

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

CWP No.19103 of 2016

Date of Decision:-10.02.2020

Ishwar Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana.

Mr. Kulbhushan Sharma, Advocate
for respondents No.7 to 13 and 15 to 41.

RAKESH KUMAR JAIN J.(Oral)

This petition is directed against the order dated 29.11.2002 passed by the Assistant Collector II Grade (Annexure P-6), order dated 28.3.2008 passed by the Collector (Annexure P-7), order dated 04.3.2011 passed by the Commissioner (Annexure P-8) and order dated 14.9.2015 passed by the Financial Commissioner (Annexure P-9). The petitioners have also prayed for the issuance of a writ in the nature of mandamus directing the respondents to perform their statutory duties of measurement of land in accordance with the rules and regulations, preparation of Shajra plan after proper measurement and preparation of record of rights in terms of the provisions of the Punjab Land Revenue Act, 1887.

Learned counsel for the petitioners has submitted that one Gauri Shankar, a resident of Haryana was the owner of 452 bighas and 19 biswas of land, which was in possession of tenants, namely, Shiv Charan, Bishambar Das and Ram Gopal. The land in the hands of Gauri Shankar measuring 452.15-4 Bighas was declared surplus and vested in the Government, out of which 316 Bighas 04 Biswas and 22 Biswansi was given to the aforesaid tenants vide order dated 05.12.1999. According to the petitioners the said tenants sold 104 Bighas 11 Biswas and 0 Biswansi on 08.12.1959 to Kuldeep Singh etc. who further sold 100 Bighas of land to the petitioners vide seven registered sale deeds dated 02.5.1975. According to the petitioners the land in question, situated in the village Manjhawali, Tehsil Ballabgarh, District Faridabad was on the bank of river Yamuna and was amenable to river action i.e. alluvion and diluvion and in the said process, recorded in the revenue record of village Chakmanjhawali of Uttar Pradesh. It is further the case of the petitioners that though they had purchased 100 Bighas of land but because of Dixit Award the land in question has been recorded in the revenue record of the State of Haryana muchless of village Manjhawali, Tehsil Ballabgarh, District Faridabad w.e.f. 1984. The controversy started when suo muto action was taken by the Deputy Commissioner, Faridabad when it was found that the instructions issued by him that no entry in the revenue record shall be made either by Girdawar or Patwari Halqa in respect of the land which is amenable to river action without his prior permission and that the Girdawar and Patwari Halqa had changed the entry in the khasra girdawari in favour of the petitioners vide Rapat No.270 dated 28.3.1985. The Deputy

Commissioner, Faridabad declared Rapat No.270 dated 28.3.1985 as illegal. The order dated 28.10.1986 was set aside in appeal vide order dated 23.6.1987 and the matter was remanded back to the Assistant Collector IInd Grade, Ballabgarh to decide the issue again. Petitioner No.1, who had been litigating alone in this case before the Revenue Authorities has been joined by petitioners No.2 and 3 in this writ petition to challenge the order of remand dated 23.6.1987 by way of an appeal which was allowed on 04.6.1998 and the matter was remanded back to the Assistant Collector IInd Grade. The petitioners were not satisfied with the order of remand and challenged the order dated 04.6.1998 passed by the Commissioner, Gurgaon Division, Gurgaon before the Financial Commissioner, Haryana. The order of Commissioner, Gurgaon Division was set aside but the matter was again remanded back to the Assistant Collector IInd Grade, Ballabgarh to initiate the proceedings afresh.

Eventually, the Assistant Collector IInd Grade passed the order dated 29.11.2002 (Annexure P-6), setting aside the Rapat No.270 dated 28.3.1985 and consequential girdawari in favour of the petitioners. Thereafter there was a chain of the orders passed by the Revenue Court in the hierarchy against the petitioners on their filing appeal and revisions. The Collector Ballabgarh dismissed the appeal on 28.3.2008, the Commissioner, Gurgaon Division, Gurgaon dismissed the revision on 04.11.2011 and the ROR filed by the petitioners was dismissed by the Financial Commissioner on 14.9.2015. The sum and substance of the findings recorded by all the four revenue authorities concurrently is that Rapat No.270 dated 28.3.1985, recorded by Patwari Halqa was in violation of the directions issued by the

Deputy Commissioner, Faridabad. Aggrieved against the aforesaid four orders, the petitioners have come up in this writ petition to seek a writ in the nature of certiorari for quashing the orders impugned herein but at the time of preliminary hearing on 15.9.2016, the petitioners conceded not to challenge the impugned orders i.e. Annexures P-6 to P-9 and confined their prayer to the second aspect of mandamus, for directing the respondents to perform their statutory duties of measurement of land in accordance with the rules and regulations. The order dated 15.9.2016 passed by this Court read as under :-

“Learned counsel for the petitioners states that he gives up the first prayer made in the petition i.e. challenge to the order dated 29.11.2002 (Annexure P-6), order dated 28.3.2008 (Annexure P-7), order dated 04.3.2011 (Annexure P-8) and order dated 14.9.2015 (Annexure P-9) and confines his prayer to the second aspect that mandamus be issued to the respondents to perform their statutory duties of measurement of land in accordance with the rules and regulations.

Notice of motion to this limited extent for 14.12.2016.”

The counsel appearing on behalf of private respondents has submitted that they have purchased 1687 Kanals of land in question from the successor in interest of Gauri Shankar by way of registered sale deeds in the year 1989, reflected in the revenue record of village Manjhawali and mutation of acquiring the rights of ownership has also been sanctioned vide No.1131 by the Assistant Collector, Ballabgarh.

It is also submitted by the counsel for the private respondents

that the petitioners have earlier filed a suit for declaration on the basis of title. Be that as it may, now the counsel for the petitioners has submitted that he would press the second prayer made in the writ petition for which the notice was issued and has referred to the decision of this Court in the case of Charan Singh vs. State of Haryana and another in CWP No.8979 of 2009 as according to him the issue in regard to the identity of the land in question which has been sold twice by the said Gauri Shankar i.e. to the petitioners when it is recorded in the revenue record in U.P. and to the private respondents when it is so recorded in Haryana.

On the other hand, counsel appearing on behalf of State of Haryana, while contesting the prayer made by the petitioners with regard to issuance of a writ in the nature of mandamus, has submitted that the petitioners do not have any cause of action for the said purpose because the petitioners have already decided to forego their rights to challenge the impugned orders Annexures P-6 to P-9 vide which they were not found to be in possession of the land in question even after their purchase and now it does not lie in their mouth to claim the measurement of the land in dispute for the purpose to establishing its identity. It is also submitted that there is no change in the area of land of village Manjhawali even pre and post Dixit Award because as per the jamabandi for the year 1954-55 the area of village Manjhawali was recorded as 14499 Marla and the same was there in the jamabandi for the year 2014-15 and it is further submitted that on the bank of river Yamuna in the State of UP, there is no village in the name of Chak Manjhawali rather the village is "Atta".

We have heard learned counsel for the parties and perused the

record with their able assistance.

The main plank of argument of learned counsel for the petitioners is the decision in Charan Singh's case (supra). The Charan Singh's case (supra) is a lead case in a bunch of writ petitions which were disposed of by this Court. Perusal of the said decision shows that the petitioners in that case were the residents of the State of Uttar Pradesh and Haryana, who owned agricultural land in the Border villages of the revenue districts of Panipat, Karnal, Sonapat, Faridabad and Palwal in the State of Haryana and Saharanpur, Meerut etc. in the State of Uttar Pradesh. The cause shown by the petitioners in that case was that the area of land fallen in the State of Uttar Pradesh was, as per award, has been encroached upon and included the State of Haryana on the pretext of alluvion and diluvion of river Yamuna, in violation of Article 245 of the Constitution of India. In this background, this Court had observed that the solution would lie in the preparation of the records of rights by following the procedure provided in Section 32 of the Punjab Land Revenue Act, 1887 and then to update the other parts in terms of Section 33 thereof. There was also a reference of the orders and notification issued by the State of Haryana in which it contemplated that the measurement of the land in accordance with rules and regulations be carried out and the sizra plan should be prepared as per proper measurement records of rights, the claims and objections should be invited in regard to the record of rights and thereafter final records of rights, after deciding the claim/objections be notified.

In the present case this is not the situation because the petitioners are claiming their rights on the land in question on the basis of

registered sale deeds dated 02.5.1975 and are stated to be in possession of the specific khasra numbers. Their grievance is that the private respondents are trying to interfere in their possession. If that is the situation, there is no question of issuance of a mandamus as claimed by the petitioners for the purpose of measurement of the land because the exact area of land is already known to the petitioners as claimed by them and in case their possession is invaded or tried to be invaded by the private respondents or anybody else, the petitioners have the remedy in the civil law by filing a civil suit for injunction to protect their possession being disturbed by any intruder. In so far as the title is concerned, if it is challenged by the private respondents or anybody else, the petitioners still have the right to establish their title by filing a suit for declaration in the civil Court in accordance with law.

Thus, in view of the aforesaid circumstances, the second prayer for which the notice was issued by this Court does not survive and therefore we do not find any merit in the present case for the purpose of granting the second prayer as well.

The petition is therefore dismissed.

(RAKESH KUMAR JAIN)
JUDGE

February 10, 2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No