

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

CWP-26675-2017

Reserved on: 13.07.2023

Pronounced on: 28.07.2023

Umesh Sarin

..... Petitioner

Versus

Financial Commissioner Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Sangram S. Saron, Advocate, for respondent No.5.

Rajesh Bhardwaj, J.

Petitioner has approached this Court praying for quashing of the impugned order dated 07.11.2017 (Annexure P-6) passed by the learned Assistant Collector Ist Grade, Nawanshahar, whereby, warrants of possession (Warrant Dakhal) has been issued without taking into consideration the fact that the petitioner and his brothers are coming as Gair Marusi/tenant for the last more than 70-75 years on the whole property i.e. 31 kanals 16 marlas. Further direction has been sought to restrain the respondents from interfering in the peaceful possession of the petitioner.

It has been contended by learned counsel for the petitioner that the petitioner is the Gair Marusi/tenant over the land in dispute. He has submitted that respondent No.5 filed an application for the partition of the land measuring 31 kanals 16 marlas, khewat No.109/128, khasra No.2/2, 3, 4314/4-5, 6, 7, 8 as per jamabandi for the year 2003-2004, village Nawanshahar Hadbast No.126, Tehsil Nawanshahar, District Shaheed

Bhagat Singh Nagar and the same was allowed by respondent No.4 and Sanad Takseem was ordered to be prepared on 16.05.2017. He has submitted that mode of partition of the said case was prepared on 11.01.2010 (Annexure P-1). He has submitted that thereafter, the petitioner challenged the order dated 11.01.2010 by way of filing an appeal before the learned Collector, Nawanshahar, however, the same was dismissed vide order dated 13.12.2010 (Annexure P-2). He has submitted that the petitioner assailed the order dated 13.12.2010 further by way of filing revisions/RORs before the learned Commissioner and the learned Financial Commissioner, however, he remained unsuccessful before both these forums and the respective revisions/RORs were dismissed vide order dated 05.08.2016 (Annexure P-3) and 19.01.2017 (Annexure P-4) respectively. It has been further submitted that the petitioner and his brother filed a suit for permanent injunction wherein it was pleaded that the plaintiffs were co-sharers to the extent of 1/7th share in the suit property and they were Gair Marusi/tenant in the whole property as per record of the Jamabandi and Khasra Girdawari. It is submitted that the suit filed by the petitioner/plaintiffs was decreed by the Civil Court vide decree dated 06.03.2014. He has submitted that the learned Civil Court decreed the suit filed by the petitioner by specifically restraining the defendants from forcibly dispossessing and his brother and the petitioner from the suit property, except in due course of law. He has submitted that thereafter under garb of the partition proceedings, respondent No.5 made an attempt to seek physical possession of the land without getting the petitioner and his brother evicted from the land. He has submitted that this Court in the

order dated 24.11.2017 had recorded the contentions of learned counsel for the petitioner, which reads as under:-

“Counsel for the petitioner submits that in the garb of delivery of possession, he may not be dispossessed from the land in dispute and the respondents may be given symbolic possession and not the actual physical possession till the petitioner is evicted in due course of law.”

Learned counsel for the petitioner has further submitted that sanad takseem had already been issued. He has submitted that from the order passed by the Civil Court as well as the Single Judge, it is evident that the petitioner can be evicted in due course of law. He has submitted that as per due course of law, gair marusi/tenant would be evicted under Sections 39 to 42 of the Punjab Tenancy Act, 1987. He has submitted that the impugned order dated 07.11.2017 (Anneuxre P-6), whereby warrants of possession have been issued against the petitioner, is totally in violation of the order of the Civil Court and the law settled. He has submitted that admittedly the petitioner is recorded as Gair Marusi/tenant and he is in possession of the property from the last 30 years and by no stretch of imagination he can be evicted from the land except in accordance with the procedure and in due course of law. He has further submitted that in view of the overall facts and circumstances, the impugned order dated 07.11.2017 issuing warrants of possession against the petitioner, deserves to be quashed. He has relied upon the judgments of this Court in Gurdawara Sahib Patshahi Naumi Guru Teg Bahadur Sahib Hind vs. Jaggar

Singh, 2001(1) RCR (Civil) 186; Kiran Dev Singh vs. Dhanvir Singh, 2005(3) RCR (Civil) 295.

Learned counsel for respondent No.5 has vehemently opposed the contention raised by learned counsel for the petitioner and has submitted that the present petition is nothing but an attempt to divest the answering respondent from his legally entitled possession over the property. He has duly admitted the filing of the civil suit for permanent injunction by the petitioner and his brother, however, he has submitted that total 27 kanals 5 marlas of land was purchased by respondent No.5 and thereafter he filed partition of the joint Khewat. He has submitted that the mode of partition was prepared on 11.01.2010 and ultimately Sanad Takseem was ordered to be prepared on 16.05.2017. He has submitted that submissions made by learned counsel for the petitioner in the present petition had already been raised by the petitioner before the quasi judicial authorities and the same have been duly appreciated and thereafter the appeal and revision filed by the petitioner have been dismissed by the respondent-quasi judicial authorities. He has submitted that the petitioner has not approached this Court with clean hands and has suppressed the material facts. It is submitted that the petitioner has accepted the mode of partition dated 11.01.2010, which fact has been concealed from this Court. He has submitted that the petitioner was bound by the statement as he has not assailed its correctness. He has submitted that warrants of possession were issued after issuance of instruments of partition (sanad takseem). It has been submitted that the petition is not even maintainable before this Court as per the law settled. He has submitted that the proceedings of issuance of warrants of possession are

not independent that can be challenged by way of filing the present petition as the petitioner has not even challenged further, the partition proceedings. He has submitted that the petitioner has failed before all the quasi judicial authorities as his appeal and revision have been dismissed and the orders dated 11.01.2010 and 16.05.2017 have attained finality. He has submitted that after the filing of the present petition the main proceedings (sanad takseem dated 13.07.2017), mode of partition dated 11.01.2010 and final order of partition dated 16.05.2017, were challenged by the petitioner in ROR No.52 of 2018 before the learned Financial Commissioner. He has submitted that the said revision petition filed had already been disposed of vide order dated 30.11.2018 with liberty to file an appeal and thus, the order dated 30.11.2018 had already attained finality and nothing survives in the revision filed; besides this no appeal has been filed by the petitioner. He has submitted as per the law settled, against the sanad takseem i.e. the final partition only revision before the Financial Commissioner is maintainable under Section 16 of the Punjab Land Revenue Act, 1887. He has relied upon the judgment rendered by Hon'ble Division Bench of this Court in Amar Khan and others vs. State of Punjab and others, 2009(1) RCR (Civil) 741 and judgments rendered by Single Bench in Balbir Chand vs. Financial Commissioner (Appeal-II), Punjab and others, 2010(2) RCR (Civil) 263; Nirmal Kaur vs. Assistant Collector Grade I, Tehsil Abohar, District Fazilka and others, 2012(68) RCR (Civil) 307 and Fateh Singh and others vs. Assistant Collector Ist Grade, Israna and others, 2017(2) PLR 727. He has further submitted that after filing of this petition, the petitioner has already availed the alternative remedy by filing of the revision petition which has

been disposed of vide order dated 30.11.2018 and the same has not been challenged by the petitioner and thus, the impugned order dated 07.11.2017 suffers from no illegality and thus, the present petition being devoid of any merit deserves to be dismissed.

Heard learned counsel for the parties and perused the record.

Admittedly, the petitioner is the co-sharer to the extent of 1/7th share in the join property in dispute. Respondent No.5 initiated partition proceedings and the same were allowed by the Assistant Collector Ist Grade, Nawanshahar and mode of the partition of the land was prepared on 11.01.2010. The petitioner challenged the order dated 11.01.2010 by way of filing appeal and revision, but remained unsuccessful. Besides this the petitioner also filed a Civil Suit seeking permanent injunction, which was decreed with the mandate that he cannot be evicted from the disputed land except in accordance with the law. However, it is evident that the partition proceedings were carried out between both the sides and the petitioner had duly availed his remedies, but he remained unsuccessful. After passing the interim order dated 24.11.2017 by the learned Single Bench, the petitioner approached the learned Financial Commissioner by way of filing ROR-52-2018, however, the same was also disposed of with liberty to him to file appeal before this Court. There is nothing on record to show that the petitioner has assailed the same by way of filing any appeal further. It is the settled proposition of law that sanad takseem is the final instrument of partition and the same can be challenged only before the learned Financial Commissioner, which the petitioner challenged by way of filing revision and that has also been decided. The warrants of possession are issued on the

conclusion of the partition proceedings when the sanad takseem was issued vide order dated 16.05.2017. There is no dispute regarding the law settled in various judgments cited by learned counsel for the petitioner, however, the same are distinguishable in the facts and circumstances of the case in hand. Thus in view of the law settled, this Court does not find any merit in this petition for interference and resultantly, the present petition is disposed of with liberty to the petitioner to avail any other alternative remedy as available to him under the law.

The present petition is disposed of accordingly.

28.07.2023
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No