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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP- 7156-2022

Date of Decision: May 03, 2024

Chhida Singh (since deceased) through his LR's

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

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

Mr.Rajneesh Chadwal, AAG, Haryana.

Mr.Pardeep Poonia, Advocate with
Mr.Karanvir Hooda, Advocate
for the caveator/respondents No.5 to 7.

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RAJESH BHARDWAJ, J.(ORAL)

1. Petitioner has approached this Court praying for quashing of impugned order, dated 25.02.2015, Annexure P-4, passed by Assistant Collector 2nd Grade-cum-Tehsildar, Sohna, whereby case No.8/Teh. for correction of girdawari filed by respondents No.5 to 7 has been allowed illegally and wrongly, and impugned order, dated 04.11.2016, Annexure P-6, passed by SDO(c)-cum-Collector, Gurgaon, whereby appeal No.24/SDO/G filed by petitioner has been illegally and wrongly dismissed and impugned order, dated 25.11.2021, Annexure P-9, passed by Financial Commissioner, Haryana, in ROR No.247 of 2017-18 whereby the petition filed by respondents No.5 to 7 was allowed against legally justified and speaking order dated 01.02.2018, Annexure P-8, passed by Commissioner, Gurugram

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petitioner whereas impugned orders, dated 25.02.2015, 04.11.2016 and 25.11.2021, Annexures P-4, P-6 and P-9 respectively are liable to be set aside being totally illegal, against record, perverse, arbitrary and non-speaking based upon conjectures and surmises and order, dated 01.02.2018 passed by Commissioner is liable to be restored.

2. It has been submitted by learned counsel for the petitioner that respondents No.5 to 7 filed an application for correction of girdawari situated within revenue estate of village Kherki Majra Dhankot, on 02.07.2013. It is submitted that the petitioner filed objections that the application was not maintainable as the petitioner was in continuing possession of the land in dispute as *Gair Marusi* before the year 1968 and he was in cultivating possession of the same. It is submitted that earlier also three applications were filed wherein spot inspection was done and all the three applications were dismissed on merit. However, thereafter respondents No.5 to 7 filed the 4th application, which was not even maintainable on the principle of *res judi cata*. He has submitted that the petitioner filed transfer application before the learned Collector, Gurugram and thus the same was transferred to the Court of Naib Tehsildar, Sohna from the Court of Assistant Collector 2nd Grade, Gurugram, on 05.08.2014. He has submitted that the learned Assistant Collector 2nd Grade-cum- Tehsildar, Sohna, illegally allowed the application filed by the respondents vide impugned order, dated 25.02.2015. Being aggrieved the petitioner filed appeal before the learned Collector, Gurugram on 21.04.2015, which was illegally and arbitrarily dismissed by the Collector vide impugned order, dated 04.11.2016. Still aggrieved the petitioner assailed the same by way of filing the executive

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Gurugram. He submits that the learned Commissioner rightly, after appreciating the evidence on record, accepted the revision petition filed by the petitioner vide its order dated 01.02.2018, however, respondents No.5 to 7 assailed the said order by way of filing ROR No.247 of 2017-18 before the learned Financial Commissioner, Haryana, who illegally accepted the same vide impugned order dated 25.11.2021. It is submitted by learned counsel for the petitioner that the impugned orders are against the basic and settled principles of law. He submits that earlier three applications, dated 22.10.2012, 29.09.2008 and 17.02.2012 were filed for correction of khasra girdawari and all these applications were decided on merit after spot inspection and the same were dismissed after recording of evidence of witnesses vide orders dated 24.06.2013, 18.04.2011 and 17.08.2012 respectively. He submits that no revision or appeal was filed against the same and hence the same attained finality. He further submits that Civil Suit No.2200 of 2016 for decree for declaration that the petitioner is in cultivating possession of land as Gair Marusi tenant is pending adjudication before the Court. He submits that thus it is evident that the impugned orders have been passed totally against the evidence on record and settled principles of law and thus, the same being unsustainable in the eyes of law deserve to be set aside.

3. Per contra learned counsel for the Caveator/respondents has opposed the submissions made by learned counsel for the petitioner. He has submitted that the present petition pertains to correction of khasra girdawari and thus the principle of *res judi cata* is not applicable to the present case.

He has submitted that the respondent/authorities have passed the impugned orders on the basis of spot inspection report, dated 10.07.2014, and thus on

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the appreciation of the same, learned Assistant Collector 2nd Grade accepted the application filed by respondents No.5 to 7 vide its order dated 25.02.2015. It is submitted that the appeal filed by the petitioner before the learned Collector was dismissed after hearing both the sides and perusing the evidence on record. Learned Collector had specifically observed that the order impugned is based on the inspection report dated 10.07.2014 and thus there being no merit in the same, the same was dismissed. However, learned Commissioner had fallen in error in setting aside the well reasoned orders passed by the learned Assistant Collector and the Collector vide order dated 01.02.2018. He submits that the learned Financial Commissioner in the revision filed by respondents No.5 to 7 has found the impugned orders to be unsustainable in the eyes of law as learned Divisional Commissioner has misinterpreted the basic law and thus the revision filed by the respondents was rightly accepted by the learned Financial Commissioner by upholding the orders passed by the learned Assistant Collector and the Collector.

4. It is further submitted by learned counsel appearing for the Caveator/respondents that the civil suit, as contended by learned counsel for the petitioner, which was pending adjudication, has been decided by the learned Court of Civil Judge, Junior Division, Gurugram, vide order dated 16.05.2022 wherein the suit filed by the petitioner was dismissed. He submits that the learned Civil Court had given a specific finding regarding the possession, as contended by learned counsel for the petitioner and thus, the present petition being devoid of any merit deserves to be dismissed with costs.

5. This Court vide order dated 02.04.2024 while issuing notice of motion had directed respondent No.4-Tehsildar to inspect the site/disputed

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land and ascertain who is in possession of the same and submit the status report.

6. Pursuant to the order dated 02.04.2024, Mr. Gurudev, Tehsildar, Sohna, District Gurugram is present in Court with his report, dated 29.04.2024. The same is taken on record.

7. Learned State counsel on instructions has submitted before this Court that there is no infirmity in the impugned order and as per inspection report, dated 29.04.2024, no crop was found cultivated on the spot and no building was there, and learned Tehsildar has also submitted in his report that it is difficult to ascertain that who is in actual possession of land in question.

8. After hearing learned counsel for the parties and perusing the record, it is deciphered from the facts and circumstances of the case that respondents had filed an application for correction of khasra girdawari on 02.07.2013, to which objections were filed by the petitioner. It is submitted that earlier also three applications were filed wherein spot inspection was done and all the three applications were dismissed on merit. However, thereafter respondents filed the 4th application, which was not even maintainable on the principle of *res judi cata*.. However, the petitioner filed an application for transfer of the case from Assistant Collector 2nd Grade, Gurugram and on his request the case was transferred to the Court of Assistant Collector 2nd Grade-cum-Tehsildar, Sohna, on 05.08.2014. He has submitted that the Naib Tehsildar, Sohna, allowed the application filed by the respondents vide impugned order, dated 25.02.2015. Being aggrieved the petitioner filed the appeal before the learned Collector, Gurugram on

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04.11.2016. Being aggrieved the petitioner assailed the same by way of filing the executive revision petition before the learned Commissioner, Gurugram Division, Gurugram, who after appreciating the facts and the law had accepted the revision petition filed by the petitioner, however, learned Financial Commissioner has set aside the same vide its order dated 25.11.2021, Annexure P-9. It is apposite to appreciate that the petitioner had filed a civil suit for declaration with consequential relief of permanent injunction and this suit has been dismissed by the Civil Court vide order dated 16.05.2022. Copy of the judgment is also placed on record. The Tehsildar in pursuant to the order passed by this Court on 02.04.2024 has also conducted the inspection of the spot on 29.04.2024 and placed on record his status report. As per its report, though it has been mentioned that it was difficult to ascertain clearly as to who was in actual possession of the land in question, however, claim of the petitioner regarding his possession is falsified by the dismissal of the civil suit filed by him. Needless to say that findings of the civil Court are binding upon the revenue authorities.

9. Resultantly, this Court finds no infirmity in the impugned orders passed and thus the petition, being devoid of any merit is hereby dismissed.

May 03, 2024

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(RAJESH BHARDWAJ)**JUDGE****1. Whether speaking/reasoned ?****Yes/No****2. Whether reportable ?****Yes/No**