

CWP-21348-2021(O&M)

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2023:PHHC:055515

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1.

CWP-21348-2021(O&M)

Asha Chauhan

... Petitioner

Versus

State of Haryana and others

... Respondents

2.

CWP-1849-2023

Smt.Kaushalya Chaudhary

... Petitioner

Versus

State of Haryana and others

... Respondents

Date of decision : 20.04.2023

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Abhilaksh Grover, Advocate
for the petitioner in CWP-21348-2021.

Mr.Govind Goel, Advocate and
Mr.Amit Kashyap, Advocate for
for the petitioner in CWP-1849-2023 and
for respondent no.22 in CWP-21348-2021.

Ms.Upasana Dhawan, AAG, Haryana
for respondents no.1 to 3 in CWP-21348-2021 and
for respondents no.1 and 2 in CWP-1849-2023.

Mr.Atul Yadav, Advocate
for respondents no.10 and 21 in CWP-21348-2021.

Mr.Vipin Pal Yadav, Advocate
for respondents no.4,5, 27, 35, 36 and 37 in CWP-21348-2021.

Mr.Danish Davesar, Advocate for
Mr. Vinod Bhardwaj, Advocate
for respondents no.22 and 34 in CWP-21348-2021.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of two writ petitions i.e., CWP-21348-2021 filed by Asha Chauhan and CWP-1849-2023 filed by Kaushalya Chaudhary. Both the cases arise from the same partition proceedings and with the consent of all the parties, the facts are being taken from CWP-21348-2021.

2. Petitioner Asha Chauhan had filed a revision petition before the Commissioner, Gurugram challenging the orders dated 10.07.2020, 14.08.2020 and also Sanad Taksim dated 04.06.2021. The Commissioner had observed that the said orders were passed by the Assistant Collector 2nd Grade and accordingly had permitted the petitioners to challenge the said orders before the Collector and had not entertained the revision. On 14.10.2021, a coordinate Bench of this Court was pleased to pass the following order:-

“The petitioner had challenged the final order of partition dated 04.06.2021 (Annexure P-2) before the concerned Commissioner, however, the challenge has failed. The petitioner has been relegated to the remedy of approaching the Collector in the first instance upon mis-reading of Section 16 of the Punjab Land Revenue Act, 1887 (as applicable to the Haryana State).

It is submitted that no remedy is available before the Collector. Sanad can only be challenged by way of revision before the Commissioner.

Notice of motion for 24.01.2022.

Mr. R.K.S. Brar, Addl. AG, Haryana, accepts notice on behalf of respondents No.1 and 3 and waives service.

Remaining respondents be served in ordinary manner.

Meanwhile, dispossession of the petitioner shall remain stayed.

(SUDHIR MITTAL)
JUDGE

14.10.2021”

and the State have jointly submitted that since, in the present case the partition proceeding had been initiated after the year 2017 i.e., on 06.11.2018, thus, it would be the Commissioner which would be the appropriate authority before whom a revision can be filed after the issuance of Sanad Taksim. It is further jointly submitted that the provisions of Section 16 of the Haryana Land Revenue Act, 1887 (in short “the Act”) governing revisional power of the Commissioner are similar to the revisional power of the Financial Commissioner under Section 16 of the Act prior to the amendment. It is further jointly stated that after passing of the Sanad Taksim it was initially held by the Hon’ble Division Bench of this Court that on account of the revenue authorities being functus officio, only a writ petition would be maintainable. Subsequently, in various judgments it was observed that the Financial Commissioner would have the power to entertain a revision petition after the issuance of Sanad Taksim. As far as the State of Haryana is concerned, an amendment was made in Section 16 of the Haryana Land Revenue Act, 1887 which was notified on 10.04.2017 by virtue of which the revisional jurisdiction was withdrawn from the Financial Commissioner. Since the power of revision of the Financial Commissioner was in similar terms with the power of the Commissioner, therefore, once the revisional power has been withdrawn from the Financial Commissioner, the said power has, even as per the stand of the State, to be exercised by the Commissioner. The Collector in the said circumstances, would not have the power to entertain a revision petition after the Sanad Taksim has been issued. It is jointly prayed that the impugned order dated 15.09.2021 be set aside and the Commissioner, Gurugram Division be directed to consider and decide the revision petition afresh on merits.

that in CWP-21348-2021, a coordinate Bench of this Court vide order dated 14.10.2021 had granted interim order in favour of the petitioner to the effect that dispossession of the petitioner shall remain stayed and pray that the said interim order may be continued till 03.05.2023 and further prayer has been made that the petitioners be granted liberty to seek extension of the said stay order before the Commissioner.

4. The abovesaid course of action has not been opposed by learned counsel for the respondents but they have submitted that the said interim order should not be construed as an expression on the merits of the case and continuation of the said interim order should be considered independently by the Commissioner in accordance with law.

5. Keeping in view the above said facts and circumstances and the consent between the counsel of the contesting parties, the present civil writ petition i.e., CWP-21348-2021 is partly allowed and the order dated 15.09.2021 passed by the Commissioner (Anneuxre P-4) is set aside and the case is remanded to the Commissioner for fresh decision on merits. The parties through their counsel will appear before the Commissioner, Gurugram Division, on 03.05.2023. The Commissioner, after issuance of notice to all the parties concerned, would decide the revision petition, in accordance with law as expeditiously as possible. The interim order dated 14.10.2021 would continue till 03.05.2023 and it would be open to the petitioners to further pray for continuance of said interim order before the Commissioner. The Commissioner would consider the said prayer as well as the revision petition independently as this Court has not given any opinion on the merits of the case. The grant of interim order till 03.05.2023 should not be construed as an expression on the merits of the case.

2023 has submitted that the revision petition before the Commissioner was not filed by the petitioner on account of the pendency of CWP-21348-2021 and has submitted that since it is within the purview of the power of the Commissioner to entertain revision petition after issuance of Sanad Taksim, thus, he be permitted to withdraw the present writ petition with liberty to file a revision petition before the Commissioner and the same may be also decided along with the revision petition filed by the petitioner in CWP-21348-2021.

7. Keeping in view the prayer made by learned counsel for the petitioner in CWP-1849-2023, the petitioner therein is permitted to withdraw the present writ petition i.e., CWP-1849-2023 with liberty to file a revision petition before the Commissioner on or before 03.05.2023 and the said matter be also decided along with the revision petition filed by the petitioner in CWP-21348-2021.

8. Pending miscellaneous applications, if any, shall stand disposed of in view of the above.

(VIKAS BAHL)
JUDGE

April 20, 2023
Davinder Kumar

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