130 THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28250 of 2023 (O&M)
Date of Decision: 21.12.2023

Hari Om and others

..... Petitioners

Versus

Municipal Corporation of Gurugram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Ms. Ridhi Bansal, Advocate with
Ms. Sidhi Bansal, Advocate
for the petitioners.

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RAJESH BHARDWAJ, J. (ORAL)

CM-21556-CWP-2023

Instant application has been filed for placing on record order dated 05.07.2018 passed by the learned Divisional Commissioner, Gurugram.

For the reasons recorded in the application, same is allowed and the order dated 05.07.2018 passed by the learned Divisional Commissioner, Gurugram is ordered to be taken on record.

CWP No.28250 of 2023

Present writ petition has been filed for quashing the order dated 29.11.2021 (Annexure P-5) passed by the learned Financial Commissioner, Chandigarh vide which while *inter alia* setting aside the order dated 05.07.2018 passed by the learned Divisional Commissioner, Gurugram whereby the petitioners were held to be vested with all the rights and title in respect of the land in question under the provisions of the Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010, the matter was remanded to the Collector to be decided on merits, notwithstanding no such revision petition was maintainable in the first place as per Section 5 of the Act, 2010 and further fell foul to the settled law that appeal being a continuation of suit, the Appellate Court was well within its jurisdiction to address the legal issues involved in the matter and also appreciate the evidentiary value of the documents.

It has been contended by learned counsel for the petitioners that the petitioners filed an application under the Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 (hereinafter referred to as "the Act") to declare them as owners of land measuring 10 Kanal 15 Marla situated in the revenue estate of Mauja Ghata, Tehsil Sohna, District Gurugram as the petitioners were in cultivating possession as Dholidars for the last more than 20 years. However, the same was dismissed by the learned Sub Divisional Officer (Civil)-cum-Collector, Gurugram (South) vide order dated 17.01.2013. She submits that being aggrieved petitioners filed an appeal before the learned Divisional Commissioner, Gurugram. However, the learned Divisional Commissioner allowed the appeal filed by the petitioners vide order dated 17.11.2017. She submits that the learned Divisional Commissioner directed the petitioners and respondent No.2 to file application before the Collector with respect to the additional portion of the land belonging to the same parcel of land. She submits that in pursuance to this order passed, the petitioners filed an application before the learned Collector for conferment of proprietary rights in respect of the said additional parcel of land but the same was dismissed by the Collector vide order dated 10.04.2018 on the ground of jurisdiction by holding that the case had been remanded to the Collector by virtue of order dated 17.11.2017 passed by the learned Divisional Commissioner and not by the Collector-cum-District Revenue Officer. She has submitted that aggrieved by the said order, the appeal dated 24.04.2018 was filed before the learned Commissioner on the ground that the District Revenue Officer, Gurugram had the power of Collector and hence had erroneously dismissed the application of the petitioners without considering the documents and the revenue record. She submits that the learned Divisional Commissioner accepted the appeal vide his order dated 05.07.2018 by holding that the petitioners fulfilled all the conditions given in the Act, 2010. She submits that aggrieved by the same, the respondent Corporation filed the revision petition before the learned Financial Commissioner, who illegally accepted the same vide order dated 29.11.2021 on the ground that the Divisional Commissioner had exceeded the jurisdiction vested in him and the right course was to remand the matter to the Collector for decision afresh on merits.

Learned counsel for the petitioners has submitted that the impugned order dated 29.11.2021 was passed holding that no such revision petition was maintainable in the first place as per Section 5 of the Act, 2010. She submits that it was not a case of the respondent Corporation that they were denied any opportunity to produce any particular evidence or that the decision was not rendered on appreciation of evidence. She submits that the appropriate remedy for the respondents in view of Section 5 of the Act, 2010 was to file an appeal before the learned Financial Commissioner against the order dated 05.07.2018 whereas they had filed the revision petition which was not maintainable. She submits that the learned Financial Commissioner could not have passed the impugned order by exercising his revisional jurisdiction in as much as the proper remedy was to file an appeal against the order dated 05.07.2018 passed by the learned Divisional Commissioner. She has relied upon the judgment passed by the Hon'ble Supreme Court in "***The Koushik Mutually Aided Cooperative Housing Society vs. Ameena Beghum and another***", **SLP (C)No.5489 of 2021**. She has submitted that on perusal of the impugned order passed by the learned Financial Commissioner would show that while remanding the matter to the Collector, no cogent reason has been assigned. She has submitted that it is evident from the record that the petitioners were in possession of the land as Dholidars from the past more than 20 years but the respondents authorities have failed to appreciate the same and thus, illegally remanded the case in violation of the statutory provisions and the law settled. Thus, she submits that the impugned order dated 29.11.2021 passed by the learned Financial Commissioner deserves be set aside.

Heard.

After hearing learned counsel for the petitioners and perusing the record, it is evident from the record that the petitioners filed an application under the Act before the learned District Revenue Officer-cum-Collector, Gurugram. However after hearing, the learned Collector dismissed the same vide order dated 10.04.2018 by observing that he has no right of hearing the aforesaid case in accordance with law. The application filed was dismissed with direction to the petitioners to file the suit before the Competent Court. Being aggrieved petitioners filed an appeal under Section 5 of the Act before the learned Commissioner, Gurugram. On hearing both the sides, the Commissioner Gurugram accepted the same vide his order dated 05.07.2018 wherein he passed the order to the effect that the petitioners are vested with all rights, titles, interest relating to the land in dispute. He further directed the petitioners to deposit the compensation amount of Rs.500/- per acre in the Treasury within a period of two months under Section 4 of the Act, 2010. Aggrieved by this order, the respondent Corporation filed the revision petition before the learned Financial Commissioner. However, the learned Financial Commissioner heard both the sides and remanded the case to the Collector for decision afresh vide impugned order dated 29.11.2021. It has been observed by the learned Financial Commissioner that on dismissal of the petition by the Collector, the Divisional Commissioner in the appeal filed had himself assumed the power of Collector and thus, exceeded his jurisdiction vested in him. On perusal of the statutory provisions and the law relied upon by the learned counsel for the petitioners, it is apparent that the Collector had erroneously dismissed the petition filed by the petitioners on the ground that he has no jurisdiction to entertain the same. However, in the appeal filed, the learned Commissioner had not only accepted the appeal but he decided the application by assuming the jurisdiction conferred upon the Collector. The learned Financial Commissioner in the revision filed has appreciated the erroneous approach adopted in the case and thus, has remanded the case to the Collector for decision afresh. The main thrust of the argument raised by learned counsel for the petitioners is that the appeal was maintainable before the Financial Commissioner and not the revision as filed by the respondent Corporation. However, there is no gainsaying that the Collector had illegally rejected the petition filed by the petitioners on the ground of jurisdiction itself but he had the jurisdiction to entertain the petition on merits and decide the same in accordance with law. The learned Commissioner had also fallen in error in not remanding the case to the Collector for decision afresh which had been finally rectified by the learned Financial Commissioner. The authority relied upon by the petitioners is distinguishable on the facts and circumstances of the present case.

In the considered opinion of this Court, this Court does not find any material illegality in the remand order passed by the learned Financial Commissioner by directing the Collector to hear both the parties and decide the case afresh on merits. Thus, the present petition is disposed of. However, keeping in view the facts and circumstances of the case, the learned Collector is directed to decide the case expeditiously in accordance with law after hearing both the sides preferably within a period of three months from the date of receipt of certified copy of this order.

(RAJESH BHARDWAJ)
JUDGE

21.12.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No