

CWP No.2721-2013

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

CWP No.2721-2013

Date of Decision: 22.01.2015

Surjit Kaur and others

... Petitioner(s)

Versus

Financial Commissioner, Punjab and others

... Respondent(s)

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.M.L.Saggar, Sr. Advocate with
Mr. Gaurav Grover, Advocate for
the petitioners.

Dr. Deepa Singh, Addl. A. G. Punjab.

Mr. G.S.Nagra, Advocate,
for respondent no.5.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 23.07.2009 (Annexure P-3) passed by the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar whereby appeal filed by respondent no.5- Joginder Singh has been allowed, order dated 29.09.2008 (Annexure P-2) passed by the Collector has been set aside and order dated 11.12.2006

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passed by the Assistant Collector Ist Grade has been upheld. Quashing of the order dated 30.08.2012 (Annexure P-4) passed by respondent no.1-Financial Commissioner whereby appeal filed by the petitioners has been dismissed, has also been prayed for.

Respondent no.5-Joginder Singh filed five applications for partition. Respondent no.4-Assistant Collector Ist Grade allowed the partition applications after clubbing the same and sanctioned the mode of partition and proceedings were completed *ex parte*.

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

Learned senior counsel for the petitioners contends that the petitioners were staying abroad and instead of serving them personally by way of registered air-mail post, the petitioners were proceeded against *ex parte*. A report was made by the process-serving agency of the Assistant Collector-Ist Grade that the petitioners are residing abroad. Despite that, they were proceeded against *ex parte*. Learned senior counsel further contends that the partition was carried out in a zig-zag manner and the petitioners are not in a position to put their land to cultivation. Besides this, no opportunity was afforded to the petitioners to defend their case at the time of partition and the petitioners were not in a position to show their possession over the land which is generally protected to the extent of share of the parties.

Per contra, learned State counsel and learned counsel for

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respondent no.5 supported the impugned orders. Learned counsel contend that partition has been done in a fair and legal manner. Every co-sharer has been given land on the road. No prejudice has been caused to the petitioners and just to delay the partition proceedings, present petition has been filed. '*Sanad Takseem*' was prepared and possession was also delivered in pursuance of partition. The partition has become final.

I have considered the rival contentions of learned counsel for the parties.

A relevant extract of order dated 29.09.2008 (Annexure P-2) passed by the Collector reads as under:

“6. I find that it is an admitted fact that the appellants were residing in foreign country, which fact is supported by the report of process-server as well. It was, therefore, mandatory on the part of the AC Ist Grade to effect service on them under the provisions of Section 20 of the Punjab Land Revenue Act, which the lower court did not do and instead got made proclamation in the village to effect service on the appellants. I find that since the appellants were not properly served and were not heard before passing the order of partition, no opportunity had been afforded to them to put forth their claims or objections. In the interest of justice, therefore, the delay in the filing of appeals is condoned. In view of the rulings quoted by learned counsel for the appellants, the appeals are accepted and the order under appeal is set aside. The

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case is remanded to the Asstt. Collector, Ist Grade, Nawanshahar with the direction that proper opportunity be afforded to both the parties to put forth their pleas and the case be decided afresh. The parties are directed to appear before him on 31.10.2008.”

Perusal of order dated 29.09.2008 passed by the Collector clearly indicates that the petitioners were not served and in that situation *ex parte* proceedings have been undertaken against the provisions of Section 20 of the Punjab Land Revenue Act, 1887 (in short, 'the Act'). It is clear that application for partition was proceeded *ex parte* but there was no proper service of notice. Therefore, it amounted to denial of opportunity to the petitioners. Section 20 of the Act contains comprehensive law with regard to mode of service of summons under the Act. When process-server has made a report that the petitioners herein were staying abroad, legal procedure prescribed in Section 20 of the Act was required to be followed. The *ex parte* proceedings against the petitioners are against law specially Sections 20 (2) and 20 (4) of the Act. The bare minimum principles of natural justice have not been followed and opportunity of hearing has not been afforded to the petitioners. The petitioners were required to be served under the provisions of the Act.

The findings recorded in the impugned orders are basically on the ground that partition has become final and '*Sanad Takseem*' was prepared and there is no jurisdiction vested in respondents no.1 and 2 to

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hear revision and appeal, respectively.

In **Krishan vs. State of Haryana and others** 2009(4) R.C.R.

(Civil) 353, this Court has held as under:

“4. It may be noticed that the petitioner has not shown as to what prejudice has been caused to him in the partition proceedings and how his rights have been affected. In fact, even the District Revenue Officer-cum-Collector, Sonapat in his order dated 3.11.2004 (Annexure-P.2) had observed that the petitioner had not been able to show as to which Killa number has been wrongly given and which was liable to be given. Learned counsel submits that in the order of the Commissioner (Annexure-P.1) it was contended on behalf of the petitioner that he has $\frac{1}{4}$ share in the entire land in the partition and he is in physical possession of Khasra Nos.28/3 and 8/2 and had also installed a tube-well in the northern and eastern side of Khasra No.28/3. However, the Assistant Collector Grade-I has wrongly given Khasra No.34/4 to the petitioner which was in possession of Ram Phal. It is also mentioned that the petitioner was in possession of Khasra No.34/1/1 in the eastern side measuring 3 Kanals 11 Marlas but he has been given Khasra No.34/1/2 measuring 1 Kanal 19 Marlas. It may, however, be noticed that it is not shown by the petitioner as to whether the Khasra numbers which are stated to have been allotted to the petitioner are far away from the Kharkhoda-Sampla highway which is his primary grievance in the present petition. Besides, it may be noticed that Ram Phal from whom Khasra No.34/4 has been taken and given to the petitioner is not impleaded

as a respondent in the present petition although the other co-sharers were impleaded as parties before the Commissioner, Rohtak Division, Rohtak. Therefore, the petition that has been filed is lacking in material particulars. It may also be noticed that 'Sanad Takseem' has been prepared and against an order preparing 'Sanad Takseem' an aggrieved person has no right, however, he is not without remedy and he can approach the Financial Commissioner by invoking his jurisdiction under Section 16(1) of the Punjab Land Revenue Act, 1887 ('Act' - for short). A Division Bench of this Court in Resham Singh alias Dilbagh Singh v. Assistant Collector Ist Grade-cum-Tehsildar, Phillaur and others, (CWP No.19985 of 2005), decided on 15.5.2007, has observed that the powers conferred under Section 16(1) of the Act would take within its ambit a quasi-judicial appraisal of the legality of the 'Sanad Takseem' and an aggrieved person may, in exceptional circumstances, invoke the Financial Commissioner's jurisdiction, under Section 16 (1) of the Act. It was held that Section 16(1) of the Act confers suo motu revisional powers upon the Financial Commissioner to call for and examine the legality of any proceeding, pending before or decided by a revenue officer. This Court in the case of Puran Singh alias Sampuran Singh v. Financial Commissioner (Development), Punjab, Chandigarh and others, 2009 (2) RCR (Civil) 712 has observed that it is true that the Act does not provide for an appeal against 'Sanad Takseem' but an aggrieved person cannot be left without a forum to seek recourse. Finality attached to a 'Sanad Takseem' can always be impugned by invoking

the powers of the High Court under Article 226 of the Constitution of India, or suo motu powers conferred upon the Financial Commissioner. The dictum in Resham Singh alias Dilbagh Singh's case (supra) was followed and the case was remanded to the Financial Commissioner.

5. *In the circumstances, in the present case, the 'Sanad Takseem' having been prepared and completed the petitioner in case he is aggrieved against the same may invoke the jurisdiction of the Financial Commissioner in the first instance by showing as to what prejudice is caused to him. However, no ground is made out for interference in the exercise of extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India."*

Since the petitioners have not been served in accordance with law and have been denied opportunity of hearing, their grievance against the *ex parte* proceedings is well founded. Even otherwise, in view of law laid down ***Krishan's case (supra)***, a party aggrieved by '*Sanad Takseem*' could have approached the Financial Commissioner. Since the matter is lingering on, this Court deems it proper to decide the matter.

In view of above, entire partition proceedings including '*Sanad Takseem*' and delivery of possession stand quashed. Consequently, the instant petition is allowed and the impugned orders are set aside. Parties through their counsel are directed to appear before the Assistant Collector-Ist Grade on 23.02.2015, who shall decide the matter afresh within six months from the date of receipt of certified copy

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of this order. It is made clear that the petitioners shall be afforded opportunity to file reply/written statement and represent their case. In the meantime, possession of respondent no.5 and petitioners as delivered shall remain undisturbed. However, if any construction has been raised after the partition, the same shall be subject to partition. The petitioners and respondent no.5 shall not carry out any further construction.

22.01.2015

parveen kumar

(Paramjeet Singh)
Judge