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Court : Punjab and Haryana

Decided On : Aug-01-2013

Appellant : Applicable to the Facts of the Present Case. Respondent No.1

Respondent : Kirpal SinghApplicant-appellant

Judgement :

LPA No.1132 of 2012 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ***** LPA No.1132 of 2012 Date of decision :

1. 8.2013 Kirpal SinghApplicant-appellant versus The Naib Tehsildar, Rania and othersRespondents CORAM: Hon'ble Mr.Justice Jasbir Singh Hon'ble Mr.Justice G.S.Sandhawalia Present:- Mr.Mandhir Singh Virk, Advocate, for the applicant-appellant Mr.Sandeep Panchhi, Advocate, for the respondents --- Jasbir Singh, J.

(Oral) This Letters Patent Appeal has been filed by the petitioner against an order dated 20.12.2011 passed by a Single Bench of this Court, dismissing CWP No.23536 of 2011.

The petitioner filed an application for correction of khaSr.girdawari qua land measuring 24 kanals and 12 marlas, stating that he be shown in cultivating possession of the said land as tenant, against payment of 1/3rd share of the crop,

towards rent (batai).His application was allowed by the Naib Tehsildar vide order dated 29.12.1997, using the powers of the Assistant Collector IInd Grade, in the absence of the contesting respondents, on recording statements of those, who do not have any share in the land in dispute.

From the year 1993, entries regarding khaSr.girdawari, qua the land in dispute, were changed in the revenue record.

Kumar Ashwani 2013.08.13 11:19 I attest to the accuracy and integrity of this document LPA No.1132 of 2012 -2- The contesting respondents No.5 to 14 filed an appeal against above order on 8.6.2000, stating that they were not in the knowledge of proceedings pending before the Naib Tehsildar for correction in the khaSr.girdawari, qua their land.

It was further stated by them that they had not refused service, as alleged by the process serving agency.

The appeal was allowed on 1.8.2001.

The petitioner went in appeal, which was dismissed on 30.12.2008.

The petitioner remained unsuccessful before the Financial Commissioner when his revision petition was dismissed on 7.4.2011.

He came to this Court by filing CWP No.23536 of 2011, which was dismissed vide the impugned order by a Single Bench of this Court on 20.12.2011.

Hence, this appeal.

Heard counsel for the parties.

It is on record that the Collector vide order dated 1.8.2001, when allowing appeal filed by the contesting respondents, has categorically stated that the Naib Tehsildar has not inspected the site before ordering correction in the khaSr.girdawari qua the land in dispute.

Relevant portion of the order reads thus :- I have carefully heard the Ld.

Counsel for both the parties as also respondent No.1 and have also carefully perused the evidence brought on record and other documents.

Besides this, the ruling 1996(2) LJR-309 was cited by the Ld.

Counsel for respondent No.1 in support of his contention and besides this, other ruling 2000 (1) RCR (Civil) -124 and 1980 PLJ -325 were also cited which also I have carefully perused.

All the aforementioned rulings cited by the Ld.

Counsel are not Kumar Ashwani 2013.08.13 11:19 I attest to the accuracy and integrity of this document LPA No.1132 of 2012 -3- applicable to the facts of the present case.

Respondent No.1 himself came present in the court and told that he is in possession of 14 kanals of land in 4 kanals of land there exists a 'Bandh' and that Fauja Singh appellant is in possession of 6 kanals of land and it becomes clear from this submission of the respondent that respondent No.1 is not in possession of the entire land in dispute and therefore, the site of the land in dispute ought to have been inspected but that the site of the land has not been inspected by the lower court.

The carrying of site inspection was legal and thereby correct and actual position could have been ascertained.

Thus, the order passed by the lower court does not appear to be legal and therefore, I set aside the order of the lower court dated 29.12.1997 and remand this case with the direction that the case be decided after properly hearing both the parties and after making site inspection and on merits and in accordance with actual position at the site.

After setting aside order passed by the Naib Tehsildar dated 29.12.1997, matter was remitted to the above said officer to decide it afresh, in terms of direction given on 1.8.2001.

Order passed by the Collector was affirmed by the Commissioner.

It was noted that the correction was ordered in absence of the owners of the land, in a casual manner, without inspecting the spot.

The Financial Commissioner has also said so.

Contention of counsel for the appellant-petitioner that in the meantime, entries were incorporated in the jamabandi were negated by stating that the entries incorporated in jamabandi, on the basis of a wrong order, cannot be made basis to decline relief to the owners of the land.

Learned Single Judge has also looked into this aspect and has Kumar Ashwani 2013.08.13 11:19 I attest to the accuracy and integrity of this document LPA No.1132 of 2012 -4- rightly said that relief cannot be declined to the contesting respondents simply because on the basis of wrong order passed, entries were made in the jamabandi qua khaSr.girdawari in dispute.

In that regard, it was observed as under :- Assuming for the sake of arguments (though not admitted).the name of the petitioner was mentioned in the jamabandi, it ipso-facto is not sufficient to infer that entry is legal, which has been made on the basis of illegal order (Annexure P-1) (which was set aside by the authorities).On the contrary, such baseless entry would be void and inoperative on the rights of true owners.

It was also noted by the learned Single Judge that even as per admission made by the appellant, he is in possession of only 14 kanals of land and No.24 kanals of land, as stated by him before the Naib Tehsildar.

Orders passed are perfectly justified.

The petitioner may agitate his grievance before the officer concerned to whom matter has been remitted for adjudication.

Accordingly, this appeal is dismissed.

(Jasbir Singh) Judge (G.S.Sandhawalia) Judge 1.8.2013 Ashwani Kumar Ashwani 2013.08.13 11:19 I attest to the accuracy and integrity of this document