

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 05, 2017

1. CWP No.21616 of 2013

Badam Singh & others

...Petitioners

Versus

Financial Commissioner, Haryana & others

...Respondents

2. CWP No.4981 of 2014

Sukhbir & others

...Petitioners

Versus

Financial Commissioner, Haryana & others

...Respondents

3. CWP No.4989 of 2014

Ram Chand

...Petitioner

Versus

Financial Commissioner, Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Shiv Kumar, Advocate,
for the petitioners (in CWP No.21616 of 2013).

Mr.Rajiv Sharma, Advocate,
for the petitioners (in CWP Nos.4981 & 4989 of 2014).

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.Keshav Pratap Singh, Advocate,
for respondent Nos.5 to 11 (in CWP No.21616 of 2013).

Mr.K.S.Dadwal, Advocate,
for respondent Nos.30 to 32 (in CWP No.21616 of 2013).

AMIT RAWAL, J.

By this order, I intend to dispose of three Civil Writ Petitions bearing No.21616 of 2013, 4981 and 4989 of 2014 as common questions of law and fact are involved.

CWP Nos.4981 and 4989 of 2014, which have been ordered to be heard with CWP No.21616 of 2013, are at the instance of the private respondents, who, as per the zimni orders extracted in CWP No.21616 of 2013, were never served.

Mr.Shiv Kumar, learned counsel for the petitioners in CWP No.21616 of 2013 and Mr.Rajiv Sharma, learned counsel for the petitioners in CWP Nos.4981 and 4989 of 2014 submit that the zimni orders reveal that there is defiance of the provisions of 20 of the Punjab Land Revenue Act as applicable to the State of Haryana (for short “the Act”). There was no munadi, yet the order of munadi was passed. Thereafter, the matter proceeded calling upon the applicants in an application under Section 111 of the Act to submit the registered envelopes. On all dates, the registered envelopes have not been deposited, which is evident from the zimni orders and ultimately without recording the satisfaction as to whether service has been effected, ex-parte proceedings were initiated on 24.7.2003 and, therefore, the petitioners have not been given a chance to contest the application vis-a-vis the memorandum of partition, which, *ex-facie*, reveals un-justified distribution of the land.

Per contra, Mr.Keshav Pratap Singh, learned counsel for respondent Nos.5 to 11 and Mr.K.S.Dadwal, learned counsel for respondent Nos.30 to 32 in Civil Writ Petition No.21616 of 2013 submit that it can, at the best, be considered as a procedural lapse but as

per the petitioners have not been able to touch conscious of the court as to what possible objections could have been taken to the memorandum of partition in case the petitioners had actually contested the proceedings. Much water has flown as the matter is of 2001 and more than 16 years have been lapsed and, therefore, it could be a total farcical exercise in remanding the matter back and, thus, pray for upholding the orders under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

The fact remains that the appeal filed against the final partition had also been dismissed as the authorities below have not taken care to look into the zimni orders. I would be reproducing the zimni orders as the previous orders, would reveal non-deposit of the registered envelopes. The zimni orders commencing from 14.2.2003 to 23.6.2003, 24.7.2003, 25.6.2004 to 10.8.2004 and order dated 27.8.2004 proceedings the petitioners (respondents in the partition proceedings) as ex-parte, are extracted herein below:-

“Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 and 16 to 19 are present. The counsel for the applicants have not deposited the registered envelope. Now the case be put up after deposit of registered envelope on 28.2.2003.

AC IInd Grade Ballabgarh

14.2.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 and 16 to 19 are present. The counsel for the applicants have not deposited the registered

envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 13.3.2003.

AC IInd Grade Ballabgarh

28.2.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 and 16 to 19 are present. The counsel for the applicants have not deposited the registered envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 28.3.2003.

AC IInd Grade Ballabgarh

13.3.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 are present has has not filed the written statement and the respondents No.16 to 19 are present. The counsel for the applicants have not deposited the registered envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 25.4.2003.

AC IInd Grade Ballabgarh

28.3.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 are present has has not filed the written statement and the respondents No.16 to 19 are present. The counsel for the applicants have not deposited the

registered envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 20.5.2003.

AC IInd Grade Ballabgarh

25.4.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10 and 11 and 16 to 19. The counsel for the applicants have not deposited the registered envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 23.6.2003.

AC IInd Grade Ballabgarh

20.5.2003

Case is presented. Applicant along with counsel is present. Respondents No.9, 10, 11 and 16 to 19. The counsel for the applicants have not deposited the registered envelope so that the remaining respondents may be summoned through registered post. Now the case be put up after deposit of registered envelope on 24.7.2003.

AC IInd Grade Ballabgarh

23.6.2003

Case is presented. The counsel for the applicant is present. Neither respondents No.9, 10, 11 and 16 to 19 nor their counsels are present. The case was filed. Again at 4.55 PM the case was called. But the court is going to over. Due to non appearance of respondents No.9, 10, 11 and 16 to 19 or their

counsels, exparte proceedings is initiated and the counsel for the applicant is directed to deposit the expenses of Munadi so that for summoning the remaining respondents, munadi can be got conducted. Now the case to come up on 31.7.2003 after deposit of munadi expenses.

AC IInd Grade Ballabgarh

24.7.2003

Case is present. The counsel for the applicant is present. Halqa patwari has been directed to issue orders for summoning the remaining respondents through munadi. Now the case be put up on 8.7.2004 after the munadi.

Sd/-

AC IInd Grade Ballabgarh

25.6.2004

Case is present. The counsel for the applicants is present. Report from the Halqa Patwari regarding conducting of munadi has not been received. Now the case be put up on 26.7.2004 after summoning the remaining respondents through munadi.

Sd/-

AC IInd Grade Ballabgarh

8.7.2004

Case is present. The counsel for the applicants is present. The order for conducting munadi for summoning the respondents has not been issued by the Halqa Patwari. Now the case be put up on 10.8.2004 to conduct the munadi.

Sd/-

AC IInd Grade Ballabgarh

26.7.2004

Case is present. The counsel for the applicants is present. The order for conducting munadi for summoning the respondents has not been issued by the Halqa Patwari. Now the case be put up on 27.8.2004 to conduct the munadi.

*Sd/-
AC IInd Grade Ballabgarh
10.8.2004*

Case is present. The counsel for the applicants is present. After mustri munadi the report rapat roznamcha has been received. The respondents No.1 to 8 and 12 to 56 or their counsels are not present. Case was called. Case was again called. It is 4.55 PM and the time of the court is to be over. Therefore due to non appearance of respondent No.1 to 8 and 12 to 56 in the court, exparte proceedings shall be initiated. Now the case may be put up for Naksha Ka on 13.9.2004.

*AC IInd Grade Ballabgarh
27.8.2004”*

The aforementioned orders would reveal that no satisfaction has been recorded with regard to the mustri munadi, even the satisfaction what to talk of compliance of the provisions of Section 20 of the Act as applicable to the State of Haryana. The authorities below have to be very wary in findings/order by proceeding against the alleged served respondents ex-parte. There is a procedure prescribed for initiating the ex-parte proceedings. The satisfaction allegedly recorded, how the munadi has been done, whether munadi fees and registered cover have been deposited or not is conspicuously wanting.

In my view, the appellate authority ought to have considered/pondered upon this aspect and set-aside the order by remanding back the matter to the assistant Collector by fixing time line as, *prima-facie*,

according to the submission of Mr.Shiv Kumar, there has not been equal distribution of land qua potentiality, much less quality of the land.

Resultantly, the orders under challenge are not sustainable being vitiated in law and do not stand on the touchstone of reasonability, therefore, the same are set-aside. The matter is remitted back to the Assistant Collector Ist Grade concerned to decide the partition proceedings afresh by causing service on the unserved respondents, in essence the respondents, who have not been associated or assailed the orders. The petitioners shall cause appearance on 28.4.2017 and qua other respondents, the Assistant Collector shall strictly adhere to the provisions of Section 20 of the Act. On completion of the service part, shall decide the application for partition as expeditiously as possible within a period of six months from the date of receipt of certified copy of this order.

Writ petitions stand disposed of accordingly.

April 05, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No