

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

CWP-9471-2017

Date of decision : 05.02.2024

Anoop Kumar

.....Petitioner

versus

Financial Commissioner and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sarju Puri, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for issuance of direction to respondents No.4 and 5 to enter the mutation of transfer of ownership in the name of the present petitioner in accordance with the order dated 27.01.2011 (Annexure P-3) passed by respondent No.1-Financial Commissioner.

It has been contended by counsel for the petitioner that the petitioner is aggrieved against the inaction on the part of the respondents-authorities wherein respondents No.4 and 5 have failed to enter the mutation with regard to transfer of ownership in favour of the petitioner despite the same having been sanctioned in favour of the petitioner vide order dated 27.01.2011 passed by learned Financial Commissioner. He submits that the official respondents have misconstrued and mis-interpreted the order dated 06.07.2011 passed by this Court in CWP No.10703 of 2011 whereby the writ petition filed by respondent No.7 challenging the sanctioning of mutation of transfer of ownership in favour

of the petitioner was dismissed as withdrawn with liberty to raise all the pleas before the Civil Court in the civil suit pending between the parties. He submits that father of the petitioner namely, Ram Parkash was recorded as the owner in possession to the extent of $\frac{1}{2}$ share in Khasra No.9//27 (1-6) as per Jamabandi for the year 1998-99. He submits that Ram Parkash transferred the aforesaid share in favour of the present petitioner vide registered transfer deed dated 01.06.2005 and delivered the possession to the petitioner. Accordingly, Mutation No.2373 was entered in favour of the petitioner on the basis of registered transfer deed. However, on the objection raised by respondent No.7-Darshan Kumar, the mutation in question was referred to the Assistant Collector 1st Grade who rejected the same vide order dated 13.06.2006. Being aggrieved, the petitioner filed the appeal before the Collector, SBS Nagar however, the same was dismissed vide order dated 31.07.2006. Thereafter, he further assailed the order before the learned Commissioner who again dismissed the revision petition vide his order dated 11.07.2007. Aggrieved by the same, petitioner filed ROR No.1075 of 2007 before the learned Financial Commissioner which was allowed vide order dated 27.01.2011 and Mutation No.2373 was sanctioned in favour of the petitioner on the basis of the registered transfer deed. He submits that thereafter, respondent No.7-Darshan Kumar filed CWP No.10703 of 2011 which was dismissed as withdrawn vide order dated 06.07.2011. It is submitted by counsel for the petitioner that the writ petition filed by respondent No.7 was dismissed as withdrawn but despite the same, the respondents-authorities failed to implement the order of the Financial Commissioner dated 27.01.2011 and thus, the mutation of transfer of ownership in favour of

the petitioner has not been carried out by respondents No.4 and 5. He submits that the petitioner submitted a representation dated 22.01.2013 through power of attorney before the SDM-cum-Assistant Collector Ist Grade, Banga but no action has been taken on the same. He has relied upon the judgment titled as **Jagjit Singh Vs. Divisional Commissioner, Patiala and others, 2012(13) RCR(Civil) 96**. He submits that though the civil suit is pending between the parties however, as per the law settled, the mutation proceeding being administrative function of the revenue officers, cannot be kept in abeyance during the pendency of the dispute before the Civil Court. Thus, the inaction of the respondents in not entering the mutation in accordance with the orders passed by the learned Financial Commissioner is totally illegal and hence, the direction be issued by directing the respondents to enter the mutation in favour of the petitioner.

Learned State counsel on the other hand has opposed the submissions made by counsel for the petitioner. She submits that admittedly, the civil suit is pending between the parties and the revenue authorities are bound by the decision of the Civil Court. She has submitted that the petitioner appeared before the SDM-cum-Assistant Collector Ist Grade, Banga on 22.01.2023 and submitted the application for the attestation of the Mutation No.2373 in his favour as per order dated 27.01.2011. Respondent No.7 has submitted his affidavit that the case with regard to Khasra No.No.9//27 (1-6) situated in the area of Village Chak Bilgan was pending before the Civil Court and thus, till the decision in the said suit, no further action be taken, but the petitioner did not produce any order of the Civil Court in his favour and as the

petitioner till date has not produced the order passed by the Civil Court, hence the mutation as prayed for could not be entered. It is submitted that respondent No.7 filed petition bearing CWP No.10703 of 2011 which was dismissed as withdrawn vide order dated 06.07.2011. It is submitted that in this petition, the Court had directed that the mutation shall be carried out as per the final judgment and decree in the pending civil suit. It is submitted that hence, the respondents-authorities in obedience of the direction given by this Court have not sanctioned the mutation and are awaiting the decision of the Civil Court which the petitioner did not produce till date.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner had filed the petition for entering the mutation of the land in dispute in his favour in pursuance to the order dated 27.01.2011 passed by learned Financial Commissioner. However, respondent No.7 filed CWP No.10703-2011 which was dismissed as withdrawn vide order dated 06.07.2011 and this Court in the concluding para of the said petition observed as under:-

“Petition is permitted to be withdrawn with liberty to the petitioner to raise all the pleas before the Civil Court in a pending civil suit. It is clarified that mutation shall be carried out as per the final judgment and decree passed in the pending civil suit. It goes without saying that civil court shall decide the pending civil suit between the parties in accordance with law”.

Thus, it is clear that this Court while allowing the above-mentioned writ to be withdrawn had clarified that mutation shall be carried out as per the final judgment and decree passed in the pending civil suit. As submitted before this Court, the civil suit is pending

adjudication till date. There is no dispute regarding the judgment relied upon by the petitioner. However, in the case in hand, the order dated 06.07.2011 is among the same parties and for the same land in dispute. Thus, the respondents-authorities are bound by the direction given by this Court wherein it had been observed that the mutation would be carried out after the final judgment passed by the Civil Court. The respondents-authorities were directed to await the decision of the Civil Court. Thus, this Court do not find any merit in the present petition and the same is dismissed as such. As is evident that the civil suit is pending adjudication till date, learned Civil Court is directed to decide the civil suit pending before it expeditiously, preferably, within six months from the date of receipt of copy of this order.

05.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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