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Court : Punjab and Haryana

Decided On : Jul-01-2013

Appellant : “8. from the Aforementioned Discussions It Is Clear That the

Respondent : Financial Commissioner (Revenue) Punjab and Others

Judgement :

LPA No.1162 of 2013 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH LPA No.1162 of 2013 (O & M) Date of decision:01.07.2013 Satwant SinghAppellant Versus Financial Commissioner (Revenue) Punjab & othersRespondents CORAM: HON'BLE MR.JUSTICE JASBIR SINGH HON'BLE MR.JUSTICE G.S.SANDHAWALIA Present: Mr.Rajiv Joshi, Advocate, for the appellant. ***** G.S.Sandhawalia J.

1. The present intra Court appeal has been preferred against the judgment of the Learned Single Judge dated 15.05.2013 passed in CWP No.10536 of 2013 titled Satwant Singh Vs. Financial Commissioner (Revenue), Punjab & others. The Learned Single Judge noticed that the revision petition was dismissed in default on 02.04.2008 by the Financial Commissioner and the application for restoration was moved after 4 years 5 months and 29 days and there was no reasonable explanation for the inordinate delay. Therefore, the order dismissing the restoration on 15.01.2013 has been upheld by the Learned Single Judge while dismissing the writ petition.

2. A perusal of the writ petition would go on to show that initially, 7 applications were filed regarding khewat Nos.85, 86, 87, 88, 89, 90 & 177 in Village Nahal, Tehsil Phillaur, District Jalandhar by Swaran Singh, Mohinder Singh, Daljit Kaur. The said applications were consolidated and the mode of partition was proposed on 20.05.1987. Thereafter, the partition proceedings were sanctioned by order dated 30.11.1987. Inderjit Singh, respondent No.4 had challenged the said partition but his appeal was dismissed on 08.04.1988 and LPA No.1162 of 2013 - 2- thereafter, revision had been dismissed as infructuous by the Financial Commissioner (Cooperation), Punjab, Chandigarh on 03.06.1999. However, his subsequent application for setting aside the ex parte order dated 20.10.1987 was filed on 28.10.1999 which was rejected on 24.12.1999 but in a revision, the Financial Commissioner, vide order dated 20.09.2001 (Annexure P-3), came to the conclusion that Inderjit Singh had not been served. The ex parte proceedings were held to be illegal and Assistant Collector 1st Grade had acted with haste and accordingly, the Financial Commissioner remanded the matter to the Assistant Collector 1st Grade, Phillaur to inspect the spot and see whether injustice had been caused. It was further directed that a detailed speaking order be passed within 30 days and the parties were directed to appear on 24.09.2001. The said order, allegedly, had been challenged by the grandfather of the petitioner, Swaran Singh by filing ROR No.346 of 2002 which was dismissed on account of default for non-appearance on 02.04.2008 (Annexure P-4). The application, thereafter, for restoration which was filed by the petitioner (appellant herein) was also dismissed on 15.01.2013. The said two orders have been further upheld in the writ petition by the Learned Single Judge which is not subject matter of challenge.

3. Counsel for the appellant very vehemently argued that it would be clear from the order dated 01/03.06.1999 (Annexure P-1) that in pursuance of the mode of partition, the parties had exchanged land and the partition had become final and vide the order dated 20.09.2001, the Commissioner had reopened partition proceedings at the instance of Inderjit Singh, respondent No.4.

4. After hearing counsel for the parties, we are of the opinion that this is a classic case where partition proceedings are not being allowed to be finalized inter se the co-sharers. Admittedly, the mode of partition was proposed on 20.05.1987 and

thereafter, on 30.11.1987, the partition was sanctioned. One of LPA No.1162 of 2013 -3- the co-sharer was successful in the revision petition before the Commissioner on 20.09.2001 and a direction was issued to see whether any injustice was caused to him and parties were directed to appear on 24.09.2001 before the Assistant Collector, Phillaur and to take a decision within 30 days. The relevant observation of the orders read as under:

8. From the aforementioned discussions, it is clear that the petitioner has not been afforded opportunity of hearing under the law. Therefore, the case is remanded to the A.C.Ist Grade, Phillaur with the direction to inspect the spot in the presence of the petitioner and others and enquire as to whether any injustice has been done to the petitioner/Inderjit Singh by the partition orders. The A.C.Ist Grade, Phillaur will pass a detailed speaking order and expeditiously preferable within 30 days discussing all the points raised before him by the petitioner during the course of his inquiry and giving specific findings thereon. Parties are directed to appear before him on 24.09.2001 for further proceedings. Announced. Bhagwant Singh Addl. Commissioner (Appeals), Jalandhar Division.

5. Counsel for the appellant has not been able to show or demonstrate to this Court as to what is the exact position after the order dated 20.09.2001 was passed not there is any such mention either in the letters patent appeal or in the writ petition as to what has happened in pursuance of the said direction by the Financial Commissioner which was passed more than a decade back. The submission of the counsel for the appellant is only that the grandfather of the appellant was pursuing the revision petition before the Financial Commissioner and since his grandfather, Swaran Singh expired on 13.11.2006, the revision petition was dismissed on 13.04.2008 and the application for restoration was then filed which was also dismissed on 15.01.2013.

6. We find that there is inordinate delay and negligence at the hands of the appellant. Admittedly, Swaran Singh, the grandfather of the appellant had LPA No.1162 of 2013 -4- expired on 13.11.2006. and no effort was made to bring on record his legal representatives and the revision was, thus, dismissed for non-prosecution by the Financial Commissioner. Thereafter also, application for

restoration was moved after 4 years 5 months and 29 days, as noticed by the Learned Single Judge. Even now, counsel for the appellant was not able to demonstrate and show from the memo of parties of the appeal dated 20.09.2001 that he was even arrayed as a party in the partition proceedings as the LRs of Mohinder Singh (deceased), s/o Swaran Singh.

7. Thus, the present proceedings, accordingly, seem to have been filed to further delay the partition proceedings which have been pending since 1987 and no useful purpose would be served to delay the proceedings any further. Accordingly, we do not find any ground to interfere in the impugned order as there is no legal infirmity in the judgment of the Learned Single Judge and the discretion has rightly been not exercised by the Financial Commissioner in restoring the ROR. The present appeal is, accordingly, dismissed. (G.S.SANDHAWALIA) JUDGE 04 07.2013 (JASBIR SINGH) sailesh JUDGE

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