

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9939-2024
Date of decision : 01.05.2024

Tarsem SinghPetitioner

versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sarbjit S. Khaira, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This is the second petition filed by the petitioner praying for quashing the order dated 31.07.2023 (Annexure P-5) passed by the Deputy Commissioner, Gurdaspur and issuance of direction to the respondents to rectify mistake in the records of rights in terms of Mutation bearing No.1415 dated 10.01.2022 as mentioned in Jamabandi (Annexure P-6) sanctioned on the basis of partition order dated 25.08.1970 passed by the learned Tehsildar with the power of Assistant Collector Grade-I, Gurdaspur, qua the land measuring 11 kanals 02 marlas comprised in Rectangle No.8, Killa No.6(7-12), Rect. No.7, Killa No.1(1-13) Rect. No.9, Killa No.25/1/1/1(2-5), and 92/1 (0-5) revenue estate of Village Rure Buttar Hadbast No.518 Tehsil and District Gurdaspur and allotted to the father of petitioner. Further prayer has been made for directing respondents No.3 and 4 to take necessary action for delivering the possession of land (supra) as per sanction of mutation bearing No.1415 dated 10.01.2022 as mentioned in Jamabandi (Annexure P-6).

Learned counsel for the petitioner has contended that father of the petitioner along with co-sharers is the owner in possession of the land bearing 11 kanals 02 marlas out of total land measuring 142 kanals 15 marlas. He has submitted that father of the petitioner got partitioned the abovesaid land vide order dated 25.08.1970 passed by the Assistant Collector Ist Grade, Gurdaspur.

He submits that in terms of the partition order dated 25.08.1970, the mutation

bearing No.816 dated 23.10.1974 was sanctioned in the name of father of the petitioner as per his share. He has submitted that the petitioner was residing along with his family as earlier he was doing service in Railway Department and the co-sharers hatched a conspiracy and got deleted the name of father of the petitioner from the revenue record in connivance with the Revenue Authority. He has further submitted that it came to the knowledge of the petitioner and he filed suit for declaration which was decreed vide judgment and decree dated 13.02.2019. He submits that thereafter, petitioner repeatedly approached the respondents-authorities to rectify the mistake in the record in terms of the mutation but no action was taken in the same. He has submitted that the Civil Court has no jurisdiction to pass any order, direction or observation on the order passed by the Revenue Court. He submits that once the partition proceedings dated 25.08.1970 had attained finality, the aggrieved co-sharers had remedy to file appeal but none of the co-sharers filed any appeal against that order. It is submitted that after sanctioning of the mutation, no co-sharer had made any effort to get enteries recorded in the name of the petitioner corrected by filing a regular civil suit as per the requirement of Section 45 of the Punjab Land Revenue Act. It is submitted that petitioner cannot be discarded merely on the basis of conjectures and surmises or any observation made by the Civil Court. He has submitted that the petitioner earlier filed CWP No.26567-2022 and CWP-12422-2023. He submits that respondent No.3 in compliance of order dated 21.11.2022 and 06.07.2023 passed the order dated 31.07.2023. It is submitted that though again mutation was sanctioned in petitioner's favour vide Mutation No.14 dated 10.01.2022, however, the possession of the said land was never delivered to the petitioner. He submits that there was a delay and in 1997 his name was deleted. He further submits that the partition of 1970 is still in force which has not been nullified till date. He submits that in the facts and circumstances of the case, direction deserves to be issued to the respondents for rectifying the record.

Heard. On hearing counsel for the petitioner and perusing the record, it is apparent that in pursuance to the orders passed by this Court in CWP No.12422 of 2023 dated 06.07.2023, learned Deputy Commissioner, Gurdaspur has already passed a speaking order dated 31.07.2023. It has been observed that the mutation in pursuance to order passed by the Civil Court has already been sanctioned as per the share of the petitioner. However, the petitioner is required to file partition application/suit and get the possession of the land which had fallen to his share. Thus, it is evident that in pursuance to the order passed by this Court, a speaking order has already been passed. Petitioner has raised disputed question of facts and the same deciphered from the speaking order passed by the Deputy Commissioner dated 31.07.2023.

There is no gainsaying that entertaining the petition involving the disputed question of facts is beyond the jurisdiction of the Writ Court. Even otherwise, once the Deputy Commissioner has already passed a speaking order, the petitioner has a fresh cause of action and he is at liberty to avail the remedy against the same which he has not availed. Thus, on both the counts, this Court is of the opinion that the present petition is not maintainable and hence, the same is dismissed. However, in the facts and circumstances of the case, the petitioner would be at liberty to avail his remedies for the redressal of his grievances as available to him under the law.

01.05.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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