

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

**CWP No.15460 of 2017
Date of Decision: 02.08.2017**

Balihar Singh

....Petitioner

Vs.

Union of India and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Ms.Sushma Chopra, Advocate, for
Mr.J.S. Thind, Advocate,
for the petitioner.

Mr.B.S. Seemar, Advocate,
for the caveator.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the order dated 14.3.2017 passed by the Financial Commissioner by which he has set aside the order passed by the Assistant Collector 1st Grade, Morinda dated 28.7.2014.

In brief, on 26.5.2014, the petitioner filed an application for partition of land measuring 422 kanal 13 marlas situated in village Kajauli, Hadbast No.266, Tehsil Chamkaur Sahib, District Roopnagar. On 2.9.2014, the Assistant Collector, 1st Grade sanctioned the partition which was challenged by way of three revision petitions before the Financial Commissioner. The case of the respondents was that the application for partition was filed without impleading the legal heirs of Bachan Kaur. The financial Commissioner has referred to the proceedings of each and every date till the order dated 28.7.2014 was passed. In this regard para 3 of the

order of the Financial Commissioner needs to be reproduced to avoid repetition, which is reproduced as under: -

“Accordingly, an opportunity was granted to Balihar Singh respondent No.1, to present his case. His counsel presented application dated 06.12.2016 at Annexure P-9 of the file. In reply, the counsel for petitioner reiterated the grounds taken in revision petition, and submitted that petitioners along with the respondents No.1 to 12 are the joint owner in possession of land measuring 422 kanal 13 marlas. The Bachan Kaur daughter of Maghi Singh was owner in possession of the above said land to the extent of 39/1556 share. The said Bachan Kaur was married to one Umrao Singh son of Nagina Singh and had four sons and two daughters from this marriage. Bachan Kaur died on 30.7.1996 leaving behind her four sons namely Govinder Singh, Sikandar Singh, Shermir Singh, Devinder Singh and two daughters namely, Surinder Kaur and Kamaljit Kaur. The respondent No.1 filed an application for partition of the above said joint Khata on 26.5.2014. That the respondent No.1 filed this application for partition without impleading the present petitioners, who were otherwise necessary parties of being heard, being the legal representatives of said Bachan Kaur. He

further submitted that thus the whole proceedings of partition have been done by the respondent No.1 in an illegal and arbitrary manner in connivance with the lower revenue officers. That a perusal of the jimni orders shows that the case came up for hearing on 26.5.2014 when summons were issued to the respondents and the case was adjourned to 06.06.2014 awaiting service. And on dated 06.06.2014 when the case was fixed for service Naksha Aliph was passed without calling any objections and it was ordered to present “Tarika Takseem” on the next date i.e. 20.06.2014 without analysing the actual possession of the parties before partition as no “Aks Sajra: Map showing the possession of the parties before partition or after proposed partition was produced by the respondent No.1 along with the partition – application which is in violation of Section 111 of the Punjab Land Revenue Act, 1987. Further, as per jimni order dated 20.06.2014, in the presence of only respondent No.1, 3, 4, 5, 7 & 8 “Tarika Takseem” was sanctioned without giving any reason why respondent No.1 will get a separate tag and all other co-sharers will get a joint un-partitioned tag. He argued that it was also ordered to present “Naksha Bey” and “Naksha Jeem”

jointly without calling for any objections on “Naksha Bey” and the matter was adjourned to 04.07.2014. And on 28.07.2014 both “Naksha Bey” and “Jeem” were presented and sanctioned and the partition proceedings were completed and the final order dated 28.07.2014 was also passed on the same date. The petitioners came to know about the above said partition when on 02.03.2016 they approached the Land Acquisition Collector-cum-SDM Roopnagar for getting the compensation as some of the land forming part of this land is acquired by the National Highway Authority of India for development of roads. The petitioners were shocked that in the Assessment of Compensation their names were not included due to the illegal partition by respondent No.1. He prayed that the order of A.C. 1st Grade may kindly be set aside.”

The Financial Commissioner allowed the revision petition observing that *“hence, I proceed to examine merits of the order of AC-I impugned. The record shows that petitioners were proceeded ex-parte, without due notice. Further, the proceedings were conducted without regard to due process prescribed in the Punjab Land Record Manual, paragraphs 18.10 to 18.17. The partition order itself is unfair and unjust. Respondent No.1 has been given a taq abutting the main road (National Highway) and others have been given a joint taq of less valuable land, in*

violation of paragraph 11 of the Mode of partition. Given these serious defects in the proceedings and in the partition order, I have no hesitation in setting it aside. It is apparent from the record that the AC-I has been remiss in this case and has committed certain acts of negligence and default. Therefore, a copy of this order may be placed before the Financial Commissioner Revenue to consider taking disciplinary action against AC-I as per the rules. With this observation this petition is accepted.”

Not only the Financial Commissioner vide his impugned order dated 14.3.2017 set aside the order of the Assistant Collector 1st Grade being unfair and unjust but also sent the copy of his order to the Financial Commissioner, Revenue to take disciplinary action against AC 1st grade as per rules.

Learned counsel for the petitioner has submitted that the proceedings of partition were carried out by the Assistant Collector 1st Grade, in accordance with law and the impugned order passed by the Financial Commissioner deserves to be set aside.

On the other hand, learned counsel appearing on behalf of the caveator has reiterated the proceedings, with the help of the zimini orders, carried out by the Assistant Collector 1st Grade, in order to show that it was held in an unholy haste much less without following due procedure and has submitted that the order passed by the Financial Commissioner in this regard does not require any interference.

I have heard leaned counsel for the parties and after examining the available record especially the zimini orders from 26.5.2014 to 28.7.2014, which are deliberated upon by the Financial Commissioner in para 3 of his order, am of the considered opinion that there is no scope for

interference in this petition as the Assistant Collector 1st Grade did not carry out the partition proceedings in due course of law. Hence, the present petition is found to be without any merit and thus the same is hereby dismissed.

02.08.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*