

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-917-LPA-2023 in/and

LPA-309-2023(O&M)

Date of Decision: 29.03.2023

Ramesh

. . . . Appellant

Vs.

State of Haryana and others

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present Mr. Ajay Jain, Advocate
for the applicant-appellant.

Mr. Puneet Bali, Sr. Advocate with
Mr. Kanwardeep, Advocate
Mr. Uday Agnihotri, Advocate
for non-applicant/respondent No.5.

M.S. RAMACHANDRA RAO, J. (Oral)

At request of both the sides, the Letters Patent Appeal bearing
No. **LPA-309-2023**, which was posted for 12.04.2023, is preponed and taken
on board today itself.

We have heard elaborate submissions yesterday and today made
by the counsel for the appellant and counsel for respondent No.5.

This Letters Patent Appeal is preferred against the order dt.
21.11.2022 passed in CWP No.19481 of 2022 passed by the learned Single
Judge dismissing the Writ Petition filed by the appellant.

In the Writ Petition, the appellant had challenged 4 orders i.e.

(i) order dt. 01.06.2022 passed by the Financial Commissioner, Haryana,

(ii) order dt. 05.01.2021 passed by the Collector, Jhajjar, (iii) order dt.05.11.2019 and (iv) order dt.08.03.2019 passed by the Assistant Collector, Grade-I, Jhajjar in partition application No. 17/NT under the Punjab Land Revenue Act.

The order of the learned single judge

In the impugned order passed by the learned Single Judge, the learned Single Judge upheld all these orders.

After recording the contentions of the parties, the learned Single Judge considered the question whether the Revision filed by the Writ Petitioner before the Commissioner, Rohtak was maintainable or not, and whether the interim orders passed by the said Commissioner on 08.02.2021 directing maintenance of *status quo*, which was later extended on 08.03.2021, were valid or not.

He also adverted to the order passed by the Financial Commissioner on 01.06.2022 setting aside the orders of the Commissioner, Rohtak on the ground that the Commissioner, Rohtak had no jurisdiction.

The learned Single Judge then referred to amendment made to Section 16 of the Punjab Land Revenue Act, 1887 vide Punjab Land (Haryana Amendment) Act, 1996 and held that before amendment was notified on 10.04.2017, the Financial Commissioner had the jurisdiction to revise the orders passed by the subordinate officer; in exercise of the said power, he could even revise interims orders and withdraw a case if he found any illegality or irregularity in the pending proceedings or if the same was without jurisdiction; a Commissioner also exercised powers of revision, but the Financial Commissioner being a higher official, Sanad issued in partition proceedings could only be challenged before him or by filing of a Writ

Petition as held by this Court in *Amar Khan and others vs. State of Punjab & others*¹.

He then went on to say that post amendment, only the Commissioner exercises revisional jurisdiction and the Financial Commissioner has been deprived of the said power. He also referred to decision in **Smt. Rajesh & others vs. State of Haryana & others**², and held that the amendment dt.10.04.2017 would apply prospectively and would govern only those cases in which partition application was instituted after the said date.

On the basis of these principles, the learned Single Judge went on to hold that in the instant case, the partition application was filed on 25.03.2011 i.e. prior to the enactment of the Amending Act No.12 of 2017 and thus, the Sanad dt.5.11.2019 could have been challenged by the petitioner only before the Financial Commissioner. He therefore held that the proceedings initiated by the petitioner before the Commissioner, Rohtak were patently without jurisdiction and the said orders have been rightly set aside by the Financial Commissioner and the order of the Financial Commissioner does not call for any interference.

Challenging the same, this Appeal has been filed.

The LPA

Heard counsel for the appellant and Mr. Puneet Bali, Sr. Advocate, counsel for respondent No.5.

Counsel for the appellant *inter alia* contended that the validity of the Sanad issued vide Annexure P-8 dt.05.11.2019 was also in challenge

¹Order dt. 22.05.2007 in CWP No.14750 of 2004

²Order dt.12.05.2017 in CWP No. 10182 of 2017

before the learned Single Judge, but the learned Single Judge had not dealt with the correctness of the said Sanad though he may be right in holding that the Commissioner of Rohtak had no jurisdiction to entertain a revision against the orders of the Collector, Jhajjar ; and since no reasons are assigned by the learned Single Judge to uphold the correctness of this Sanad , the order of the learned Single Judge deserves to be set aside and the matter be remitted back to the learned Single Judge to decide the said issue. He further contended that the Sanad/order dt.5.11.2019 (P-8) itself is erroneous because a previous order passed by the Collector, Jhajjar on 12.12.2017 (P-4) had not been noticed while issuing it, and this vitiates it. He also pleaded that there was violation of principles of natural justice.

Counsel for respondent No.5 refuted these contentions. He sought to contend that there were certain affidavits filed by the petitioner before the Collector, Jhajjar bearing dt. 18.12.2020 and 19.12.2020 in which the petitioner and 2 others stated that the partition was rightly effected, and this fact had also been noticed by the learned Single Judge in para 6 of his order, and there is therefore no warrant to interfere in the order of the learned Single Judge. He also contended that a logistic park is proposed to be set up by respondent No.5 in about 80 acres of land which forms part and parcel of the Sanad and grave and irreparable injury would be caused to respondent No.5 if the partition is now put in jeopardy.

Consideration by the Court

We may point out that the validity of the Sanad issued vide Annexure P-8 dt.05.11.2019 was also in challenge before the learned Single Judge along with validity of other orders impugned in the Writ Petition. He dismissed the Writ Petition in *toto* upholding all the orders impugned therein,

but he had not given any reasons for upholding the Sanad/order dt.5.11.2019 (P-8).

Though he may be right in holding that the Commissioner of Rohtak had no jurisdiction to entertain a revision against the orders of the Collector, Jhajjar, since no reasons are assigned by the learned Single Judge to uphold the correctness of the Sanad/order dt.5.11.2019, the order of the learned Single Judge deserves to be set aside on that aspect and the matter has to be remitted back to the learned Single Judge to decide the said issue.

Further we may also point out that in the replication filed before the learned Single Judge by the petitioner, the petitioner had specifically contended that the affidavits dt.18.12.2020 and 19.12.2020 and their contents (relied upon by respondent no.5) are denied; that the said affidavits are forged and fabricated and these affidavits were never executed by the petitioner.

This pleading in the replication has not been noticed by the learned Single Judge, possibly by inadvertence.

The learned Single Judge, *while recording the respective contentions of the parties*, recorded in para 6 of his order that counsel for the petitioner, while rebutting the contentions of counsel for respondent no.5, did not deny affidavits annexed as Annexure R-2 with written statement of respondent No.5; that he had only contended that the said affidavits were not relied upon in the Revision Petition filed by respondent No.5 before the Financial Commissioner; and that the counsel for the petitioner had contended that respondent No.5 is estopped from relying upon the same in the Writ Petition.

But the learned Single Judge however did not advert to this aspect at all while dismissing the Writ Petition and confirming the Sanad/Order (P-8) dt.05.11.2019.

In our opinion, when there is a specific pleading of the petitioner and other family members that the affidavits in question were forged and fabricated and they have never executed the same, it was incumbent upon the learned Single Judge to take note of the said pleading, which he has not done.

The said pleading of the petitioner in the replication cannot be ignored by the Court even if counsel for the party argues contrary to it because Counsel, without instructions from the party, cannot take a stand contrary to party's stand.

As regards the order passed by the Financial Commissioner, which the learned Single Judge has also upheld *in toto*, we noticed that what was in challenge before the learned Financial Commissioner was only the interim order dt.08.02.2021 passed by the Commissioner, Rohtak and the extension thereof by the said official on 08.03.2021. There was no challenge to the Sanad /order dt.05.11.2019 (P-8) before the said officer because the Revision before the Financial Commissioner was filed by respondent No.5, who was in fact relying on this Sanad.

Therefore, while deciding the said Revision and holding that the Commissioner, Rohtak had no jurisdiction to entertain the Revision filed by the petitioner, there was no warrant for the Financial Commissioner to go into the correctness of the Sanad dt.05.11.2019 and also uphold it.

So in our view, he ought not to have confirmed the order of the Financial Commissioner dt.01.06.2022 *in toto* though he is correct insofar as he held that Financial Commissioner was right in holding that the

Commissioner, Rohtak had no jurisdiction to entertain the Revision filed by the Petitioner.

Having regard to these facts and circumstances, we are of the view that the order of the learned Single Judge is partly unsustainable insofar as the learned Single Judge upheld the Sanad/order dt.05.11.2019 (P-8) without assigning any reasons, and also insofar as he upheld in *toto* the order dt.01.06.2022 of the Financial Commissioner, Haryana, who had also upheld this Sanad, without there being any challenge to it before him. To that extent his judgment is set aside.

We, however, affirm the learned Single Judge in his order insofar as he found that the Commissioner, Rohtak had no jurisdiction to entertain the Revision filed by the petitioner.

So the LPA is partly allowed and the matter is remitted back to the learned Single Judge to decide the correctness of the Sanad/Order dt.05.11.2019 which he had not done on the previous occasion, having regard to the judgment of this Court in *Amar Khan(1 supra)*.

Since respondent No.5 claims to be aggrieved by the pendency of the matter, we request the learned Single Judge to decide the Writ Petition as expeditiously as possible, preferably within 4 weeks from the date of receipt of copy of this order.

List the matter before the learned Single Judge on 13.04.2023.

Till the learned Single Judge decides the matter after remand, *status quo* be maintained by the parties in all respects.

LPA stands disposed of accordingly.

Pending CM(s), if any, shall also stand disposed of.

Parties are directed to appear before the learned Single Judge on
13.04.2023.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

March 29, 2023
Mohit goyal

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |