

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-5989-2016

Date of decision: 08.05.2023

GURDEEP SINGH AND ANOTHER

.....Petitioners

VERSUS

FINANCIAL COMMISSIONER APPEALS-1 PUNJAB
CHANDIGARH AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

Mr. Deepanjay Sharma, DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition raises a challenge to the order dated 06.08.2015 (Annexure P-6) passed by the Financial Commissioner Appeals-1, Punjab, Chandigarh in ROR No. 1076/2010 vide which the revision petition filed by respondents No.5 to 7 against the order dated 29.10.2010 (Annexure P-4) and the order dated 22.06.2007 has been allowed without affording any opportunity of hearing to the petitioners.

2. Notice in the present petition had been issued on 31.03.2016. Mr. Ravi Singh, Advocate had entered appearance on behalf of respondents No.5 to 7 on 22.07.2016 and had sought time to file reply. The matter was thereafter adjourned repeatedly on numerous dates. The counsel appearing on behalf of the respondent, however, chose to not appear. On 16.01.2019,

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Mr. Narender Kumar Wadhera, Advocate filed his Power of Attorney on behalf of respondents No.5 to 7 and sought time to file reply which was granted. Thereafter, even the said counsel stopped appearing in the matter. Eventually, the defence of the respondent was struck off vide order dated 06.02.2023. The matter was adjourned to 08.05.2023 for further consideration.

3. No application for re-calling the order dated 06.02.2023 against striking of defence has been moved nor any person has entered appearance on behalf of respondents No.5 to 7 i.e. the contesting respondents. The matter relates to the year 2016, no further wait would be justified. The petition was hence heard on merits.

4. Counsel for the petitioner contends that the dispute in the present case pertains to inheritance of the estate of one Swaran Singh who died on 21.08.2003. Mutation No. 953 of village Talwandi Bakhtan, Tehsil Batala, District Gurdaspur was entered at the instance of Sadha Singh (brother of Swarn Singh) now deceased. The said Sadha Singh was father of respondents No. 5 to 7 herein. The petitioners objected to the sanction of mutation in favour of Sadha Singh on the strength of an unregistered Will dated 19.10.2002, vide which the estate of Swaran Singh had devolved upon the petitioners as well as respondent No.8 –Sadha Singh to the extent of half shares while respondents No.5 to 7 had been vested with the remaining half share. The aforesaid mutation being contested, the Assistant Collector, 2nd Grade, referred the same to respondent No.4 i.e the Assistant Collector, 1st Grade, Batala.

5. Upon hearing both the parties, Assistant Collector First Grade, sanctioned the mutation as per the Will dated 19.10.2002 vide order dated

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22.06.2007.

6. Aggrieved by the said order, the respondents No.5 to 7 herein preferred an appeal before the Collector. Vide order dated 29.09.2009, the said appeal was allowed and the order of the Assistant Collector, 1st Grade dated 22.06.2007 was set aside. Resultantly, the petitioners were constraint to file a revenue Appeal No. 60 of 2009 before the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar. The said appeal was accepted by the Commissioner and the mutation was ordered to be sanctioned in terms of the Will dated 19.10.2002.

7. At the same time, Sadha Singh (now deceased) father of respondents No.5 to 7 had also preferred Civil Suit No. 654 of 2003 for permanent injunction against the petitioners herein alleging that he inherited the property in dispute from Swaran Singh being his brother. The petitioners herein were defendants in the above said suit which was duly contested on the strength of the above Will dated 19.10.2002. Issue No.1 A was framed to the following effect :-

“1A” Whether Swaran Singh has executed legal and valid Will dated 19.10.2002 in favour of defendant? OPD.

8. Vide judgment and decree dated 05.12.2012, the Civil Judge (Junior Division) decided the above said issues in favour of the petitioners herein and the Will dated 19.10. 2002 was successfully established. The burden of proof was thus discharged by the petitioners herein.

9. Notwithstanding the aforesaid decree having been passed by the Civil Court, the respondent preferred petition before the Financial Commissioner, Appeals-1, Punjab bearing ROR-1076/2010. The said ROR was allowed vide order dated 06.08.2015 without affording any opportunity

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of hearing to the petitioners.

10. Learned counsel appearing on behalf of the petitioners contends that Section 16 (3) of the Punjab Land Revenue Act, 1887, as applicable to the State of Punjab, mandates that if any order passed by the subordinate authorities is to be reversed or modified in any proceedings initiated before the Financial Commissioner Appeals-1, the same shall not be carried out without granting an opportunity of hearing to the persons who are likely to be affected. He contends that a perusal of the impugned order Annexure P-17 fails to mention that any notice was ever issued to the petitioners. It is thus averred that the orders passed by the Subordinate authorities upholding the mutation to be sanctioned on the basis of the unregistered Will dated 19.10.2002 which has also been proven before the Civil Court has been set aside in an illegal manner and without adhering to the provisions of the Punjab Land Revenue Act, 1887 as applicable to the State of Punjab.

11. I have heard learned counsel appearing on behalf of the petitioners and have gone through the documents available on record. A perusal of the impugned order Annexure P-17 shows that there is no averment noticed in the said order qua issuing notice to the respondents. Further, the service report of respondents is also not narrated in the order. The respondents have also chosen not to appear before this Court and to contest the said issue. Consequently, the allegations leveled in the present petition remain uncontroverted. This Court thus has no option but to come to a conclusion that respondent Financial Commissioner Appeals-1 had not issued any notice to the respondents and that the impugned order in question was passed without affording any opportunity of hearing to the petitioner.

The said action of the respondent is clearly in violation of the principles of

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natural justice and Section 16 (3) of the Punjab Land Revenue Act, 1887 as applicable to the State of Punjab.

12. Without commenting further on merits and going into the controversy involved in the present case any further, the present writ petition is allowed. The order dated 06.08.2015 passed by the Financial Commissioner Appeals-1, Punjab in ROR No. 1076/2010 titled “Nirmal Singh and others versus Gurdeep Singh and others” is set aside. The matter is remanded to the Financial Commissioner Appeals-1, Punjab for fresh adjudication after granting an opportunity of hearing to the parties concerned.

13. Let this case be listed before Financial Commissioner Appeals -1, Punjab on **12.06.2023** whereupon the Financial Commissioner-Appeals-1 shall further proceed in the matter and pass a fresh order.

The writ petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 08, 2023

Vishal Sharma

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