

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 24409 of 2014 (O&M)

Reserved on: October 15, 2015

Pronouncement on : October 29, 2015

Davinder Parmar and others

... Petitioners

Versus

Financial Commissioner, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1. Whether Reporters of 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. Sumeet Mahajan, Sr. Advocate with
Mr. Atul Nehra and Mr. Hitesh Ghai, Advocates,
for the petitioners.

Mr. S.S. Chandumajra, Addl. A.G., Punjab,
for respondents no. 1 to 3.

Mr. Sanjiv Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate,
for respondent No. 4 (i).

Mr. Dinesh Nagar, Advocate,
for respondent No.5.

Mr. Malkeet Singh, Advocate,
for respondent No.6.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of
the Constitution of India for issuance of a writ in the nature of certiorari
quashing order dated 29.08.2014 (Annexure P/17) passed by respondent

no.1 – Financial Commissioner (Animal Husbandry), Punjab, whereby orders dated 30.11.2011 (Annexure P/2), 01.02.2012 (Annexure P/3), 17.07.2013 (Annexure P/13) passed by respondent no.3 – Assistant Collector Ist Grade, Garhshankar and order dated 14.08.2013 (Annexure P/14) passed by respondent No.2 – Collector, Garhshankar have been set aside and case remanded to respondent no.3 – Assistant Collector Ist Grade for *de novo* partition proceedings.

Brief facts of the case are that petitioners no. 1 and 2 filed an application dated 01.04.2010 before respondent no.3 – Assistant Collector Ist Grade for partition of land measuring 390 kanals and 06 marlas situated within the revenue limits of Village Basiala, Tehsil Garhshankar, District Hoshiarpur and prayed for creating a separate kurras as absolute owners. In pursuance of that partition application, summons were issued to the respondents therein for their appearance, but as service could not be effected through ordinary process, a proclamation was made under Section 21 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the “Act”). On 23.06.2010 mode of partition was proposed and same was approved on 06.08.2010 and copy of mode of partition was sent to the Field Staff for preparation of Naksha *Aara (Bay)*. During that process, respondent nos. 5 and 6 – Kulbir Singh Parmar and Sukhbir Singh filed an application for setting aside the ex-parte proceedings against them. In the meantime, Ranbir Singh (respondent No.8 in the partition application before Assistant Collector Ist Grade) died and his legal heirs were brought on record and direction was issued to Reader to correct the amended memo of parties impleading LRs of respondent No. 8 – Ranbir Singh. Counsel for

the applicants has submitted amended memo and application for setting aside ex-parte proceedings were filed by respondent. Thereafter, Naksha Aara (Bay) was called and objections to the same were invited. LR of respondent no.8 raised objections and also made a prayer that his kurra also be separated. Respondent Nos. 5 and 6 – Kulbir Singh and Sukhbir Singh also raised objections to Naksha Aara (Bay) on the ground that principle of murabbabandi (consolidation) has not been followed. No share has been given to them in abadi. Equal share be given on road and in abadi. Separate block be carved out for the applicants. At the initial stage, there were only two applicants, but subsequently LR of Ranbir Singh in the main application for partition have been impleaded as applicants. On this ground, it was alleged that mode of partition deserved to be amended and re-approved by the Collector. The Assistant Collector Ist Grade heard the parties and rejected the objections and approved the partition with the amendment that wherever there is abadi, the same be kept in his Kurra and a separate block be collectively prepared for applicants and LR of Ranbir Singh vide order dated 30.11.2011 (Annexure P/2). Ultimately, Naksha Errie and sanad takseem were ordered to be passed. It would be appropriate to notice here that against order dated 30.11.2011 (Annexure P/2), respondent no.5 – Kulbir Singh Parmar filed C.W.P. No. 12993 of 2012 before this Court and this Court vide order dated 05.10.2012 (Annexure P/6) modified the stay order by observing as under:-

“Status quo order passed on 16.07.2012 is modified and the same would operate to the extent of share of the petitioner and it would not be construed with regard to the status quo if

the petitioner is having possession more than his share.”

Against that order, respondent No. 5- Kulbir Singh Parmar filed L.P.A. No. 1723 of 2012, which was disposed of by the Hon'ble Division Bench of this Court vide order dated 16.11.2012 (Annexure P/7) modifying the stay order as under:

“Possession of the land, in dispute, shall be delivered to the parties in accordance with their shareholdings. The appellant shall be entitled to select any portion of the joint land in accordance with his shareholding of approximately 34 kanals. The arrangement so made shall however, be subject to the outcome of the writ petition. In case, any modification is made in the Sanad Takseem, parties would be bound to implead the modified Sanad Takseem.”

Another C.W.P. No. 16713 of 2012 was filed by respondent No.6 – Sukhbir Singh. Both the aforesaid writ petitions i.e. CWP Nos. 12883 and 16713 of 2012 filed by respondent nos. 5 and 6 were disposed of in view of order dated 16.11.2012 passed by Hon'ble Division Bench in LPA No. 1723 of 2012, vide order dated 30.04.2013 (Annexures P/9 and P/10). In the meantime, Chander Kanta, sister of respondents no. 5 and 6, also filed C.W.P. No. 7493 of 2013, which was disposed of by the learned Single Judge of this Court vide order dated 30.04.2013 (Annexure P/11) by passing the following order:-

“Learned counsel for the petitioner, at the very outset, fairly states that since during the pendency of this writ petition, State of Punjab has issued notification dated 28.1.2013 restoring the powers of Financial Commissioner to entertain the appropriate petition against the impugned orders, let the petitioner may be relegated to her alternative remedy before

the Financial Commissioner, at the first instance.

In view of the above statement made by learned counsel for the petitioner, the petitioner is relegated to her alternative remedy before the Financial Commissioner.

Disposed of accordingly.”

Thereafter, Chander Kanta and others preferred SLPs before the Hon'ble Supreme Court against order dated 16.11.2012 passed in LPA No. 1723 of 2012 and orders dated 30.04.2013 passed in CWP Nos. 16713, 12883 of 2012. Said SLPs were dismissed vide order dated 13.01.2014 (Annexure P/12). However, direction was issued to the Financial Commissioner to decide the matter without being influenced by any observations made by the High Court. In pursuance of order dated 13.01.2014 (Annexure P/12) respondent no.4 – Chander Kanta, respondent nos. 5 and 6 – Kulbir Singh and Sukhbir Singh filed three separate R.O.Rs. before the Financial Commissioner. Vide impugned order dated 29.08.2014 (Annexure P/17), the Financial Commissioner (Animal Husbandry), Punjab, has set aside orders dated 30.11.2011 (Annexure P/2), 01.02.2012 (Annexure P/3), 17.07.2013 (Annexure P/13) passed by respondent no.3 – Assistant Collector Ist Grade, Garhshankar and order dated 14.08.2013 (Annexure P/14) passed by respondent No.2 – Collector, Garhshankar and remanded the case to respondent no.3 – Assistant Collector Ist Grade for *de novo* partition proceedings. Hence, this writ petition.

In pursuance of notice of motion, respondents appeared. Respondents no. 4 to 6 filed their separate written statements. Replications to the written statements filed by respondent nos. 4 and 5 have also been

filed.

I have heard learned counsel for the parties.

Learned senior counsel for the petitioners vehemently contended that respondent nos. 4 to 6 are legal heirs of Avtar Singh i.e. Chander Kanta (now represented through her legal heir), Kulbir Singh Parmar and Sukhbir Singh being daughter and sons, respectively, are in possession of virtually the entire property because of which they are delaying the partition proceedings. Learned senior counsel further contended that service was properly effected in accordance with law. It is further contended by the learned senior counsel for the petitioners that to delay the partition proceedings, private respondents are challenging every order passed by the Assistant Collector Ist Grade upto the Hon'ble Supreme Court. The Hon'ble L.P.A. Bench of this Court has specifically ordered for staying the dispossession, however, those orders were challenged in the Hon'ble Supreme Court by respondents no. 4 to 6 jointly. It is further contended that Financial Commissioner by setting aside all the orders has virtually directed *de novo* process of partition from the initial stage after effecting service, which is clearly against law.

Per contra, learned counsel for the respondents vehemently defended the order passed by the Financial Commissioner and contended that respondent no.4 – Chander Kanta was residing outside the territorial jurisdiction of the District and was never served personally. Now, she has expired and represented through her LRs. Chander Kanta was not having knowledge of pendency of the partition proceedings. It is further contended that order passed by the Financial Commissioner is legal and

valid and orders passed by the Assistant Collector First Grade and the Collector have rightly been set aside. It is further contended that Chander Kanta was not given valuable piece of land as per mode of partition. Every shareholder is entitled to the property according to the value and kind as per the entitlement. The Financial Commissioner has rightly set aside all the orders and remanded the case and proceedings needs to be started *de novo*.

I have given my anxious thoughtful consideration to the contentions raised by learned counsel for the parties and perused the record.

So far as the service is concerned, the same is governed by Section 20 of the Act. Section 20 of the Act reads as under:-

“20. Mode of service of summons – (1) A summons issued by a Revenue-officer shall, if practicable, be served (a) personally on the person to whom it is addressed, or, failing him (b) his recognized agent or (c) an adult male member of his family usually residing with him.

(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or if that person does not reside in the district in which the Revenue-officer is employed and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if

the Revenue-officer so directs, be served by delivery of a copy thereof to such of those persons as the Revenue-officer nominates in this behalf and by proclamation of the contents thereof for the information of the other persons interested.

(4) A summons may, if the Revenue-officer so directs, be served on the person named therein, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part III of the Indian Post Office Act, 1866 (XIV of 1866).

(5) When a summons is so forwarded in a letter, and it is proved that the letter was properly addressed and duly posted and registered, the Revenue-officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

(6) If it is not possible to serve summons in accordance with any of the modes, as provided in sub-sections (1), (2), (3), (4) and (5), then, -

(a) summons may be sent by the Revenue Officer by whom it is issued whether within or out of the State by post or by courier service, as approved by the High Court of Punjab and Haryana or by fax message or by Electronic Mail Service or by any other means, as may be provided in the rules made by the High Court;

(b) where the person is confined in prison, the summons may be delivered by post or may be sent by courier service, as approved by the High Court or by fax message or by Electronic Mail Service or by any other means, as may be provided in the rules made by the High Court to the officer-incharge of the prison for service to the person;

(c) where the person resides out of India and has no agent in India, empowered to accept service, the

summons may be addressed to the person at the place, where he is residing or may be sent to him by post or by courier service, as approved by the High Court or by fax message or by Electronic Mail Service or by any other means, as may be provided in the rules made by the High Court, if there is postal communication between such place and the place, where the Court is situated; and

(d) where the Central Government, by notification in the Official Gazette, has declared in respect of any foreign country that summons should be served on the persons actually and voluntarily residing or carrying business or personally working for gain in that foreign country through an officer of the Government of foreign country, as specified by the Central Government the summons may be sent to such officer, through the Ministry of Government of India dealing with foreign affairs or in such other manner, as may be specified by the Central government, and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons have been served on the persons, such service shall be deemed as evidence of service.”

Sub Section (1) of Section 20 of the Act provides that summons issued by a Revenue-officer, if practicable, be served personally on the person to whom it is addressed or his recognized agent or an adult male member of his family usually residing with him. Sub Section (2) of Section 20 of the Act provides that if service cannot be made in view of Section 20(1) of the Act, the same can be served by pasting/posting a copy thereof at the usual or last known place of the residence of the person to

whom it is addressed or if that person does not reside in the district in which the Revenue-officer is employed and the partition application to which the summons relates has reference to land in that district, then by pasting/posting a copy of summons on some conspicuous place in or near the estate wherein the land is situate. Where there are numerous persons and other persons having the same interest, then provisions of Sub Section (3) of Section 20 of the Act will apply. If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, the same can be done by effecting service upon such person as the Revenue-officer may nominate and proclamation in this regard can be made. Under Sections 21 and 22 of the Act, proclamation can also be made for effecting service. Method and manner has also been provided therein.

In the present case, admittedly, Chander Kanta was residing outside the State i.e. in Shimla as is clear from her application and her brothers i.e. respondents no. 5 and 6 were having the similar interest in the land as they were looking after the interest of Chander Kanta. Thus, the contention that Chander Kanta was not properly served is devoid of merit. Otherwise also, there is no allegation that petitioners have committed any fraud or mis-representation while effecting service upon the respondents. In the absence of allegation of fraud or mis-representation with regard to not effecting service, the ex parte order on the bare plea of non-service cannot be set aside in partition matters in view of the provisions of the Act. In view of above, it is clear that brothers of Chander Kanta were having the similar interest and were rightly defending the same and it is not the

case of Chander Kanta before the revenue authorities that any fraud or misrepresentation has been done while effecting service or her brothers were not in speaking terms, rather SLP has been filed by Chander Kanta and others challenging the orders passed in LPA No. 1723 of 2012 and though CWP Nos. 16713 and 12993 of 2012. Hence, it is held that Chander Kanta would be deemed to have been served validly and had the knowledge of pendency of partition proceedings.

Now, the question arises as to whether Chander Kanta and her brothers i.e. respondent nos. 5 and 6, were given opportunity to raise objections to the *Naksha Aara(Bay)*.

From the perusal of the record, it is clear that when *Naksha Aara* was called, all the persons were given opportunity to raise objections against *Naksha Aara* and after considering the objections, the same was accepted which has been concurrently found to be legal by all the revenue authorities except Financial Commissioner. It needs to be emphasised that earlier also there was no power vesting in the Financial Commissioner to hear the revision petition, but subsequently in fact Chander Kanta filed a C.W.P. before this Court which was disposed of with liberty to avail remedy before the Financial Commissioner since the notification restoring the power of revision to Financial Commissioner was issued by that time. Another feature which needs to be considered is that while dismissing the SLP against orders passed by Hon'ble Division Bench of this Court in LPA No. 1723 of 2012 and orders passed by learned Single Judge of this Court in CWP No. 16713 and 12883 of 2012, it was observed by the Hon'ble Supreme Court that Financial Commissioner shall decide the matter

without being influenced by any observations made by the High Court. In fact, by that time, the entire partition proceedings had almost been completed. Only formal Naksha *Errie* and sanad takseem were required to be issued. Naksha *Errie* is nothing but repetition of sanctioned Naksha *Bay* and thereafter, instrument of partition was prepared. Actually the main proceedings with regard to partition are only upto the stage of approval of Naksha *Bay* against which appeal, revision or writ can be filed. Once that become final, other proceedings are formal in nature.

In the impugned order (Annexure P/17), the Financial Commissioner has not recorded any finding that there was no valid service upon Chander Kanta and her brothers, who have preferred three R.O.Rs. separately. Once the opportunity to Kulbir Singh Parmar and Sukhbir Singh, who are real brothers of Chander Kanta has been provided then merely on the ground that Chander Kanta was not validly served, entire proceedings cannot be set aside. Admittedly, the interest of Chander Kanta is the same as of her two brothers who have been defending the proceedings, she has no better right than her two brothers. It needs to be noticed here that both brothers of Chander Kanta are filing appeals, revisions and writ petitions independently against the same very orders. There is categorical case of petitioners that respondents no. 5 and 6 i.e. Kulbir Singh Parmar and Sukhbir Singh are in possession of the property in excess of their shares, for that reason they are delaying the partition proceedings by challenging every order including interim order passed by this Court in LPA upto the Hon'ble Supreme Court. The *modus operandi* is that respondents no. 5 and 6 may continue in possession by delaying the

partition proceedings. In order dated 16.11.2012 (Annexure P/7), the L.P.A. Bench specifically held that possession of the land, in dispute, shall be delivered to the parties in accordance with their share in the holdings. The appellant shall be entitled to select any portion of the joint land in accordance with his share of approximately 34 kanals. The arrangement so made shall however, be subject to the outcome of the writ petition. In case, any modification is made in the Sanad Takseem, parties would be bound to implement the modified Sanad Takseem.

In view of above, impugned order dated 29.08.2014 (Annexure P/17) passed by Financial Commissioner is set aside. Orders of the other revenue authorities are restored. The Assistant Collector Ist Grade, Garhshankar is directed to proceed from the stage at which the proceedings were pending before him after passing of order dated 16.11.2012 (Annexure P/7) in LPA No. 1723 of 2012 and order dated 13.01.2014 (Annexure P/12) passed by Hon'ble Supreme Court. The conduct of respondent nos. 4 to 6 clearly indicates that they want to delay partition and retain possession as long as possible. In view of these facts and conduct of respondent nos. 4 to 6, the Assistant Collector Ist Grade is directed that he would calculate how much excess possession is with Kulbir Singh Parmar, Sukhbir Singh and Chander Kanta (now represented through legal heirs). This Court deems it fit and proper that Assistant Collector Ist Grade shall also examine the respective shares and determine who are in excess possession than their entitlement. It is common that shareholder in excess possession continue to delay partition and enjoy the fruits of excess land in his/her possession. Whosoever is in excess

possession, he will have to deposit the amount @ Rs.30,000/- per acre per annum from the date of filing of the application for partition i.e. 01.04.2010 and the same shall be paid to the shareholders who remained without possession.

Parties are directed through their counsel to appear before the Assistant Collector Ist Grade, Garhshankar on 18.11.2015 or within two weeks thereafter. The Assistant Collector Ist Grade shall expeditiously proceed with regard to the delivery of possession of land in accordance with law. Even if the crops are standing, they will be afforded opportunity to reap the crops if it is ripe or otherwise compensation will be assessed and possession will be handed over without any delay to the parties in partition in accordance with the instrument of partition.

Disposed of accordingly.

October 29, 2015
vkd

[Paramjeet Singh]
Judge