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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22738 of 2023
Date of Decision: 09.10.2023

M/s Value Homz Realtors Pvt. Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Mr. Amit Kumar Jain, Advocate for the petitioner.

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RAJESH BHARDWAJ, J.

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the impugned order dated 19.04.2023 (Annexure P-8) passed by respondent No.2 in case ROR No.32 of 2022 titled as Prompt Engineering Pvt. Ltd. Versus Commissioner Gurugram Division and others, whereby respondent No.2 has set aside the instrument of partition dated 23.01.2017 (Annexure P-2) passed in case No.215/ Tehsil/08 of village Begampur Khatola titled as M/s Chakradhari Estate Developers Pvt. Ltd. Versus Anuj Yadav and others.

It has been contended by learned counsel for the petitioner that respondent No.7 filed an application for partition of the suit land measuring 167 Kanal 0 marla comprised in Khewat No.163, khata No.222, mustil No.47, Killa No.16(6-16), khata No.223, mustil No.56, killa No.1(8-0), 2(8-0), khata No.224, mustil No.47, Killa No.15(7-8), khata No.225 mustil No.56, killa No.9(8-0), 10(8-0), khata No.226, mustil No.48, killa No.1(7-7), 2(7-7), 9(8-0), 10(8-0), 11(8-0), 12(8-0), khata No.226, mustil No.48, killa No.19(8-0), 20(8-0), 21(8-0), 22(8-0), khata No.227, mustil No.47, killa No.13(8-0), 14(8-0), 17(8-0), 18(7-11), 19 (7-4), 22/1 (3-16) situated in village Begampur Khatola, Gurugram on 27.06.2008. He submits that notices in the partition application were issued to all the respondents on 10.07.2008 and as many of the respondents were not residing within the territorial jurisdiction of respondent No.5, hence, respondent No.5 ordered for summoning of respondents through registered post. He submits that the petitioner purchased the share of M/s Daffodil Garments Pvt. Ltd. on 29.12.2009 and thereafter, filed an application for substituting the name of M/s Daffodil Garments Pvt. Ltd. to the name of petitioner, which was allowed and amended title was also filed. He further submits that the instrument of partition was finalized and issued on 06.12.2016. He submits that respondent No.21 had filed an appeal against the order passed by respondent No.5 challenging the acceptance of Naksha “B” and respondent No.6 has also filed the cross appeal. He submits that neither respondent No.21 nor respondent No.6 impleaded the present petitioner as party in the appeal filed before the learned Collector, Gurugram. He submits that respondent No.4 finding no merit in the appeal, dismissed the same vide order dated 06.02.2018. He submits that respondents No.6, 14, 17, 21 & 22 filed three revision petitions before respondent No.3 without impleading the petitioner, however, the revision petitions were dismissed on 09.11.2021. He submits that respondent No.6 filed ROR No.32 of 2022 before respondent No.2 but the petitioner again was not impleaded as a party. He submits that ROR filed by respondent No.6 was allowed by respondent No.2 vide order dated 19.04.2023. He submits that as all the co-sharers were not impleaded, hence the impugned order dated 19.04.2023 passed by respondent No.2 is totally unsustainable in the eyes of law and thus, deserves to be set aside.

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

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were filed by respondent No.7 on 27.06.2008. Notices were issued to the shareholders and the objections filed were also considered. Finally, the Sanad Takseem was issued on 23.01.2017. Learned Financial Commissioner heard both the sides and appreciated the issues raised by the parties. However, learned Financial Commissioner, on hearing both the sides, culled out three issues for adjudication. The revision petition filed was appreciated on the issue pertaining to the mode of service as per Section 20 of the Punjab Land Revenue Act, whether the order dated 27.10.2016 and 23.07.2017 were in accordance with law and whether the case could be re-opened up by the Financial Commissioner after issuance of Sanad Takseem. The issue wise findings were given and it was found that the proclamation made was not as per the mandate of Section 20(3) of the Punjab Land Revenue Act. Further, the partition proceedings were found to be in violation of the conditions as approved in the mode of partition. It was further found that the Financial Commissioner had the jurisdiction to evoke his suo motu revisional power after issuance of the Sanad Takseem.

Hence, finding the partition proceedings suffering from illegalities, the Sanad Takseem dated 23.07.2017 was set aside. Resultantly, the case was remanded for initiating fresh partition proceedings.

The precise submissions made by learned counsel for the petitioner that is the petitioner was not impleaded in the revision petition filed before the learned Financial Commissioner and thus, has not been heard in the revision petition filed before the Financial Commissioner. However, as apparent from the findings given by the Financial Commissioner in the impugned order, there were found various illegalities in the partition proceedings carried out and hence, the case has been remanded for decision afresh after hearing all the co-sharers.

Taking in view the facts and circumstances of this case, this Court does not find any infirmity in the opinion drawn by the learned Financial Commissioner wherein the case has been remanded for decision afresh after hearing all co-sharers. Thus, the present petition being devoid of any merit is hereby dismissed. However, the respondents-authorities are directed to conclude the partition proceedings afresh expeditiously in accordance with law.

(RAJESH BHARDWAJ)
JUDGE

09.10.2023

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