

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

CWP No.18045 of 2016

Date of decision: 9.8.2018

Chetan

...Petitioner

Versus

The Financial Commissioner, Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Sudhir Aggarwal, Advocate for the petitioner

Mr. Shivendra Swaroop, Assistant Advocate General, Haryana

Mr. Ajai Jain, Advocate for respondent no.5.

G.S.SANDHAWALIA, J. (Oral)

The present petition is directed against the order dated 13.1.2016 (Annexure P/7) whereby respondent no.1-the Financial Commissioner, Haryana has allowed respondent no.5-Shish Ram an opportunity to participate in the partition proceedings since he was never heard when the instrument of partition was prepared.

It is not disputed that when the partition proceedings were initiated by the predecessor-in-interest of the petitioner, namely, Kishori Lal against his brother and other co-sharers including one Roshan son of Patram who is now represented through respondent no.8-Abhi Singh. The present respondent no.5-Shish Ram was, however, not impleaded.

The dispute pertains to 65 Kanals 5 Marlas of land and the predecessor-in-interest of respondent no.8 had half share in the land in dispute. Private respondent no.5-Shish Ram had purchased the land measuring 18 marlas on 14.5.1993 and mutation had also been entered on

24.8.1993. However, in the absence of the entry in the revenue record, no notice was issued to him and neither he was impleaded when the instrument of partition was prepared. Resultantly, he filed an appeal on 14.8.1997 six months after the preparation of the same which was allowed on 4.5.1998 (Annexure P/3) by the Collector, Rewari on the ground that he had not been served and his valuable interest was infringed. The order was set aside by the Commissioner and direction was issued to take action against the concerned Patwari. The respondent no.5 accordingly approached the Financial Commissioner, Haryana who vide impugned order dated 13.1.2016 (Annexure P/7) has directed that partition proceedings be done afresh as to between all the present co-sharers of the disputed land. Resultantly, the same is under challenge.

From the above stated facts, one aspect would be clear that for no fault of respondent no.5, partition proceedings have been carried out behind his back mainly on account of the fault of the revenue authority i.e. in spite of the mutation having been entered about the said sale on 24.08.1993, but entry in the revenue record had not been made. Partition proceedings had been initiated much later on 8.11.1995 and more than 2 years had gone by. The said vendor also never brought this fact to the notice of the authorities that 3rd party interest had crept in. Irreparable loss and injury as such have been caused to respondent no.5 as he would thus only be able to claim his share from the legal representatives of Roshan Lal to the extent for that portion which had been allotted to them. Therefore, the Collector was well justified in setting aside the proceedings by allowing the appeal and the Financial Commissioner also on the principle of *Audi*

Alteram Partem has rightly allowed the revision petition.

The argument raised by Mr. Sudhir Aggarwal, Advocate that the impugned order is not speaking order may carry some weight. Though the reasoning aspect is lacking in the impugned order yet the factual aspect has properly been noticed which has helped this Court to decide the matter in its proper perspective.

Accordingly, no ground is made out to interfere with the impugned order and the present writ petition is dismissed.

August 09, 2018
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No