

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

CWP-10131-2017

Date of Decision: 26.04.2024

Jaspal Singh and another

..... Petitioners

Versus

Financial Commissioner and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Naresh Chander, Advocate, for the petitioners.

Mr. N.S.Diwana, Sr. DAG, Punjab.

Mr. Sunny K. Singla, Advocate, for respondents No.4 and 5.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the order dated 03.04.2017 (Annexue P-10) passed by learned Financial Commissioner i.e. respondent No.1, order dated 16.04.2015 (Annexure P-5) passed by learned Collector, Malerkotla i.e. respondent No.2 and order dated 20.11.2014 (Annexure P-3) passed by Assistant Collector Ist Grade (Tehsildar), Malerkotla i.e. respondent No.3, whereby, *Naksha Arra* has been approved on the very same date without taking into consideration the objections filed by the petitioners, which is illegal, erroneous and liable to be set aside. Further prayer has been made for upholding the order dated 31.01.2017 (Annexure P-9) whereby the case was remanded to respondent No.3 with a direction for passing fresh *Naksha Arra*.

2. It has been contended by learned counsel for the petitioners that the petitioners filed an application on 03.06.2013 under Section 111 of the Punjab Land Revenue Act, 1887 (for short, 'the Act') for partition of land 29 Bighe 15 Biswa situated at village Aahankheri, Tehsil Malerkotla, District Sangrur. He submits that private respondents duly appeared and

joined the partition proceedings and the Assistant Collector Ist Grade proposed *Naksha Arra*, to which the petitioners filed objections on 20.11.2014. He submits that learned Assistant Collector Ist Grade dismissed the objections filed by the petitioners on the very same date i.e. 20.11.2014. Thus, aggrieved by the same, the petitioner filed an appeal before learned Collector on the ground that the petitioners were not given front of the land as per their entitlement, however, learned Collector dismissed the appeal vide order dated 16.04.2015. He submits that still aggrieved by the same, the petitioners filed revision petition alongwith stay application before the Commissioner, Patiala Division, Patiala. He submits that learned Commissioner after hearing both the sides, accepted the contentions raised by counsel for the petitioners and thus, set aside the impugned order by remanding the case to the Assistant Collector Ist Grade with a direction to prepare fresh *Naksha Arra* by providing land in single tak for each co-sharer and to divide front proportionately among all the co-sharers as per their entitlement. He submits that to the utter surprise of the petitioners, it was found that the private respondents filed a revision petition before respondent No.1 i.e. Financial Commissioner, which was allowed by him on the very first day itself without even issuing notice to the petitioners and thus, learned Financial Commissioner has set aside the well reasoned order passed by learned Commissioner vide order dated 03.04.2017. He further submits that the impugned orders being totally against the principles of natural justice are illegal and unsustainable in the eyes of law and thus, deserve to be set aside.

3. Learned counsel for respondents No.4 and 5 has opposed the submissions made by counsel for the petitioners. He has submitted that the

learned Commissioner had illegally set aside the order passed by the Collector by ignoring the evidence on record, wherein he remanded the case to the Assistant Collector Ist Grade for decision afresh. However, learned counsel for respondents No.4 and 5 could not deny the fact that learned Financial Commissioner has passed the impugned order without issuing notice to the petitioners, wherein, he set aside the order passed by the Commissioner.

4. Heard.

5. After hearing learned counsel for the parties and perusing the record with their able assistance, it is apparent that the partition proceedings were initiated at the behest of the petitioners. The petitioners filed an appeal before the Collector, which was dismissed, however, learned Commissioner had set aside the same by remanding the case to Assistant Collector Ist Grade. There is no denial to the fact that this order passed by the Commissioner was assailed before learned Financial Commissioner by the private respondents. Learned Financial Commissioner admittedly has passed the impugned order on 03.04.2017 without issuing notice to the petitioners. This Court has no hesitation to hold that the impugned order is violative of principles of *audi alteram partem* and thus, is illegal and unsustainable. Hence, the impugned order dated 03.04.2017 (Annexure P-10) is set aside. The case is remanded to the Financial Commissioner for decision afresh after hearing both the sides. The Financial Commissioner would issue notice to both the sides and after hearing them, would pass a fresh order expeditiously in accordance with law preferably within a period of two months from the date of receipt of copy of this order.

6. Registry is directed to send a copy of this order to the Financial

Commissioner concerned, who on receipt of the same would issue notice to the parties for appearance and proceed with the matter in accordance with law.

7. The present petition stands allowed in above-said terms.

26.04.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE