124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**CWP-8687-2024**
**Reserved on: 22.04.2024**
**Decided on: 03.05.2024**

**Ajaib Singh and another .....Petitioners**

**versus**

**Financial Commissioner (Appeals) Punjab and others**
**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**
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Present :- Mr. S.S. Salar, Advocate
for the petitioners.

Mr. Sherry K. Singla, Advocate
for the caveators/respondents No.5, 7 and 8.
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**RAJESH BHARDWAJ, J.**

Petitioners have approached this Court praying for quashing of orders dated 18.01.2024 and 12.06.2015 (Annexures P-12 & P-9) and order dated 16.10.2017 (Annexure P-10) wherein mutation No.4072 dated 30.03.2006 (Annexure P-2) has been set aside.

2. It has been submitted by counsel for the petitioners that the petitioners purchased 120 kanals 17 marlas of land from Chhota Singh vide sale deed dated 03.05.1963 and accordingly, Mutation No.1835 was sanctioned. He has submitted that petitioners purchased the specific khasra numbers vide sale deed dated 03.05.1963. It has been submitted that the mutation was entered and it was sanctioned on 30.03.2006 by mentioning that all the co-sharers including the petitioners presented the agreement admitting partition. However, the mutation sheet did not have the signatures of the petitioners acknowledging their presence but the signatures of the respondents were there. He has submitted that there being no signatures on partition agreement, the same proves that fraud

was committed by the respondents in connivance with the revenue officials. He has further submitted that the appeal was filed before the Collector against Mutation dated 30.03.2006. When the petitioners came to know, they filed application for review of the Mutation on 04.03.2010. Thereafter, the appeal was filed against the mutation order dated 30.03.2006, however, learned Sub Divisional Magistrate dismissed the appeal holding the same to be time barred vide his order dated 07.04.2011. Thereafter, the Deputy Commissioner ordered the review of the mutation vide his order dated 15.05.2013. This order was never challenged by any party and thus, became final. However, as no action was taken for review of the order, the petitioners filed their representation on 04.11.2014. However, learned Assistant Collector 2nd Grade in violation of the law rejected the review and confirmed the mutation on the ground that the petitioners had purchased the specific khasra vide his order dated 12.06.2015. The appeal filed by the petitioners was dismissed on 16.10.2017. Being aggrieved, the petitioners filed the revision petition which was allowed vide order dated 28.12.2017. He contends that ROR filed was allowed vide order dated 18.01.2024 for extraneous considerations. It is submitted that learned Financial Commissioner without adverting to the findings regarding there being no express consent for partition and signatures of the petitioners has set aside the order on the ground that Mutation No.4072 was already upheld in the appeal by the Sub Divisional Magistrate on 07.04.2011 and therefore, attained finality. He submits that the learned Financial Commissioner has failed to appreciate that the Deputy Commissioner had already ordered for the review of mutation. He further submits that once the mutation was illegal its effect given in subsequent Jamabandi does not take away the jurisdiction of the revenue authorities to review the order when it was entered as a result of fraud. It is submitted that the only exception is the oral family partition. However, once there was written agreement, it could not be relied upon unless entered in the revenue record. Hence, the mutation entered was illegal and contrary to the public policy. He vehemently contends that Mutation No.4072 was sanctioned on the basis of family partition to which the petitioners were never the signatory. It is submitted that the view taken by the learned Financial Commissioner is against the judgment rendered by this Court in ***Bhartu Vs. Ram Sarup, 1981 PLJ 204*** and the judgment of Hon'ble Supreme Court report in ***Jai Singh Vs. Gurmej Singh***, ***2009(15)SCC 747***. He has submitted that the Commissioner had exceeded his jurisdiction as it was required to deal with the permission to review the said Mutation No.4072. He has submitted that the appeal was dismissed on 16.10.2017 which was under consideration before the learned Commissioner. Hence, the matter regarding review was not under consideration rather the mutation was under consideration in pursuance to the order dated 15.05.2013 directing the review of the mutation which remained unchallenged till date. He has submitted that the observations made by learned Financial Commissioner are conclusive in nature and shall bound the learned Commissioner while re-deciding the case on remand. He has relied upon the judgments titled as ***Jai Singh Vs. Gurmej Singh, 2009(15) SCC 747*** and ***Mohinder Singh Vs. State of Punjab and others, 2011(1) RCR(Civil) 107***. He thus, submits that the impugned orders being totally in violation of the statutory provisions and the law settled, deserve to be *set aside*.

3. *Per contra*, learned counsel for the caveator/respondents No.5, 7 and 8 has vehemently opposed the submissions made by counsel

for the petitioners. He has submitted that the learned Financial Commissioner vide his order dated 18.01.2024 has remanded the case to the Court of Commissioner, Patiala Division, Patiala in accordance with law and therefore, no prejudice has been caused to either of the parties as the case would be decided afresh, after hearing both the sides. He has submitted that the dispute pertains to Mutation No.4072 which was entered and sanctioned vide order dated 30.03.2006. The petitioners challenged this order by way of appeal before the learned Collector-cum-Sub Divisional Magistrate, Nabha and the said appeal was dismissed vide order dated 07.04.2011 and as this order passed by the Appellate Authority was never challenged by the petitioners, it has attained finality. He submits that during the pendency of the said appeal, the petitioners filed the application dated 04.03.2010 for the review of Mutation No.4072 which was sanctioned vide order dated 30.03.2006. This appeal filed by the petitioners was dismissed vide order dated 07.04.2011. Thereafter, the application seeking review of the said order was also dismissed by the Court of Assistant Collector IInd Grade vide order dated 12.06.2015. The petitioners challenged this order by way of an appeal before the Collector which was dismissed on 16.10.2017. He vehemently contends that the petitioners never challenged the said orders dated 12.06.2015 and 16.10.2017 before the Court of learned Commissioner. It is submitted that learned Commissioner had *set aside* the Mutation No.4072 which was sanctioned vide order dated 30.03.2006 without even considering that the said Mutation No.4072 was not even challenged by the petitioners by way of revision. It is further submitted that the petitioners challenged the order dated 12.06.2015 and 16.10.2017 seeking review of the order dated 30.03.2006 which was dismissed by the Court of Assistant Collector IInd

Grade as well as by Sub Divisional Magistrate, Nabha. Thus, the Commissioner had exceeded his jurisdiction and thus, the same has been rightly set aside by the learned Financial Commissioner vide order dated 18.01.2024. He submits that the Mutation No.4072 was sanctioned on 30.03.2006 on the basis of the partition between the parties. Hereinafter the petitioners purchased the suit land measuring 120 kanal 17 marla vide sale deed dated 04.05.1963 and as per the record, the Mutation No.1835 had already been sanctioned in favour of the petitioners on the basis of sale deed dated 04.05.1963 pertaining to the specific khasra numbers. He has also submitted that the petitioners had obtained loan on the said land measuring 120 kanal 17 marla which was allotted to him by virtue of Mutation No.4072. It is submitted that the petitioners challenged the said order dated 30.03.2006 by way of appeal in the year 2010 i.e. after a delay of 04 years. This appeal has already been dismissed on 07.04.2011 which has attained finality as it was not challenged further. He submits that by virtue of the impugned order, learned Financial Commissioner has remanded the case for a decision afresh and thus, there is no prejudice whatsoever caused as contended by counsel for the petitioners. He submits that the petition being devoid of any merits deserves to be dismissed.

4. Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioners had approached this Court impugning the orders dated 18.01.2024, 12.06.2015 and 16.10.2017. As deciphered from the arguments raised by both the sides and the record available, Mutation No.4072 was entered and sanctioned on 30.03.2006 and the appeal filed against the same was dismissed on 07.04.2011. This order was not challenged further. However, the petitioners filed the

application dated 04.03.2010 for the review of Mutation No.4072 which was sanctioned vide order dated 30.03.2006. The application seeking review was dismissed by the Assistant Collector IInd Grade on 12.06.2015. This order was further challenged by way of appeal and the same was dismissed by the Collector on 16.10.2017. Thereafter, the petitioners challenged the orders dated 12.06.2015 and 16.10.2017 before the learned Financial Commissioner. Learned Financial Commissioner had observed in the impugned order that the Mutation No.4072 was entered and sanctioned by the Assistant Collector IInd Grade on the basis of family sanctioned agreement which was duly consented by the petitioners and was acted upon. It has been further observed that the Commissioner had exceeded his jurisdiction while passing the impugned order in respect of Mutation No.4072 as the same was never challenged by way of the revision petition filed by the petitioners. Thus, having found the Commissioner exceeded his jurisdiction, the case was remanded back to the Commissioner to decide the revision afresh keeping in view the provisions of Section 45 of the Punjab Land Revenue Act. Learned counsel for the petitioners has primarily assailed this order that the learned Financial Commissioner had rather given the directions to the Commissioner to pass the order in the specific directions given which would prejudice the petitioners. On hearing both the sides, it is apparent that the material dispute raised by both the sides had not been properly dealt by the Commissioner and thus, it requires a fresh decision on the reconsideration of the contentions raised by both the sides.

5. Thus, this Court does not find any infirmity in the remand order for a decision afresh keeping in view the provisions of Section 45 of the Punjab Land Revenue Act. However, learned Commissioner would

decide the case afresh on hearing both the sides in view of the submissions made by them afresh. Learned Commissioner would proceed with the case afresh on hearing both the sides and decide the same in accordance with law without being influenced by any observation made by the Financial Commissioner, however, the Commissioner would be at liberty to consider all the points raised by the Financial Commissioner in his order and decide the same independently. Learned Commissioner is directed to issue notice to both the sides and hear the case afresh and decide it expeditiously in accordance with law preferably, within three months, from the date of receipt of copy of this order. Office is directed to send copy of this order to the Commissioner forthwith who on receipt of the same will issue notice for appearance to all the parties concerned and proceed further in the matter.

Perusal of the file shows that the Commissioner, Patiala Division Patiala has not been made a party in the present petition. He being a necessary party, is impleaded as respondent No.13 in the present petition.

Learned counsel for the petitioner is directed to file amended memo of parties during the course of the day.

Disposed of in above terms.

**03.05.2024** **( RAJESH BHARDWAJ )**
*m. sharma* **JUDGE**

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