

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

**CWP No.13505 of 2016
Date of decision: 21.11.2016**

Udham Singh

... Petitioner

Vs.

Financial Commissioner, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Arun Jindal, Advocate
for the petitioner.

Mr. Sherry K. Singla, Advocate
for the caveator.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 28.03.2016 (Annexure P-8) passed by Financial Commissioner, Punjab, whereby he accepted the revision petition filed by the private respondents, remanding the case to Assistant Collector 1st Grade, for a fresh decision.

Heard learned counsel for the petitioner.

It is a matter of record that mode of partition was finalized vide order dated 25.02.2011 (Annexure P-5). Para No.6 of the mode of partition reads as under: -

“The partition will be done after taking into consideration possession of the parties. Best out of best and bad out of bad will

be partitioned among the parties according to their share. Vendees will be bound of their vendors.”

It has been specifically recorded by the Financial Commissioner in his impugned order that name of the petitioner before him, was not figuring in Naksha “Alf”. It is also not in dispute that respondents No.4 to 7 were the co-sharers and were entitled for allotment of the land to the extent of their share, as per mode of partition, even if they had been proceeded against ex parte.

During the course of hearing, when confronted with the abovesaid fact situation, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It has further been specifically recorded by the Financial Commissioner, Punjab in the impugned order that old possession of the private respondents No.4 to 7 has been disturbed, thereby glaringly violating the abovesaid one of the conditions of mode of partition, recorded in para No.6 of the mode of partition.

Learned counsel for the petitioner has also not placed on record any site plan, for the reasons best known to him. In the absence of any site plan, it could not be appreciated at the hands of this Court that which land was allotted to whom. However, one material fact has gone undisputed before this Court that mode of partition stands glaringly violated at the hands of the respondent revenue authorities, particularly respondent No.3. Having said that, this Court feels no hesitation to conclude that Financial Commissioner, Punjab committed no error of law, while passing the impugned order and the same deserves to be upheld.

Further, present writ petition is directed only against a remand

order. Petitioner shall get due opportunity to defend himself before the Assistant Collector 1st Grade. It goes without saying that Assistant Collector 1st Grade shall take up the partition proceedings immediately after the stage of mode of partition, which has already become final between the parties as Annexure P-5.

Should there be any confusion in this regard, it is clarified that Assistant Collector 1st Grade shall ensure finalizing of the partition proceedings between the parties, strictly in accordance with the mode of partition. It is so said because any deviation from the mode of partition may amount to another round of avoidable litigation between the parties.

In view of what has been discussed hereinabove, the impugned order passed by Financial Commissioner has not been found suffering from any patent illegality or perversity. Further, no prejudice, of any kind whatsoever, has been pointed out by learned counsel for the petitioner, which might have been caused to the petitioner by passing the impugned order, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument 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 ground for interference has been made out.

However, since the parties are litigating for quite some time,

Assistant Collector 1st Grade is directed to ensure early decision of the matter. He shall make an endeavour to conclude the partition proceedings within a period of six months from the date of receipt of certified copy of this order.

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

21.11.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No