

In the High Court of Punjab and Haryana at Chandigarh.

**CWP- 22264 of 2015
Decided on 03.8.2017**

Kuldeep Singh and others

--Petitioners

Vs.

State of Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. P.S.Saini, Advocate for the petitioners

Mr. Sourav Khurana, DAG, Punjab

Mr.Lalit Kumar, Advocate, for respondent No.3.

Rakesh Kumar Jain,J: (Oral)

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated 04.12.2009 by which the Assistant Collector Ist Grade, Patiala, had approved the “Mode of Partition”; the order dated 13.8.2010 passed by the Collector by which the appeal filed by the petitioners has been wrongly dismissed and also the order dated 05.8.2015 of the Financial Commissioner, Punjab, by which the revision petition filed by the private respondents has been allowed.

In brief, the private respondents filed an application under Section 111 of the Punjab Land Revenue Act,1887 (for short,'the Act') for

partition of land measuring 604 kanals 7 marlas and 6 kanals 14 marlas situated at village Harigarh, Tehsil and District Patiala, falling in two different khewats.

The petitioners filed reply to the application, inter-alia, alleging that the application is not maintainable because the application has been filed for two different khewats in which there are different co-sharers and therefore, two separate applications should have been filed.

However, the Assistant Collector Ist Grade, Patiala, proposed the “Mode of Partition” vide his order dated 04.12.2009 and approved the same on the same day without giving an opportunity of hearing to the petitioners to file objections to the “Mode of Partition”.

Aggrieved against that order, the petitioner filed an appeal before the Collector, Sub Division, Patiala, in which it was, inter-alia, urged that the revenue authorities, seized of the partition application, should have issued summons to all the co-sharers but in this case, notices have not been issued to all the co-sharers and without their service, ex-parte proceedings have wrongly and illegally been conducted. It is also averred that 'Naksha Urri' was wrongly prepared and approved without notice to the affected parties and the names and addresses of some of the co-sharers have been wrongly mentioned.

The objections were not allowed against which the petitioners filed a revision petition before the Collector, Sub Division, Patiala, which was dismissed on 13.8.2010. This order was challenged by the petitioners by way of revision under Section 16 of the Act, before the Commissioner, Patiala Division, Patiala, who allowed the revision observing that “In this case, the A.C.Ist Grade has approved “Mode of Partition” vide order dated

4.12.2009 and the appeal filed against this order has been rejected by Collector Sub Division, Patiala vide order dated 13.8.2010. Now the petitioners are emphasizing on the point that they have not been afforded any opportunity to file objections on proposed 'Mode of Partition' and that all the co-sharers have not been impleaded as party and the partition has been sought for two khewats in one application whereas the co-sharers are not common in both the khewats. I am in agreement with the contentions of the petitioners as it is well settled law that every co-sharer should have been impleaded as party in partition proceedings and as such the revision filed in this case is hereby accepted”.

With these observations, the case was remanded back to the A.C.Ist Grade, Patiala, with a direction to implead the remaining parties and after giving them opportunity of hearing to lead evidence, decide fresh “Mode of Partition”.

The A.C.Ist Grade, Patiala, after the remand did not give opportunity of hearing to the parties, as directed and approved “Mode of Partition” on 03.1.2012 and called for the “Naksha Arra” on 20.1.2012. This led to the filing of another revision at the hands of the petitioners before the Commissioner of the Division. The Commissioner again allowed the revision petition observing that “The partition case can be disposed off khewat wise unless the co-sharers are same in the common khewats and no body have objection for disposal of partition proceedings keeping the khewats common for partition proceedings. The A.C.Ist grade also to send his clarification as to why he has failed to comply with the orders of the Commissioner, Patiala Division, Patiala dated 03.5.2011. The speaking order be passed within 45 days from the receipt of order of this Court”.

Now it was the turn of the private respondents to file revision petition before the Financial Commissioner, who allowed the said revision petition vide his order dated 05.8.2015 only on the ground that the partition proceedings are pending for the last five years and the present petitioners are trying to delay the proceedings.

Learned counsel for the petitioners has submitted that all the proceedings were carried out by the petitioners against the orders by which “Mode of Partition” has been accepted without complying with the provisions of law and had to file another appeal before the Collector, Sub Division, Patiala against the acceptance of “Naksha Arra” which has been prepared on the basis of same “Mode of Partition”. In that appeal, the Collector has remanded the case back to the A.C. Ist Grade, Patiala, vide his order dated 14.6.2013.

Learned counsel for the petitioners has submitted that there has been consistent order of the Commissioner, Patiala Division, Patiala, while dealing with this aspect of the petition in respect of “Mode of Partition” which has been approved by the A.C.Ist Grade, Patiala.

However, the Financial Commissioner without advertng to all these aspect of the matter, has, thus, allowed the revision petition of he private respondents on the ground that the matter is pending for the the last five years and there is an effort on the part of the petitioners to delay the proceedings.

It is interesting to note that even after “Naksha Arra” was prepared, the petitioners challenged the same by way of appeal and the Collector has remanded the case back to the A.C.Ist Grade, Patiala, for preparing “Naksha Arra” because it was not in accordance with the “Mode

of Partition” which is under challenge. All these facts lead to one irresistible conclusion that the A.C.Ist Grade, Patiala, has not proceeded in the matter of partition in accordance with law.

It is well settled law that application for partition can be filed in respect of more than one khewat and can be entertained by the A.C.Ist Grade, provided that co-sharers in the different khewats are the same. But if the co-sharers are different in the different khewats, then separate applications have to be filed because khewats have to be separated of all the co-sharers.

Secondly, there were objections of the petitioners that the partition proceedings have been carried out without impleading all the co-sharers which suffers from vice and even this aspect of the matter has not been seen before passing the order by the Financial Commissioner.

In view of the aforesaid facts and circumstances of the case, I am of the considered opinion that the impugned order passed by the Financial Commissioner deserves to be set aside. Therefore, the same is hereby quashed and the order of the Commissioner is restored whereby he has remanded the case back to the A.C.Ist Grade, Patiala, to decide about the question raised by him in his order in regard to the partition proceedings.

With these observations, the present petition is hereby allowed.

03.8.2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned:

Yes/No.

Whether Reportable:

Yes/No