

CWP-16568-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16568-2018

Date of Decision: 10th July, 2018

Seeta Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jag Nahar Singh, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 18.04.2016 (Annexure P-2), whereby, the petitioner was proceeded against *ex parte* by the Assistant Collector Ist Grade, Dera Bassi, SAS Nagar (Mohali) and the Naksha 'Aarra' dated 17.04.2017 (Annexure P-4), which was approved and the subsequent approval of Naqsha 'Eree' as also the *sanad taqseem* dated 16.06.2017 (Annexure P-5), which, when challenged by way of revision petition before the Financial Commissioner Revenue, Punjab, the same was dismissed vide order dated 04.04.2018 (Annexure P-6) being illegal, null and void as the same was passed without following the proper procedure with a prayer to remand the case back to the Assistant Collector Ist Grade, Dera Bassi.

2. It is the contention of the learned counsel for the petitioner that as per the summons which have been issued to the petitioner, the date fixed for appearance was 08.04.2016, on which date, the petitioner was not

proceeded against *ex parte* but was so proceeded on 18.04.2016 (Annexure P-2). He contends that the address of the petitioner has been wrongly mentioned in the partition proceedings and therefore, the summons were not duly served upon the petitioner. No efforts have been made to serve the petitioner by submitting correct address nor any publication was made. Petitioner, through a registered sale deed, had purchased 7 Bighas 4 Biswas of land and was in possession of specific Khasra No. 28 (3-10), 555/27 (3-14) at front. Although the said possession has been kept intact but passage has been left out in these khasra numbers by deducting proportionate area of petitioner, whereas, he has a passage. He further submits that the petitioner has not been allotted a separate 'tak' of partition and he has been shown to be a co-sharer in the land with some other persons, which he contends is not sustainable and therefore, the orders passed by respondents No.2 and 3 cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the counsel for the petitioner and with his assistance have gone through the impugned orders and the records of the case.

4. Perusal of the order passed by the Financial Commissioner Revenue, Punjab, dated 04.04.2018 (Annexure P-6) would show that on perusal and consideration of the claim of the petitioner on merits as per the grounds raised in the revision petition, as have been reiterated by the counsel for the petitioner as recorded above, the authority had come to a conclusion that no prejudice has been caused to the petitioner in any manner

and the authorities have passed the order of partition which do not call for interference by the Court. This order has been passed on an assumption that the petitioner has not been served before the Assistant Collector Ist Grade, although it has been clearly mentioned that on perusal of the original application, it is apparent that the address which has been mentioned of the petitioner along with the other co-sharers as residents of village Jeoli, is the correct address as the said address has been given by the petitioner in the revision petition also. As per the records of the Assistant Collector Ist Grade, the petitioner along with some others have refused to accept the summons and therefore, were proceeded against *ex parte*.

5. I have also gone through the site plan which has been appended as Annexure P-10, on which reliance has been placed by the counsel for the petitioner to assert that the petitioner has been prejudiced because of the carving out of the passage along with his land, wherein, a proportionate share of the land has been taken from the share of the petitioner cannot be accepted as after the partition, all share holders had to be provided with a passage to their respective lands. In the partition proceedings, the possession of the share holders have been kept intact and it is not the case of the petitioner that his possession in any manner has been adversely effected on the piece of land which he had purchased. The only grievance appears to be the carving out of the land for the passage but that is not exclusively from the share of the petitioner rather it is proportionate share of all co-sharers. The site plan (Annexure P-10) when seen in the light of the share holders' respective shares, the passage as has been provided for by the

Assistant Collector Ist Grade, is the best option. In any case, this Court cannot substitute its opinion when the revenue authority has visited the spot and had on site inspection proceeded to carve out the passage. It is not in dispute that each share holder is entitled to a passage to his land and each co-sharer has to pool in for carving out of such land when partition proceedings are resorted to. The passage as has been provided under the consolidation proceedings is abutting the land of the petitioner and one more co-sharer leaving the remaining share holders without any passage to the respective fields and land after the partition. The passage which has been provided to the holders of other khasra numbers, which are on the back side of the land of the petitioner, which is on the passage as left out in the consolidation proceedings, cannot be said to be unjustified.

6. As regards the contention of the learned counsel for the petitioner that the summons which have been issued to the petitioner, the date fixed for appearance was 08.04.2016, on which date, the petitioner was not proceeded against *ex parte* but was so proceeded on 18.04.2016, it is observed that the petitioner was in knowledge about the pendency of the partition proceedings before the Assistant Collector Ist Grade, Dera Bassi as he along with others had refused to receive the summons which were sent to them and he intentionally did not appear before the said authority on 08.04.2016 and thereafter on 18.04.2016. Therefore, it could not be said that the Assistant Collector Ist Grade, Dera Bassi, has wrongly proceeded to record the petitioner as *ex parte* on 18.04.2016.

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7. As regards the grievance of the petitioner that the share of the petitioner has not been separated to that of the joint holder holding by other co-sharers, the said grievance has also been taken care of by the Financial Commissioner Revenue, Punjab, by observing that it is the option of the co-sharers to move an application for partition to get the share separated. Petitioner can also avail of the remedy to move an application for partition to get his share separated from the share of others with whom he remains as a co-sharer.

8. This Court does not find any illegality in the order dated 04.04.2018 (Annexure P-6) passed by the Financial Commissioner Revenue, Punjab, in the revision petition which has been preferred by the petitioner.

9. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

10th July, 2018

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No