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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : April 18, 2023

BISHAN SINGH

-Petitioner

V/S

THE FINANCIAL COMMISSIONER AND ANOTHER

-Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Pawan Kumar Sharma, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Amarpreet Singh Bains, Advocate
for the respondent No.2.

SURESHWAR THAKUR, J.(ORAL)

1. On the oral request of the learned counsel for the petitioner, the name of Bishan Singh is deleted, as petitioner, whereas his son Balvinder Singh Maan, through whom he is stated in the array of the petitioners, to be prosecuting the petition, is substituted in his place, as the solitary petitioner. The requisite correction be so made.

2. The Nagar Council Dera Bassi, Tehsil Dera Bassi, S.A.S. Nagar, through its Executive Officer, instituted Missal No.8, on 29.08.2016, before the Assistant Collector, IInd Grade-cum-Tehsildar, Dera Bassi (hereinafter referred to as the 'Assistant Collector' for short), raising a claim therein for correction of the Girdawari, Crop Hari-2015, pertaining to land measuring 1 Bigha 2 Biswas, comprised in Khewat No.29, Khata No.47, Khasra

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No.98/1(1-2), situated at Village Bakarpur, Tehsil Dera Bassi. The Assistant Collector, through an order made thereon, on 15.12.2016, and, which becomes carried in Annexure P-8, after making investigation of the site, and, also making perusal of the records, made a conclusion that the Nagar Council, i.e. the petitioner in the Missal (supra), is owner in possession of the disputed land, comprised in Khasra No.98/1(1-2). A further conclusion was made therein, that the construction of the path on the said land, has been lawfully done.

3. Though it is candidly stated in the impugned order that Bishan Singh, who was arrayed as a respondent in the said Missal, and, who appears to have been represented by his son Balvinder Singh, rather was dead, at the time of the institution of the Missal (supra) before the Assistant Collector.

4. Though the arraying of the principal respondent in the Missal (supra), one Bishan Singh, who was deceased at the time of its institution, before the Assistant Collector, could be construed to be a valid therein addition of the said respondent, as he is also reflected in the memorandum of parties, as exist in Annexure P-8, to be purportedly represented by his son, one Balvinder Singh. Moreover, the representation of the interest(s) of deceased Bishan Singh, in Annexure P-8, by his son Balvinder Singh also did require, that prior thereto a valid order of apposite substitution be made for ensuring the continuation of the lis against Bishan Singh, hence by his legal representative (supra). Nonetheless, without any valid order, for ensuring the substitution of the principal respondent deceased Bishan Singh, by his son Balvinder Singh, hence being made by the Assistant Collector, thus, the decision on the lis becomes apparently drawn against a deceased person, resultantly the same becomes nonest and completely void. Therefore, on the

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above score, the impugned order is devoid of any force, and, is quashed and set aside.

5. Also, on merits of the decision, as carried in Annexure P-8, does not make any emergences, that in the Assistant Collector drawing the impugned order, his as a matter of fact, discerning all the relevant records pertaining to the disputed khasra numbers, it appears that merely on his making an investigation of the site, and, of the claim raised in the Missal, he concluded that there was a requirement for correction of the Girdawari being made.

6. As a matter of fact, the Assistant Collector could make an order for making corrections in the Girdawari, and, would also be justified in making such corrections, if the disputed land(s), did not evidently fall for cultivation, to the principal deceased respondent, one Bishan Singh, or, to his successor(s) in interest, but rather fell for cultivation to some other person/entity.

7. In other words, the Khasra Girdawari is meant only for ensuring, that the name of the person/entity, who is actually cultivating the petition land(s), and, also is but entered in the record, as the person, who makes cultivation of the disputed land(s), be ensured to become entered in the revenue record. For that purpose, the classification column of the petition land(s) becomes relevant. In the classification column, of the petition land(s), the petition land(s), is designated as “Barani” land, besides in the column of cultivation, as occur in the revenue record, the said respondent is entered. Thus, the petition land(s) but obviously was amenable for cultivation by the principal respondent Bishan Singh, during his life time, and on his demise, by his successor(s) in interest, or, by the agent(s) nominated by them. Moreover,

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as revealed by the apposite jamabandi, to which Annexure P-6 is assigned, in the column of ownership, the Nagar Panchayat is shown to be the owner, but, reiteratedly in the column of cultivation, the name of Bishan Singh occurs. In addition, since reiteratedly deceased Bishan Singh is depicted therein to hold cultivating possession of the petition land(s) but in the capacity of a 'Gair Marusi'. Therefore, though the Nagar Panchayat, as owner of the petition land(s), could oust the principal respondent deceased Bishan Singh from the petition land(s), or, could ensure his lawful eviction therefrom. Nonetheless, the Nagar Panchayat concerned, despite holding the above facilitation to cause lawful eviction of Bishan Singh, and, on his demise, of his successor(s) in interest, from the petition land(s), has chosen the untenable mode, of seeking an alteration and correction in the column of possession of the petition land(s), through its asking for a correction being made in the Khasra Girdawari, pertaining to the petition land(s). The above exercise appears to be prima facie unlawful, besides the order made thereon, also appears to be made without any profound legal insight, about the limits of the correctional jurisdiction vested in the revenue officer concerned.

8. Normally, the Assistant Collector, or, any other empowered revenue officer concerned, can make correction(s) of the revenue record(s), but the said empowerment is to be well rested, only when a validly drawn document of title is presented before the Assistant Collector concerned, and/or, if there is an apparent patent mistake, in the revenue records concerned, and, which is borne from the document(s) of title, pertaining to the petition land(s). Contrarily, if however, a dispute emerges, in respect of the validity of the makings of entries, in the revenue records concerned, but on the permissible anvil that such entries are unauthorizedly made, or, are surmisely

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made, besides when the apposite document of title becomes disputed, thereupon such dispute(s) require(s) issues becoming framed, upon, the respective contentions, or, assertions, with respect to the assertion qua validity of title, inhering in the litigant concerned. Resultantly, then the jurisdiction to try, and, to decide the issue with respect to the validity of making of the revenue entry(ies) is but squarely vested in the Civil Court concerned, and, the Assistant Collector concerned may not, in such a situation, proceed to make correction(s) of the revenue entries, especially when the said empowerment is ably rested, only on the unquestioned document(s) of title concerned, not being assigned adequate reverence, at the time of the making of the initial entry(ies) in the revenue records, or, when the initially made entry(ies) is not well rested, upon any validly drawn undisputed document of title, rather is made surmisely, or, is made in conflict with the said unchallenged document of title.

9. The above situation does not exist in the instant case. The correction(s) in the Khasra Girdawari, as were ordered to be made through Annexure P-8, but on the premise that evidently, Nagar Panchayat is the recorded owner of the petition land(s), entity whereof, is but not recorded in the revenue record(s), to be holding cultivating possession of the petitioner land(s), rather when the principal respondent deceased Bishan Singh, is recorded therein to be evidently holding cultivating possession of the petition land(s), rather as a 'Gair Marusi'. Consequently, other than the petitioner seeking to change the said entry in the cultivation column of the jamabandi appertaining to the petition land(s), from theirs therein despite being designated in the revenue records, as 'Barani' lands, to theirs raising a path thereon, thus but resultantly deprivation would ensue to the concerned, to

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make cultivations of the petition lands, but designated as ‘Barani’.

10. The above has obviously resulted in an unlawful eviction of the successor(s) in interest of Bishan Singh, being made from the petition land(s), other than in the manner, as ordained by law, inasmuch as, by the Nagar Council Dera Bassi, rather taking to institute an eviction petition before the jurisdictionally competent authority concerned. The impugned order(s) is quashed, and, set aside. It is clarified, that irrespective of the above, on the relevant motion under the relevant statute, being forthwith cast by the Nagar Panchayat concerned, before the authority contemplated under the relevant statute, thereupon the said authority shall, with utmost expedition, make a lawful decision thereon, but, after hearing all affected persons.

11. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 18, 2023
devinder

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