

In the High Court of Punjab and Haryana at Chandigarh.

**1. CWP-7954 of 2012
Decided on 27.7.2017**

Zile Singh and another

--Petitioners

Vs.

Financial Commissioner, Haryana and others

--Respondents

**2. CWP-10697 of 2012
Decided on 27.7.2017**

Zile Singh and another

--Petitioners

Vs.

Financial Commissioner, Haryana and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. R.S.Chauhan, Advocate,for the petitioners

Mr. Saurav Mohunta, DAG, Haryana

Mr.Surender Lamba, Advocate,for respondent
Nos.5,6 and 24 to 27.

Rakesh Kumar Jain,J: (Oral)

This order shall dispose off two petitions bearing CWP Nos.

7954 and 10697 of 2012 as the issue involved in both the petitions is common. However, the facts are extracted from CWP-7954 of 2012 titled as Zile Singh and another Vs. Financial Commissioner, Haryana and others.

The facts given to me in the Court are that partition application was filed on 17.7.2007 by the contesting respondents in respect of two Khasra Nos.92 and 95. The petitioners filed reply and mode of partition was proposed and approved on 06.4.2008 which attained finality as it was not further challenged. Naksha Bey was called on 31.1.2009 which was not in terms of mode of partition. Therefore, the petitioners raised objections which were decided by the Assistant Collector Ist Grade, Charkhi Dadri, who again called Naksha Bey. On 16.3.2009, Naksha Bey was produced which was not in terms of mode of partition.

The petitioners filed objections on 04.1.2010 which were dismissed by the A.C Ist Grade, Charkhi Dadri on the same day. Thereafter, he asked for Naksha Zeem on 22.2.2010.

The petitioners challenged the order dated 04.1.2010 by way of an appeal before the Collector but his appeal was dismissed only on the ground of delay of three months. Then he filed the revision before the Commissioner, which too was dismissed on the same ground and the Financial Commissioner also dismissed the revision of the petitioner.

Aggrieved against the aforesaid orders, the present petition has been filed.

Learned counsel for the petitioner has submitted that the Collector and further the higher authorities have erred in dismissing his appeal/revision only on the ground that he approached their Courts after a

delay of three months. The petitioner submitted that he was wrongly advised that his appeal would not be entertained before the Commissioner because Naksha Zeem has been called, otherwise, he would have filed the appeal in time against the order of the Collector dated 04.01.2010.

On the other hand, learned counsel for the respondents has submitted that the only purpose of the petitioners is to prolong the litigation, otherwise he is in cultivation of the land more than his share.

Be that as it may the fact remains that the petitioner is aggrieved against the preparation of Naksha Bey which is not in terms of mode of partition and the said order has attained finality and the objections were dismissed by A.C.Ist Grade, Charkhi Dadri on the same day when it was made before it and that he was under the impression that since Naksha Zeem has been called, he has become remediless, therefore, the appeal could not be filed within time.

In this regard, learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the case of **Collector Land Acquisition, Anantnag and another Vs. Ms. Katiji and others** 1987 AIR (C) 1353 in which the Supreme Court has held that meritorious matter should not be thrown on the ground of delay.

Keeping in view this aspect of the matter into consideration especially the fact that the dispute pertains to the partition of land in which the parties have to live together even after the partition, I deem it appropriate to set aside the orders of the Collector, Commissioner and the Financial Commissioner and remand the case back to the Collector, Charkhi Dadri to entertain the appeal and the decide the same in accordance with law.

The parties are directed to appear before the Collector, Charkhi Dadri on 08.08.2017, who is directed to decide the matter within a period of one month because the parties are in litigation since the year 2007.

Till the appeal is decided by the Collector, the partition proceedings shall remain in abeyance.

27.7.2017
rr

(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned:

Yes/No.

Whether Reportable:

Yes/No