116 THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21683 of 2023
Date of Decision: 07.11.2023

Madan Mohan

..... Petitioner

Versus

Commissioner, Ambala Division, Ambala Cantt and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Mr. Vishal Aggarwal, Advocate
for the petitioner.

Ms. Upasna Dhawan, AAG, Haryana.

Mr. Narender Pal Bhardwaj, Advocate
for respondents No.3 to 5.

Mr. Vikram Singh, Advocate
for respondent No.6.

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<u>RAJESH BHARDWAJ, J.</u>

Present writ petition has been filed for quashing the impugned order dated 14.09.2023 (Annexure P-7) passed by the learned Commissioner, Ambala Division, Ambala Cantt and order dated 03.11.2022 (Annexure P-5) passed by learned District Collector, Sonepat and restoring the order dated 30.03.2021 (Annexure P-4) passed by the learned District Revenue Officer-cum-Assistant Collector, Sonepat. Further prayer has been made for staying the operation of impugned order during the pendency of the present petition and also for restraining respondent No.6 from alienating the suit property.

As contended by learned counsel for the petitioner, the present case pertains to the ownership of land measuring 98 kanals 5 marlas situated in the revenue estate of village Sultanpur, Tehsil and District Sonepat bought by the petitioner vide sale deed No.2017 dated 07.02.1966 and the mutation regarding the same was entered in the name of petitioner. However, the ownership is being claimed by many persons showing that the petitioner has already died.

It has been contended by learned counsel for the petitioner that due to the riots of 1984 in Delhi, the petitioner had lost his mental balance and when he regained his senses, he was surprised to see that lot of mafias were after his land. It was found that the petitioner was shown to have died in 1984 and on the basis of an unregistered will, a mutation No.3258 was entered in the favour of Narender Aggarwal i,.e. respondent No.6, Santosh Devi etc. He has contended that even though the petitioner is alive, however he was shown to have died in the year 1984. He submits that mutation No.3258 was challenged in the Court of learned District Revenue Officer-cum-Collector, Sonepat and the same was ordered to be cancelled vide order dated 30.11.2016. The appeal filed against the same was also dismissed by the learned Commissioner, Rohtak Division, Rohtak vide order dated 27.08.2020. Aggrieved by the same, respondent No.6 filed the revision petition before the learned Financial Commissioner, Haryana, however the same was dismissed on 08.03.2021. This order was further challenged by way of filing Civil Writ Petition No.7213 of 2021, which is pending adjudication before this Court. He submits that it is evident that claim of respondent No.6 already stands rejected. He further submits that one Manoj son of Babu Ram also claimed ownership of the said land on the basis of registered will dated 24.04.2017, which was allegedly executed in his favour and hence he claimed his entitlement for the said land. He submits that the said Manoj even lodged an FIR against respondent No.6 and his family specifically alleging that documents have been forged and fabricated. He further submits that another person, namely Parvesh Kumar i.e. respondent No.3 along with others claimed ownership of this land on the basis of registered will dated 07.02.2018 which had been allegedly executed in his favour by Madan Mohan. He submits that the petitioner is the original Madan Mohan born in 1946 and has bought the land in 1966. He submits that Madan Mohan i.e. the petitioner is still alive and he has no legal heirs. He submits that the respondents have no concern with the land. He has submitted that later on a mutation No.4414 was entered in favour of respondents No.3 to 5 on the basis of will dated 07.02.2018 which had been allegedly executed by Madan Mohan and accordingly, Assistant Collector, 2nd Grade vide order dated 16.09.2020 sanctioned the same. He has further submitted that the said mutation was challenged by the petitioner before the learned District Revenue Officer-cum-Assistant Collector, Ist Grade, who accepted the same vide order dated 30.03.2021. He has submitted that respondents No.1 to 3 challenged the same by way of filing an appeal before the Commissioner Rohtak, who forwarded the case to the District Collector as the order dated 30.03.2021 was passed by District Revenue Officer as Assiatant Collector, 1st Grade and hence, the appeal was maintainable before the District Collector. He has submitted that the District Collector vide impugned order dated 03.11.2022 set aside the order of Assistant Collector, 1st Grade dated 30.03.2021. Aggrieved by the same, appeal was filed before the learned Commissioner, Rohtak Division. He submits that an FIR was lodged against respondent No.6 by one Manoj. He has also submitted that respondent No.6 filed a Civil Suit for declaration before the Civil Court at Sonepat contending himself to be the legal heir of the petitioner, namely, Madan Mohan. He submits that the learned Commissioner had exceeded his jurisdiction by deciding the appeal in favour of respondent No.6 vide impugned order dated 14.09.2023. He submits that the writ petition filed by respondent No.6 is already pending adjudication before this Court, hence, the present petition be decided along with the same. He submits that impugned order passed is totally beyond the jurisdiction. He submits that the petitioner, namely, Madan Mohan is still alive and therefore, there was no question of mutation being entered in favour of any legal heir.

Notice was issued in this case by this Court to the respondents.

Learned counsel for respondent No.6 has vehemently opposed the contentions raised by learned counsel for the petitioner. Besides merit, learned counsel for respondent No.6 has vehemently opposed the maintainability of this petition before this Court. He has submitted that mutation No.4414 is in continuation to the proceedings which had been initiated since 2004. He has submitted that respondent No.6 and his mother tried to get the land mutated in their names on the basis of an oral will and mutation No.2524 was entered stating therein that Madan Mohan had died on 23.05.2004 but the said petition was dismissed for non prosecution. He has submitted that another mutation No.3226 on 21.02.2012 was entered in favour of Smt. Giano Devi wife of Om Parkash as she claimed herself to be the successor on the basis of an unregistered will and the said mutation was also cancelled by the Circle Revenue Officer vide order dated 21.03.2012. He has submitted that the Revenue authorities had entered mutation No.3258 dated 23.03.2012 in avour of Smt. Santosh Devi widow of Madan Mohan, Narender son of Madan Mohan and Smt. Santosh wife of Narender son of Madan Mohan. He has submitted that the said mutation was sanctioned on 07.06.2012. He has submitted that these mutations were the subject matter in appeals and revisions and the Commissioner, Rohtak Division, Rohtak vide order dated 17.08.2020 had upheld the order of the Collector in rejecting mutation No.3258 and the said order was upheld by the Financial Commissioner vide order dated 08.03.2021. He has further submitted that thereafter another mutation No.4414 was entered and sanctioned in favour of Parvesh Kumar i.e. respondent No.3. He submits that Assistant Collector, 1st Grade-cum-District Revenue Officer cancelled the mutation No.4414 vide order dated 30.03.2021 and the appeal against the said order was filed by the private respondents before the District Collector. He submits that vide order dated 03.11.2022, the order dated 30.03.2021 was set aside. He has submitted that thus, it is evident that the private respondents were parties to the earlier litigation and to the dispute which was initiated in the year 2004. He submits that thus it is evident that proceedings in the present case were initiated much prior to 10.04.2017 i.e. the date from which the amended Act came in operation. He submits that once it is evident that proceedings in this case had been initiated prior to 10.04.2017, hence the provisions of Section 16 of the unamended Act of Haryana Land Revenue Act, 1887 would be attracted in the present case. Thus, the impugned order is assailable before the learned Financial Commissioner and not before this Court. He has relied upon the judgment passed by this Court in "***Ramesh versus State of Haryana and others***", **CWP No.19481 of 2022**, decided on 21.11.2022 reported as **2021(1) RCR Civil 625**. Learned counsel for respondent No.6 has challenged the maintainability of this petition and has submitted that once the petition filed is not maintainable before this Court, merits of the case should not be adjudicated at this stage. He has thus submitted that the petition being not maintainable be dismissed by relegating the petitioner to avail his remedies as per the un-amended statutory provisions of Section 16 of the Haryana Land Revenue Act, 1887.

I have heard learned counsel for the parties and perused the material on record.

After hearing learned counsel for the parties and perusing the record, it is evident that this case has a chequered history. The petitioner is claiming himself to be the original Madan Mohan, who is the owner of disputed property measuring 98 kanals 5 marlas of land. As has been submitted that the petitioner had bought this land vide sale deed No.2017 dated 07.02.1966. However, as contended that due to riots of 1984 in Delhi, the petitioner lost his mental balance and thus, the respondents taking undue advantage of the same started claiming themselves to be the owner of this property. As alleged, the petitioner was shown to have died in 1984. Thereafter mutation No.3258 was entered in the name of respondent No.6 and others on the basis of an unregistered will. Perusal of the impugned order passed by the learned Commissioner dated 14.09.2023 would show that the dispute had arisen much prior to 10.04.2017. Numerous mutations were entered and various claimants claimed themselves to be the owners of this property. Original Madan Mohan has been shown to be dead, however the petitioner is claiming himself to be alive. The impugned order would reflect that the learned Commissioner has discussed the proceedings carried out during these years. One mutation No.2524 was entered on 23.05.2004 stating Madan Mohan to be dead. Thereafter, another mutation No.3226 was entered on 21.02.2012 in favour of one Smt. Giano Devi wife of Om Parkash. The Revenue Authorities also entered mutation No.3258 dated 23.03.2012 in favour of Smt. Santosh Devi widow of Madan Mohan, Narender son of Madan Mohan and Smt. Santosh wife of Narender son of Madan Mohan. This mutation was sanctioned on 07.06.2012. All these mutations were subject matter of appeal and revision and the Commissioner, Rohtak Division vide his order dated 17.08.2020 had upheld the order of Collector in rejecting the mutation No.3258. As observed by the Commissioner, Madan Mohan had expired on 28.05.1994 and copy of death certificate was said to be on record. Various persons alleged claim on the property from 1995 when the first mutation No.1615 had been entered by the authorities. Not only this, a complaint was filed before the Financial Commissioner, Haryana and on the basis of same, the inquiry was conducted by the DSP of CM Flying Squad. On the report submitted by him dated 10.02.2021 to ADGP, CID, Panchkula, it was opined that Narender Aggarwal i.e. respondent No.6 was the actual owner of the land in question and the claim of other persons was fake. On the basis of this report, an FIR No.5 dated 06.12.2021, under Sections 167, 218, 420, 467, 468, 471, 120-B IPC was registered with Anti Corruption Bureau, Haryana. The learned Commissioner had observed that mutation No.1615 which was initially entered in the name of respondent No.6 and his mother, should have been sanctioned. He had observed that Will dated 07.02.2018 in favour of respondents No.3 to 5 was surrounded by suspicious circumstances.

From perusal of the observations made, it is apparent that the proceedings which are pending since 2004 cannot be segregated from the present proceedings. The dispute is in continuation of the earlier proceedings when the original Madan Mohan on one side is said to be dead whereas the petitioner is claiming himself to be alive. Section 16 of the Haryana Land Revenue Act, 1887 has been amended w.e.f. 10.04.2017. As the proceedings were pending prior to the amendment, hence as submitted by learned counsel for the respondents, the provisions of unamended Act would be applicable and thus, the impugned order dated 14.09.2023 passed by the learned Commissioner is further assailable before the learned Financial Commissioner.

In view of the arguments raised by learned counsel for respondent No.6 and the judgment relied upon, this Court finds that the present petition is not maintainable before this Court and hence, the present petition is disposed of with liberty to the petitioner to avail his further remedies before the learned Financial Commissioner in accordance with law. It is being clarified that this Court has not expressed any opinion on the merits of the case and the contentions raised by both the sides have been appreciated only qua the maintainability of this petition. If any petition is filed by the petitioner before the learned Financial Commissioner, the same would be decided on merits in accordance with law.

(RAJESH BHARDWAJ)
JUDGE

07.11.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No