

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

Civil Writ Petition No.19342 of 2008 (O&M)

Date of Decision: November 28, 2016

Tek Singh (dead) through LRs

...Petitioner

Versus

Financial Commissioner, Appeals-I, Punjab, Chd. & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Puja Chopra, Advocate, for the petitioner.

Ms.Monica Chhibber Sharma, DAG, Punjab.

Mr.Binderjit Singh, Advocate, for respondent Nos.6 to 9.

RAMESHWAR SINGH MALIK, J.(Oral)

CM-6888-89 of 2016

Applicant seeks permission to bring on record legal representatives of the petitioner-Tek Singh and also seeks condonation of delay of 676 days in filing the application.

Notices of both the applications to the counsel opposite.

Ms.Monica Chhibber Sharma, DAG, Punjab, accepts notice on behalf of respondent Nos.1 to 4. Mr.Binderjit Singh, Advocate, accepts notice on behalf of respondent Nos.6 to 9.

After hearing learned counsel for the parties, both these applications are allowed. Delay of 676 days in filing the application is condoned, for the reasons stated in the application. Legal representatives of Tek Singh-petitioner are permitted to be brought on record, however, subject to all just exceptions and only for the limited purpose of decision of the present writ petition. Amended memo of parties dated 22.05.2016 is also permitted to be placed on record.

C.Ms stand disposed of.

CWP-19342-2008

The present writ petition is directed against the order dated 29.05.2008 (Annexure P-7) passed by the Financial Commissioner, Appeals-I, Punjab, whereby revision petition filed by the private respondents was allowed and the impugned remand order dated 29.07.2003 (Annexure P-4) passed by the Collector, Sub Divisional Magistrate, Rampura Phul, was upheld, in a partition matter.

Notice of motion was issued and in compliance thereof, written statements have been filed.

Heard learned counsel for the parties.

A bare perusal of the impugned order dated 29.05.2008

(Annexure P-7) passed by the Financial Commissioner shows that since the objections raised by the private respondents to *Naksha Be* were not properly considered and decided by the Assistant Collector Ist Grade, Rampura Phul, said order was rightly set aside by the Collector, vide order dated 29.07.2003 (Annexure P-4). Financial Commissioner further held that the Commissioner exceeded his jurisdiction, while setting aside the well-reasoned remand order passed by the Collector. Alleged oral agreement between the parties could not be established on record. Considering all the material aspects of the matter, learned Financial Commissioner rightly passed the impugned order (Annexure P-7) which has not been found suffering from any patent illegality or perversity and the same deserves to be upheld.

It goes without saying that in compliance of the remand order, Assistant Collector Ist Grade, Rampura Phul, shall permit both the parties to raise their respective objections to the *Naksha Be*. Both the parties shall be granted reasonable opportunity of being heard and thereafter, *Naksha Be* shall be finalized, after granting due consideration to the objections filed by both the parties.

During the course of hearing, learned counsel for the

petitioner could not point out any patent illegality or perversity in the impugned orders passed by the Collector as well as learned Financial Commissioner. Further, no prejudice, as a matter of fact, either has been caused to the petitioner by passing the impugned orders or is likely to be caused to the petitioner, by taking further proceedings by Assistant Collector Ist Grade, Rampura Phul, in compliance of the impugned remand order. Having said that, this Court feels no hesitation to conclude that since the Financial Commissioner committed no error of law, while passing the impugned order, the same deserves to be upheld.

No other arguments was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference is made out.

Consequently, Assistant Collector Ist Grade, Rampura Phul, is directed to proceed further with the matter and ensure that partition proceedings are concluded at an early date. He shall grant due opportunity of being heard to both the parties. He shall consider the

objections filed by both the parties and only thereafter, shall pass an appropriate order, strictly in accordance with law, however, within a period of three months from the date of receipt of a certified copy of this order.

Should there be any confusion, it is also clarified that if both the parties have already arrived at an amicable settlement or may arrive at such settlement during the proceedings before the Assistant Collector Ist Grade, said aspect of the matter shall also be kept in view by the Assistant Collector Ist Grade, Rampura Phul, before finalizing *Naksha Be*.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands disposed of, however, with no order as to costs.

November 28, 2016

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(RAMESHWAR SINGH MALIK)

JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*