

CWP No.8248 of 1995

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

CWP No.8248 of 1995
Date of decision: 16.09.2015

Maman

....Petitioner

Versus

The Financial Commissioner (R), Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Mohit, Advocate, for
Mr. R.A. Sheoran, Advocate, for the petitioner.
Mr. Rajneesh Chadwal, DAG, Haryana.
Mr. Surinder Gandhi, Advocate, for respondent No.5.
Mr. Jitendra Sharma, Advocate, for respondent No.6.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the order dated 08.07.1993 (Annexure P-1) passed by Assistant Collector IInd Grade, Tosham, order dated 18.08.1993 (Annexure P-2) passed by Assistant Collector IInd Grade, Tosham, order dated 06.04.1994 (Annexure P-3) passed by Collector, Sub Division, Tosham, order dated 26.08.1994 (Annexure P-4) passed by Commissioner, Hisar Division, Camp Bhiwani, and order dated 13.02.1995 (Annexure P-6) passed by Financial Commissioner, Haryana.

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Brief facts of the case are that on 08.04.1992 respondent No.5 – Amar Singh filed an application for partition of land. The case was adjourned to 21.12.1992 and direction was issued to respondent No.5, who was original applicant before the Assistant Collector IInd Grade, to furnish registered letter and correct addresses of the unserved respondents. However, the order was not complied with and the application was dismissed in default on 21.12.1992. On 01.01.1993 respondent No.5 moved an application before the Assistant Collector IInd Grade for restoration of the application for partition. Notice in the application for restoration was issued for 05.05.1993. Thereafter upto 03.07.1993 no date was given in the case. Ultimately, on the statement of one Sukhdei d/o Banwari Lal, without effecting service upon other respondents, application for restoration of application for partition was allowed vide order dated 08.07.1993 (Annexure P-1) and other respondents were proceeded against ex parte. Petitioner filed an application dated 18.08.1993 for setting aside the order whereby application for partition was allowed, however, the same was dismissed on the same date by the Assistant Collector IInd Grade vide Annexure P-2) and '*nakhsa khe*' was called. Against the order of the Assistant Collector IInd Grade, petitioner preferred an appeal before the Collector, which was dismissed vide order dated 06.04.1994 (Annexure P-3). Against the orders of the Assistant Collector IInd Grade and the Collector, petitioner filed revision petition before the Commissioner, which was dismissed vide order dated 26.08.1994 (Annexure P-4).

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Petitioner further preferred revision petition before the Financial Commissioner, which has also been dismissed vide order dated 13.02.1995 (Annexure P-6). Hence, this writ petition.

In pursuance of notice of motion, respondents No.1 to 5 have filed their written statements. In the reply filed by respondent No.5 it is averred that final partition of the land has already been effected on 30.08.1994. However, in the written statements it has not been mentioned that on the date fixed, petitioner and other respondents in the application for partition were served properly.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that once the original application for partition of land was dismissed in default and the application for restoration of the application for partition was filed, even for the purpose of restoration service upon other respondents was required to be effected. However, only on the statement of one Sukhdei, respondent No.2 in the application, application for partition was restored and other respondents were proceeded against ex parte. Such an order of the Assistant Collector IInd Grade is null and void and cannot be sustained in the eyes of law. Learned counsel for the petitioner further contended that petitioner and others were proceeded against ex parte on 08.07.1993. When petitioner came to know about the ex parte proceedings then on 18.08.1993 i.e. about 1 ½ months after the order of restoration of the application, petitioner moved application for

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setting aside the order of ex parte, however, the same was dismissed illegally and contrary to the settled law.

On the other hand, learned counsel for respondent No.5 contended that partition has already been effected and has become final and possession has already been delivered, therefore, no useful purpose would be served by setting aside the impugned orders. Learned counsel further contended that petitioner and other respondents in the application for partition of land were never objected to join the proceedings.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, the original application for partition was dismissed in default and thereafter application for restoration of the application for partition was moved. Once the main application was dismissed in default and application for restoration of the same was filed, notices were required to be given to all the respondents in the application for partition. The application for partition had been restored by the Assistant Collector IInd Grade only on the statement of one of the respondents in the application for partition. Even if the restoration was ordered, atleast petitioner and other respondents in the application for partition should have been served and opportunity to defend the case should have been provided to them. Not only this, even the application for setting aside the ex parte proceedings had been dismissed and '*naksha khe*' had been called on the same very day i.e. 18.08.1993. In the order of restoration it is nowhere mentioned that proceedings had

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been restored from the earlier stage. While restoring the application for partition, '*naksha ka*' was called even without effecting service upon respondents No.1 and 3 to 5 in the application for partition and case was adjourned to 23.07.1993. On 18.08.1993, petitioner moved application for setting aside the ex parte order, however, the same was dismissed on the same date mentioning in the order that partition case was at the final stage. As per procedure for partition, prescribed in the Punjab Land Revenue Act, firstly service is required to be effected upon all the respondents in the application for partition and thereafter opportunity to file reply is required to be given. Thereafter, if the Court comes to the conclusion that partition proceedings should continue, then Assistant Collector proceeds for partition and '*naksha alf (k)*', wherein the shares of the parties and their actual possession, excess or less land is indicated, is called. Thereafter, statements of the parties are recorded for the purpose of framing the mode of partition. After that, mode of partition is approved. After the approval of mode of partition, '*naksha bay (khe)*' is called and thereafter further opportunity to file objections is required to be afforded. Once the '*naksha bay (khe)*' is finalized then '*naksha jeem (Ga)*' is called and thereafter '*sanad takseem*' (instrument of partition) is required to be filed, which is a document of final partition.

It appears that in the order dated 18.08.1993 (Annexure P-2), when '*naksha khe*' was called, Assistant Collector has not recorded the fact as to when mode of partition was approved and parties were afforded opportunity to file objections to '*naksha khe*'. The application

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for setting aside the ex parte order was dismissed on the same day and '*naksha khe*' was called from the Circle Patwari. At that stage Assistant Collector should have set aside the ex parte proceedings and respondents in the application for partition should have been afforded opportunity to file reply to the application for restoration. Finding of the Assistant Collector that partition proceedings are at the final stage, is not sustainable in the eyes of law. It is, in fact, a wrong finding. It appears that the Assistant Collector was not aware about the stages for partition. That is why this Court has mentioned in detail in preceding para the stages for partition. Similarly, other authorities have also acted in a casual manner. Once the basic order passed by Assistant Collector IInd Grade is not sustainable in the eyes of law, the orders passed by other authorities upholding that order, cannot be held to be sustainable in the eyes of law.

In view of above, present petition is allowed. Impugned orders are set aside. Case is remanded to the Assistant Collector IInd Grade to proceed in accordance with law. Parties through their counsel are directed to appear before the Assistant Collector IInd Grade on 19.10.2015.

September 16, 2015
R.S.

(Paramjeet Singh)
Judge