be considered to be an authentic document, thus, the basis of the order being unsubstantiated record, the order was illegal. The Commissioner and the learned Financial Commissioner have failed to consider this aspect of the matter. Moreover, in matters pertaining to correction of *girdawari*, possession is the primary consideration. Evidence on record regarding the possession of the land in dispute has not been taken into consideration by the Collector. On this ground also, the order could not be sustained. The Commissioner and the learned Financial Commissioner have erred in side-lining this aspect of the matter too.

The Commissioner passed order dated 15.01.2009 on an appeal filed by the petitioners. They invited the order and, therefore, they have to suffer the consequences thereof. The Collector was bound to examine the available record regarding allotment of surplus area, which he has done. The original surplus file was not available but original of allotment record was available, based upon which the Patwari concerned has submitted a report. The same has been reproduced in the

been recorded on the basis thereof and the same cannot be termed to be perverse. In fact the argument of perversity has not been raised at all. In this view of the matter, the order of the Collector cannot be termed to be illegal. He has passed the order strictly in accordance with the directions received by him from the Commissioner because direction contained in order dated 15.01.2009 was “*On completion of above said task the decision of this dispute/appeal would automatically be done.*”

There was no direction to consider the evidence on record regarding possession. This order was invited by the petitioners themselves and, thus, they cannot say that the directions given therein were illegal.

The orders passed by the learned Commissioner and the learned Financial Commissioner also deserve to be upheld as no perversity has been pointed out therein. The only argument is that they have failed to take note of the illegality committed by the Collector and this argument cannot be accepted because the order of the Collector has been passed strictly in accordance with the directions issued to him by the Commissioner.

The impugned order of the learned Financial Commissioner is dated 14.08.2018. The writ petition is thus hit by principle of delay and laches also.

In view of the aforementioned reasons, the writ petition has no merit and is dismissed. The petitioners however, would have the liberty to get their title decided in case the same has come under a cloud, by approaching the Civil Court.

(SUDHIR MITTAL)
JUDGE

05.10.2021
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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No