

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

CWP No.23602 of 2015
Date of Decision: 04.11.2015

Sarwan Kaur @ Swaran Kaur

. . . .Petitioner

Versus

Financial Commissioner (Appeals) Punjab, Civil Secretariat,
Chandigarh

. . . . Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikas Mehsempuri, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

Learned counsel for the petitioner, *inter alia*, contends that respondent No.3 had filed an application for partition of the joint khewat in which the mode of partition was suggested and objection filed by the petitioner was dismissed on 20.11.2007. The petitioner filed an appeal against the said order which was allowed by the SDM-Collector on 2.1.2009 and the case was remanded back to the AC 2nd Grade. Respondent No.3 challenged the order dated 2.1.2009 in appeal before the Commissioner. Since, there was no stay in that appeal, therefore, the proceedings continued before the AC 1st Grade in partition application. Respondent No.3 did not appear in the said application and as such it was dismissed for non-prosecution on 23.2.2011. Respondent No.3 filed the application for restoration on 24.3.2011 and on the same day,

without notice to the petitioner, the application for restoration was allowed and the case was shown to have been adjourned for 17.3.2011 and on 17.3.2011, the case was adjourned for 25.3.2011 for munadi. On 25.3.2011, the Presiding Officer was not present and the case was adjourned to 6.4.2011. On that day, the Court recorded the order that since the munadi has been effected on 22.3.2011 and nobody has appeared on behalf of the petitioner to contest the application for partition, therefore, *ex parte* proceedings were initiated against her. Ultimately, the petitioner withdrew the appeal, filed before the Commissioner, Patiala Division on 17.5.2011. The petitioner was not aware of all these proceedings but when the land in question was acquired in 2015, the petitioner came to know that his land has already been partitioned and *Sanad Taksim* has already been issued in favour of respondent No.3. The petitioner filed ROR No.190 of 2015 before the Financial Commissioner in order to challenge *Sanad Taksim*. The revision petition was filed along with an application for stay and condonation of delay which was repeatedly adjourned and is now fixed for 7.12.2015. According to the petitioner, respondent No.3 has filed CWP No.18673 of 2015 before this Court on 1.9.2015 in which prayer has been made for a direction to deliver the possession of the land which has been partitioned.

The grievance of the petitioner, at this stage, is that on the one hand, respondent No.3 is asking for possession on the basis of *Sanad Taksim*, which is under challenge before the Financial Commissioner in the aforesaid revision petition and on the other hand, the Financial Commissioner is neither deciding her application for condonation of delay nor stay. In case, the writ

petition filed by respondent No.3, which is pending for 26.11.2015, is allowed and a direction is issued for delivery of possession, she could change the nature of land to the detriment of interest of the petitioner, therefore, the petitioner has prayed that an appropriate direction may be issued to the Financial Commissioner, who is hearing his revision petition, filed along with application of stay, to decide his application for stay before 26.11.2015.

After hearing learned counsel for the petitioner, this petition is hereby disposed of with a direction to respondent No.1 to decide the application for stay much less the application for condonation of delay as well, on 23.11.2015 by preponing the date of hearing from 7.12.2015.

Registry is directed to send a copy of this order to respondent No.1 along with a copy of the writ petition.

04.11.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**