

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

Date of decision: 13.09.2018

Vs.

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

Mr. Manish K. Singla, Advocate, for respondent No.14.

G.S.SANDHAWALIA, J. (Oral)

The petitioners who were respondent Nos. 4, 5 and 7 in the applications which were filed for partition are aggrieved against the final order of the Financial Commissioner dated 13.05.2014 (Annexure P/4), whereas he has upheld the partition proceedings in which the instrument of partition was drawn up on 09.10.2006. It is pertinent to notice here that the said instrument of partition is not the subject matter of challenge in the

present writ petition and neither it has been appended as Annexure. The Financial Commissioner has noticed that initially partition petition had been filed by Bakshish Singh, the predecessor-in-interest of respondent Nos. 5 to 8 herein.

The petitioners had been proceeded against ex-parte on 14.07.2003, after all the prescribed modes of service i.e. issue of summons, service by affixation and service through proclamation. In the another set of applications for partition which had been filed by Renu Bala-respondent No.9 (herein) and etc, which were filed in September 2005 as the respondents were the same, the proceedings were clubbed. Eventually, they were also proceeded against ex-parte in the said proceedings also on 12.10.2005. The mode of partition which had earlier been finalised on 04.10.2004 was thereafter prepared afresh on 23.01.2006 and eventually the partition was finalised on 29.05.2006 (Annexure P/1), whereby certain portions were given to different parties.

No appeal was filed within the prescribed period and resultantly instrument of partition was prepared on 09.10.2006. The petitioners thereafter filed an appeal only on 02.04.2009 before the Collector, which was dismissed on 03.09.2009 (Annexure P-2) and it was noticed that there was no application for condonation of delay and the party has a right to approach the Civil Court and therefore the appeal had no merits and was accordingly dismissed.

The Commissioner also vide order dated 31.05.2011 (Annexure P-3) noticed that the proclamation had been made and ex-parte proceedings conducted. Necessary formalities of Nakshas 'Bey' and 'Jeem' had been

prepared vide order dated 29.05.2006 (Annexure P-1). It was also further noticed that possessions have changed hands vide Rapat No. 1007 dated 21.05.2007 and mutation No.4579 had also been sanctioned and resultantly it was held that final partition had been implemented and, therefore, orders of the Collector and the Assistant Collector were upheld which has also been done by the Financial Commissioner.

Counsel for the petitioner has vehemently strived to argue that he was not served and the ex-parte proceedings have been conducted. The zimni orders and the details that how the service was affected has not been placed on record. As noticed ex-parte proceedings were initiated on 14.07.2003, it took as many as almost three years before the instrument of partition has been prepared. Thus, nothing has been brought on record to show that in what manner the service was not effectively affected upon the petitioners and that was in violation of statutory procedure prescribed under the Punjab Land Revenue Act, 1887.

The argument raised that the Financial Commissioner would have jurisdiction of such to interfere in the instrument of partition is also without any basis as admittedly the instrument of partition itself was never the subject matter of challenge. Rather the appeal itself was time barred against the order dated 29.05.2006 (Annexure P-1) and neither any application for condonation of delay had been filed. As per Section 14 of the Punjab Land Revenue Act, the appeal was to be filed within 30 days and as noticed it was filed after almost three years later on 02.04.2009. Neither any site plan has been placed on record to show in what manner the petitioners are aggrieved as to the fact regarding the division of land and

whether they have allotted land at a place which is not as per their entitlement or other persons have been given unfair benefits.

In such circumstances the orders passed by the competent authorities do not suffer any infirmity.

Dismissed.

September 13, 2018
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(G.S. SANDHAWALIA)
JUDGE

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