IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Judgment Reserved on 09.11.2022
Date of Decision: November 21, 2022

Civil Writ Petition No.19481 of 2022

Ramesh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Deepkaran Dalal, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Puneet Bali, Senior Advocate with
Mr. Uday Agnihotri, Advocate and
Mr. Kanwardeep Singh, Advocate, for respondent No.5.

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SUDHIR MITTAL, J.

Susceptibility to avarice is one of the greatest shortcomings in human beings. Even holy people and saints fall prey to it. Eradication of this evil appears to be impossible. The law can only deal with it by discouraging acts which are the outcome of greed.

2. Three persons of village Dulina, Tehsil & District Jhajjar filed an application for partition of joint land in all measuring 4250 kanals 19 marlas. The same was rejected vide order dated 10.02.2014 passed by the Assistant Collector Ist Grade, Jhajjar on the ground of non-mentioning of names of owners of land forming part of Drain No.8 in the relevant jamabandi. This order was challenged before the Collector by the persons who had filed the partition application, who allowed the appeal filed by

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them vide order dated 12.12.2017 with a direction that the land through which Drain No.8 was flowing be excluded from the partition. Thereafter, the partition was concluded and sanad dated 05.11.2019 was issued. The same was challenged by the petitioner and two other persons namely Rajesh and Rakesh sons of Nar Singh by way of an appeal filed before the Collector, Jhajjar. This appeal was dismissed as being not maintainable. Thus, a revision was filed before the Commissioner, Rohtak Division, Rohtak and status quo was ordered vide order dated 08.02.2021. Order of status quo was continued vide order dated 08.03.2021 resulting in challenge to the said orders by respondent No.5 by way of a revision petition filed under Section 16 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act) as applicable to Haryana. The Financial Commissioner stayed the proceedings pending before the Commissioner and finally allowed the revision petition vide order dated 01.06.2022. The revision pending before the Commissioner was dismissed. Thus, the present writ petition has been filed.

3. It may also be noticed that before the Collector, aforementioned Rajesh and Rakesh tendered affidavits stating that they do not wish to continue with their appeal and the petitioner submitted an application that he has no objection to sale/purchase of land. This application is in fact an unattested affidavit of the petitioner and is on record as Annexure R-2 with the written statement filed on behalf of respondent No.5. After dismissal of the appeal, respondent No.5 purchased a total of about 80 acres of land from different co-sharers through different sale deeds for setting up a logistic park.

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4. Learned counsel for the petitioner has argued that after amendment of Section 16 of the Act as applicable to Haryana, vide Act No.12 of 2017 notified on 10.04.2017, the Financial Commissioner has been divested of revisional jurisdiction and thus, the impugned order is without jurisdiction. Only the Commissioner has jurisdiction in the matter after a sanad has been issued and thus, the impugned order deserves to be set aside. It has also been argued that Drain No.8 having not been excluded from partition, the partition proceedings are illegal. The land under the said drain had been acquired by the State of Haryana long before the partition application was filed and the same was not partible. On this ground also, the sanad deserved to be set aside.

5. Learned Senior counsel appearing for respondent No.5 has argued that the filing of the revision petition was an act of blackmail because Rajesh and Rakesh had already sworn affidavits before the Collector that they do not wish to continue with the appeal and yet, they filed the revision petition. The petitioner had filed an affidavit stating that he had no objection to sale/purchase of the land but in effect meaning that the co-sharers who had been allotted land as per the sanad were free to sell the same which in turn meant that he had no objection to the sanad, yet, the revision petition was filed. Such acts of blackmail cannot be condoned. Respondent No.5 purchased land after being assured that there was no challenge to the partition for the purposes of setting up a logistic park. The project has been delayed due to proceedings initiated before the Commissioner and this has resulted in huge financial loss. That apart, it has been submitted that in the instant case, the partition application was

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filed on 25.03.2011 i.e. before 2017 amendment. In this view of the matter, the un-amended Section 16 of the Act was applicable to this case as has been held by this Court in judgment dated 12.05.2017 in CWP No.10182 of 2017 titled as ***Smt. Rajesh & ors. vs. State of Haryana & ors.*** The same possession has been reiterated in order dated 25.01.2019 passed in CWP No.1211 of 2018 titled as ***Ved Pal & ors. vs. Financial Commissioner, Haryana & ors***. The Commissioner had no jurisdiction in the matter and the proceedings initiated before him were not only mala fide but also illegal. Under the un-amended provision, either a revision petition could be filed before the Financial Commissioner or a party could approach the High Court by way of a writ petition as has been held by a Division Bench of this Court in ***Amar Khan & ors. vs. State of Punjab & ors.*** passed in CWP No.14750 of 2004 dated 22.05.2007. For these reasons, the order of Financial Commissioner does not call for any interference.

6. In rebuttal, learned counsel for the petitioner does not deny the affidavit annexed as Annexure R-2 with the written statement of respondent No.5. He only submits that the said affidavit was not relied upon in the revision petition filed by respondent No.5 before the Financial Commissioner and thus, he is estopped from relying upon the same in this writ petition.

7. In the aforementioned backdrop, the only question of importance which arises for consideration is which of the proceedings were without jurisdiction, the one preferred before the Commissioner or the one preferred before the Financial Commissioner?

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8. Section 16 of the Act prior to its amendment in the year 2017 is reproduced below:

> "***16. Power to call for examine and revise proceedings of Revenue-officers*** *: -(1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue –officer subordinate to him.*
>
> *(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue officer under his control. (3) If in any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner whose decision shall be final.*
>
> *(4) The Financial Commissioner under sub-section (1), or Commissioner under sub-section (2), in any case called for by himself, may pass such orders as he thinks fit:*
>
> *Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue-officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.*
>
> *Provided further that the revisional cases pending before the commencement of the Punjab Land Revenue (Haryana Amendment) Act, 1996, shall be decided by the Financial Commissioner as heretobefore.*"

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9. After the amendment it is as follows:

> ***"16. Power to call for, examine and revise proceedings of Revenue Officer:-*** *(1) The Commissioner may call for the record of any case pending before, or disposed of by any Revenue-officer under his control and pass such orders, as he thinks fit.*
>
> *(2) The Collector may also call for the record of any case pending before, or disposed of by any Revenue-officer under his control and if he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner, whose decision shall be final:*
>
> *Provided that he shall not pass an order reversing or modifying any proceeding or order of a subordinate Revenue-officer and affecting any question of right between private persons without giving them an opportunity of being heard*."

10. It is thus evident that before the amendment notified on 10.04.2017, the Financial Commissioner had the jurisdiction to revise order passed by any Subordinate Revenue Officer. In exercise of the said power, he could even revise interim orders and withdraw a case if he found any illegality, irregularity in the pending proceedings or if the same were without jurisdiction. A Commissioner also exercised powers of revision but the Financial Commissioner being a higher official, sanad issued in partition proceedings could only be challenged before him apart from filing of a writ petition as held by this Court in ***Amar Khan (supra)***.

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To interpret un-amended Section 16 of the Act as conferring concurrent jurisdiction would be violative of the principles of interpretation of statutes as it would create confusion among the litigants. Post-amendment, only the Commissioner exercises revisional jurisdiction and the Financial Commissioner has been deprived of the said power. In ***Smt. Rajesh (supra)*** as well as ***Ved Pal (supra)***, it has been held that amendment dated 10.04.2017 would apply prospectively and would govern only those cases in which partition application was instituted after the said date. In the instant case, the partition application was filed on 25.03.2011 i.e. prior to the enactment of the amending Act No.12 of 2017 and thus, the sanad could only be challenged before the Financial Commissioner. Proceedings initiated before the Commissioner were patently without jurisdiction. The said proceedings have rightly been set aside by the Financial Commissioner by the impugned order and the said order does not call for any interference. The reasons given by the Financial Commissioner are not very happily worded but the final result cannot be faulted.

11. As the writ petition can be decided on the basis of the foregoing reasons, this Court refrains from examining other questions raised and argued by learned counsel.

12. The writ petition has no merit and is dismissed.

November 21, 2022 **(SUDHIR MITTAL)**
'Ankur Goyal' **JUDGE**

Whether speaking/reasoned ***Yes***

Whether Reportable ***Yes***

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