

224

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

CWP-7858-2015

Date of decision : 08.02.2017

Nachhattar Singh @ Darshan Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Brar, Advocate
for the petitioners.

Ms. Monica Chhibber Sharma, DAG, Punjab.

Mr. M.K. Singla, Advocate
for respondent Nos.4 to 6.

AMIT RAWAL, J. (ORAL)

The petitioners being the applicants in application under Section 111 of the Punjab Land Revenue Act, are aggrieved of the impugned order of the Financial Commissioner (Revenue), whereby revision filed against the order dated 30.10.2014 passed by the Commissioner remanding back the matter to the Assistant Collector, has been dismissed.

Mr. J.S. Brar, learned counsel appearing on behalf of the petitioners submits that the application for partition, aforementioned, was moved in the year 2002. The private respondent(s) herein appeared and contested the same. However, the aforementioned proceedings were

adjourned *sine die* vide order dated 28.02.2006 owing to the pendency of the civil suit instituted at the instance of the private respondent(s) claiming declaration of having become owner by way of adverse possession. The said suit was dismissed on 16.01.2009. Thereafter, the aforementioned application was registered again on 11.08.2009. Effective notice or promulgation was issued, but did not put in appearance. The order of partition was passed on 28.04.2010 and '*Sanand Takseem*' on 17.02.2011, thus, the appeal before the Collector and revision before the Commissioner, in view of the Section 16 of the Act and the *ratio decidendi* culled out by the Hon'ble Division Bench of this Court in "*Amar Khan and others V/s State of Punjab and others*" 2009 (1) RCR (Civil) 741, was not maintainable.

Mr. M.K. Singla, learned counsel appearing on behalf of respondent Nos.4 to 6 submits that *zimini* orders of the Assistant Collector commencing from 11.08.2009 till passing of the partition order reveal that no effort of notice or promulgation, as indicated in the impugned order of the Assistant Collector, is indicated. It was incumbent upon the Assistant Collector to send the notice, thus, the private respondents being subsequent purchasers have a valuable right being *bona fide* purchasers under Section 41 of the Transfer of Property Act, therefore, their interest is seriously effected. They are liable to be heard viz-a-viz protecting of possession, much less, nature of land being superior or inferior.

I have heard the learned counsel for the parties and appraised the paper book. *Zimini* orders commencing from 11.08.2009 till passing of the order dated 28.04.2010, passed on to this Court during the course of the

arguments, have not been rebutted by Mr. J.S. Brar. On perusal, do not indicate any effort being made to effect the service upon the affected parties i.e. Private respondent(s), thus, the findings of the Assistant Collector and the Collector in the appeal preferred by the respondent(s) of effecting the service is totally erroneous, much less, fallacious. The order of the Commissioner remanding back the matter noticing the record of the Court below is perfectly legal and justified. Dismissal of the revision petition by the Financial Commissioner also does not call for interference, thus, there is no illegality and perversity.

In my view, the Assistant Collector's order indicates the presence of the parties being represented by the counsel, which is totally beyond the record. The Assistant Collector being the competent authority in entertaining the application for partition should not be lackadaisic in following the procedure particularly effecting service and so-called promulgation. They are directed to be more careful in future.

Resultantly, the order dated 30.10.2014 (Annexure P-7) of the Commissioner and order dated 24.02.2015 (Annexure P-8) of the Financial Commissioner (Revenue) are hereby upheld. The present writ petition stands dismissed.

However, keeping in view the fact that the parties are at loggerhead since 2012, I deem it appropriate to direct the Assistant Collector, Grade-I, Ferozepur Division, Ferozepur, to expedite the application for partition preferably within a period of four months from the receipt of the certified copy of this order by giving the effective opportunities and ensure that none of the parties does not indulge into

delaying tactics.

Learned counsel for the parties and as well as the parties are directed to appear before the Assistant Collector, Grade-I, Ferozepur on 28.02.2017.

08.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No