116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11462-2023
Date of Decision: 29.05.2023

GURMEJ SINGH AND OTHERS ….Petitioners

Versus

FINANCIAL COMMISSIONER HARYANA AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. S.S. Momi, Advocate
for the petitioners.

Ms. Rajni Gupta, Addl. A.G., Haryana
for respondent Nos.1 to 3.

Mr. Vineet Chaudhary, Advocate
for respondent No.4.

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VIKAS BAHL, J. (Oral)

1. This is a writ petition filed under Articles 226/227 of the Constitution of India for setting aside of the order dated 29.03.2023 (Annexure P-15) passed by respondent No.1 (Financial Commissioner, Haryana), vide which the order passed by the Assistant Collector Jagadhari approving Naksha-kha thereafter upheld by the Commissioner, vide order dated 07.12.2022 (Annexure P-14) has been set aside without issuing notice to the petitioners.

2. Learned counsel for the petitioners have submitted that in the present case, the petitioners and the private respondent No.4 were co-sharers in the land in question and the petitioners filed an application for partition on 26.09.2010 and thereafter, the mode of partition was prepared on

14.03.2013. It is further submitted that on 06.12.2013, the previous application for partition was withdrawn and thereafter on 16.08.2014, a family partition had taken place with the intervention of respectables from the locality and relatives and was reduced into writing and the said compromise was acted upon and the parties were put into possession as per the terms of the compromise. It is contended that respondent No.4 has backed out from the said compromise. It is further contended that the petitioners had filed a second application for partition before the Assistant Collector IInd Grade, Jagadhri for the total land measuring 236 kanals 16 Marla and the said application was contested by respondent No.4 and thereafter on 03.04.2015, Naksha Alif was prepared and on 03.02.2016, the mode of partition was suggested, which was approved as none of the parties filed objections against the same. It is argued that after the said mode of partition, Naksha Bey was approved but respondent No.4 filed objections against Naksha Bey, which was rejected by the Assistant Collector IInd Grade, Jagadhri, vide order dated 09.02.2018 and the appeal filed by respondent No.4 was accepted by the Collector, vide order dated 15.06.2018. It is further argued that the petitioners have filed further an appeal before the Commissioner and vide order dated 07.12.2022, the appeal of the petitioners was allowed and it was observed that the mode of partition has been prepared as per the compromise effected between the parties. It is also submitted that thereafter, ROR No.98 of 2022-23 was filed by respondent No.4 and the Financial Commissioner, vide order dated 29.03.2023 (Annexure P-15) had observed that the partition must conform to the mode of partition sanctioned on 14.03.2013 and the revision petition was disposed of with a direction to the Assistant Collector, Jagadhri to rehear the parties on Naksha-Kha and ensure that Clauses 5 and 6 of the mode of partition are strictly complied with. It is also contended that the said order was passed without even issuing notice to the petitioners and thus, the said order deserves to be set aside solely on the ground of violation of the principles of natural justice. It is also argued that the observation of the Financial Commissioner to the effect that the mode of partition sanctioned on 14.03.2013 is illegal and against law inasmuch as the said mode of partition was the mode of partition in the previous proceedings which had been withdrawn and the mode of partition in the present proceedings dated 03.02.2016 had claimed finality, to which, no objection had been raised. It is further submitted that in fact, the Financial Commissioner has set aside the order of the Commissioner without even specifically recording the said aspect and the order of the Commissioner was legal and valid and in case, an opportunity had been granted to the petitioners to argue the matter, then they would have made submissions to show that the order of the Commissioner deserves to be upheld.

3. Learned counsel appearing for respondent No.4 has submitted that the impugned order passed by the Financial Commissioner is legal and valid and deserves to be upheld. It is further submitted that it is the petitioners who have violated the family settlement/compromise and have constructed a wall, which is in violation of the settlement/compromise. It is however, not disputed that no notice was issued much less served on the present petitioners before the passing of the order of the Financial Commissioner.

4. Learned State counsel appearing on behalf of respondent Nos.1 to 3 has submitted that respondent No.4 is the contesting party in the present

case.

5. This Court has heard learned counsel for the parties and has perused the paperbook.

6. It is not in dispute that the appeal filed by the petitioners was allowed by the Commissioner vide order dated 07.12.2022. Against the said order, respondent No.4 had filed ROR No.98 of 2022-23 and the Financial Commissioner, vide order dated 29.03.2023, observed that the partition must conform to the mode of partition sanctioned on 14.03.2013. It is also not in dispute that no notice was issued to the petitioners prior to the passing of the said order dated 29.03.2023, which is in clear violation of the principles of natural justice and audi alteram partem. The rights of the petitioners have been prejudiced without affording an opportunity of hearing to them and thus, on the said ground alone, the order of the Financial Commissioner dated 29.03.2023, deserves to be set aside and the matter deserves to be remanded to the Financial Commissioner, Haryana for a fresh decision.

7. It would also be relevant to note that the mode of partition dated 14.03.2013 was the mode of partition in the previous partition application, which was dismissed as withdrawn on 06.12.2013 and it is thereafter that the subsequent application for partition, which is the subject matter of the present litigation, was filed on 26.09.2014 in which, mode of partition dated 03.02.2016 was proposed and duly approved and thus, any reference to the previous mode of partition by the Financial Commissioner dated 14.03.2013 is uncalled for.

8. Keeping in view the abovesaid facts and circumstances, the order dated 29.03.2023 (Annexure P-15) is set aside and the matter is

remanded to the Financial Commissioner, Haryana to decide the ROR No.98 of 2022-23 afresh after giving due opportunity of hearing to all the parties concerned including the petitioners and respondent No.4.

9. The petitioners as well as respondent No.4 along with their counsel are directed to appear before the Financial Commissioner on 06.07.2023 and the Financial Commissioner would then list the case for hearing and would decide the same afresh, in accordance with law.

10. It would be open to both the parties to raise pleas, which are available to them in law and the Financial Commissioner would decide the case afresh after considering the submissions raised by the petitioners as well as respondent No.4.

11. With the abovesaid observations, the present Civil Writ Petition is allowed.

(VIKAS BAHL)
JUDGE

29.05.2023
Amandeep

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No