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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19353 of 2016
Date of decision:17.10.2016

Fateh Singh and others ...Petitioners

Versus

Assistant Collector 1st Grade, Israna and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sudhir Mittal, Advocate,
for the petitioners.

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Rakesh Kumar Jain, J.

This petition is filed in order to challenge the instrument of partition dated 22.07.2016 prepared on the order of the Assistant Collector 1st Grade.

The preliminary issue raised by this Court was regarding the maintainability of the present writ petition.

Counsel for the petitioners had initially relied upon a Division Bench judgment of this Court, rendered in the case of **Raja Ram alias Rajender vs. Tehsildar-cum-Assistant Collector, Hissar,** 2001(2) R.C.R. (Civil) 739 but the Court had an impression that the petitioners would have the remedy before the Financial Commissioner by way of revision and the case was thus adjourned. On the adjourned date, counsel for the petitioners, very fairly referred to another Division Bench judgment of this Court, rendered in the case of **Resham Singh @ Dilbagh Singh vs. Assistant**

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Colector 1st Grade-cum-Tehsildar, Phillaur & others, CWP No.19985 of 2005, decided on 15.05.2007, in which the Court was of the opinion that the petitioner should first approach the Financial Commissioner by way of revision.

I have heard learned counsel for the petitioners and examined the available record.

In **Raja Ram's case (supra)**, it was observed by this Court that no appeal is provided to challenge the instrument of partition after the partition proceedings are over and the only forum for the petitioner to challenge the Sanad Taqseem is by way of writ petition. However, in **Resham Singh's case (supra),** the Division Bench, by taking note of Section 16(1) of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the "Act"), made the following observations:-

> "It is true that the Punjab Land Revenue Act, 1887 does not provide for an appeal against the Sanad Takseem. An aggrieved person, however, cannot be left without a forum to seek redress. The 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 in our opinion, the suo motu powers, conferred upon the Financial Commissioner, under Section 16(1) of the Act. Section 16(1) of the Act reads as follows:-
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> > "16. **Power to call for, examine and revise proceedings of Revenue-officers.-**(1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by, any Revenue-officer subordinate to him."
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> In our considered opinion, powers, conferred by Section 16(1) of the Act, would take within their ambit a quasi-judicial appraisal of the legality of the Sanad Takseem. An aggrieved person may, in exceptional circumstances, invoke the Financial Commissioner's jurisdiction, under Section 16(1) of the Act. 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. We are, thus, satisfied that in the first instance, the petitioner should have approached the Court of the Financial Commissioner by way of a revision. Consequently, but without expressing any opinion as to the merits of the controversy, the petitioner is relegated to the remedy, as held herein above."

I have considered both the aforesaid decisions of the Division Benches. In both the cases, it has been observed that the finality attached to the Sanad Taqseem can always be challenged by way of writ petition but in **Resham Singh's case (supra)**, while referring to Section 16(1) of the Act which has no reference in **Raja Ram's case (supra),** this Court was of the opinion that at the first instance, remedy would lie before the Financial Commissioner by way of revision.

Thus, following the decision in **Resham Singh's case (supra)**, I am also of the considered opinion that the petitioners should approach the Financial Commissioner at the first instance for redressal of their grievance.

Accordingly, the present petition is hereby disposed of without touching its merits relegating the petitioners to avail their remedy of revision before the Financial Commissioner by invoking Section 16(1) of the Act, if so advised.

October 17, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No
Whether Reportable: Yes/No