

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.16340 of 2016
Date of decision:21.10.2016**

Joginder Singh @ Ginder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Rajender Kumar, Advocate, for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 19.01.2016 (Annexure P-8) passed by Financial Commissioner (Revenue), Punjab, whereby the order passed by Assistant Collector 1st Grade was set aside, remanding the case with direction to Assistant Collector Ist grade to grant opportunity of hearing to the concerned parties and pass fresh appropriate order regarding partition of land between the parties.

Heard learned counsel for the petitioners.

It is a matter of record that respondent No.5 was co-sharer in the joint khewat. He was absolute owner of land measuring 8 kanals 11 marlas. Assistant Collector 1st Grade fell in serious error of law, holding that since respondent No.5 purchased the land from original owner, he would not have similar and equal rights as compared to other shareholders. Such an approach adopted by Assistant Collector 1st grade would be totally alien to the provisions of law, thus, a perverse approach. Similarly, respondent No.5 was denied the facility of path as well as watercourse, simply saying that he was a small share holder. This finding recorded by Assistant

Collector 1st Grade again was patently illegal. On both these counts, Financial Commissioner has rightly set aside such a patently illegal order passed by Assistant Collector 1st grade. Case was rightly remanded, issuing a direction to the Assistant Collector 1st Grade to hear both the parties and thereafter pass afresh order, in accordance with law.

The relevant observations made by the Financial Commissioner, in the operative part of his impugned order, which deserve to be noticed here, read as under:-

“Admittedly petitioner/applicant is a co-sharer in possession of his share measuring 8 kanals 11 marlas of nehri (canal irrigated) land. In these circumstances, the Assistant Collector Grade-I’s order is clearly illegal on two counts. First, Assistant Collector Grade-I’s has incorrectly held that because the petitioner is a purchaser from original (ancestral) land owners, he does not have similar and equal rights as compared to other shareholders. This observation is a travesty of the revenue law, which recognises the title of all shareholders incorporated in the revenue record as being equal, irrespective of the point in time when they may have acquired such title. Second, Assistant Collector Grade-I has clearly erred in holding that a small shareholder is not entitled to a path or water course. There is no such principle of precedent in the revenue law pertaining to partition of land holdings. In any case, petitioner’s holding of 8 kanals 11 marlas cannot be said to be too small to irrigate effectively.”

During the course of hearing, when confronted with the above-said cogent findings recorded by Financial Commissioner in his order, learned counsel for the petitioner had no answer and rightly so it being a matter of record. Further, learned counsel for the petitioner could not point out any kind of prejudice, which might have been caused to the petitioner,

by passing the impugned order, so as to warrant 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 impugned order has not been found to be suffering from any patent illegality or perversity. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

21.10.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No