IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22300 of 2018
Date of decision: 19.9.2018

Cahnderpal **...Petitioner**

Versus

Assistant Collector Ist Grade-cum-Tehsildar, Abohar and others

...Respondents

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

Present: Mr. Jaswinder Singh Grewal, Advocate for the petitioner.

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G.S.SANDHAWALIA, J. (Oral)

The petitioner is aggrieved against the non compliance of the order of the Financial Commissioner Revenue, Punjab dated 23.12.2016 (Annexure P/5) as it is his case that the warrants of possession have been issued in violation of the said order for the land measuring 254 Kanals. The petitioners are Legal Representatives of Krishan Lal who was respondent no.1 in the partition proceedings and their appeal had been dismissed by the Collector, Abohar on 31.10.2014 (Annexure P/3) against the order dated 28/29.1.2013 (Annexure P/2) against the order of partition on the ground that they had failed to file any objection.

The petitioners thereafter approached the Financial Commissioner who had passed the following order on 23.12.2016 (Annexure P/5) without even calling upon the private respondents:

> "4. Ld. counsel for the petitioners argued that the during the pendency of appeal, filed by the petitioners before the Collector, Abohar, the Sanad Takseem had been issued by the Assistant Collector Grade-I, which is illegal. Ld. Counsel for the petitioners prayed for the acceptance of the revision petition.

> 5. I have considered the arguments advanced by the counsel for the petitioners and also perused the record produced before me. It transpires that the appeal before the Collector, Abohar was filed on 17.5.2013 against the order dated 28.1.2013 passed by the Assistant Collector Grade-I and during the pendency of appeal, the Sanad Takseem had been issued by the Assistant Collector Grade-I on 09.7.2013. Similarly, the petitioners filed objections on Naksha 'Bey' and 'Zeem' which is available as Annexure P-9 at page 53 of the revision petition in this Court but the Assistant Collector Grade-I gave finding that no objections were received from the petitioners. The copy of the objections filed before the Assistant Collector Grade-I produced by the petitioner is not a certified copy and the zimni of the Assistant Collector Grade-I on the document produced as Annexure P-9 at page 53 of the revision petition is also not legible.
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> Keeping in view the submissions made by the petitioner and also principles of natural justice, the revision petition is disposed of with directions to the Assistant Collector Grade-I, Abohar to verify the original objections filed by the petitioner and pass appropriate speaking orders."

A reading of the said order would go on to show that even though the Sanad Takseem had been drawn up the revision was entertained which was obviously in excess of jurisdiction in view of amended provisions of the Punjab Land Revenue (Amendment) Act, 2012 (hereinafter referred to as "the Act"). Section 16 of the Act reads as under:-

> **16. Power to call for examine and revise proceedings of Revenue-officers : -** (1) <u>Except a case pertaining to question of division or property or the mode of making a partition under Section 118</u>;-
>
> (i) The Financial Commissioner may, it any time, call for the record of any case pending before, or disposed by any Revenue officer subordinate to him; and
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> (ii) A Commissioner or Collector may call for the record of any case pending before, or disposed of by any Revenue

officer under his control.

(2) If any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with him opinion thereon for the orders of the Commissioner whose decision shall be final.

(3) The Financial Commissioner or Commissioner may, in any case called for by himself under sub-section(1) or under sub-section(2) as the case may be, pass such orders as he thinks fit.

Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue-officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

(4) Notwithstanding anything contained in this section, the cases called for by the Commissioner or Collector, as the case may be, under sub-section(1) and (2) as it existed prior to the commencement of the Punjab Land Revenue (Amendment) Act, 2012, shall be decided by them as heretofore"

Prior to the amendment the Division Bench in **Ranbir Singh Vs. Financial Commissioner, Haryana and others** **2005(3) R.C.R.(Civil) 385** had held that the Punjab Land Revenue Act, 1887 does not provide remedy against final order of partition which is concluded by drawing up of the "Sanad Takseem". However, the same could be impugned by filing a writ petition.

Similarly in **Amar Khan and others Vs. State of Punjab and others** **2009(1) R.C.R.(Civil) 741** has held that jurisdiction of the Financial Commissioner would be there to call for the record under Section 16(1) of the Act. However, in view of the amendment now as noticed above, the jurisdiction provides for exception in the case of pertaining to question of division of property and mode of making a partition under Section 118 and therefore, it was beyond the scope of the Financial Commissioner to entertain the revision petition against the order dated 28/29.1.2013 (Annexure P/2) once the Sanad Takseem had been prepared on 9.7.2013.

Secondly it would also show that even other side was not called upon while passing the impugned order whereby the revision was disposed with a direction to the Assistant Collector Grade-I, Abohar to verify the original objections filed by the petitioner and pass appropriate speaking orders which is in violation of Section 16(3) of the Act.

This approach of the Financial Commissioner (Appeals), Punjab cannot be as such approved of in any manner. The principles of natural justice have been openly violated without even calling upon the other side. This is not for the first time this fact has come to the notice of this Court. Resultantly, this Court does not fell that any direction can be issued as such for the enforcement of nonest orders passed by the said highest Revenue Authority.

Accordingly, this Court is loath to issue any direction in the present petition. However, it is always open to the petitioner to seek his remedy in accordance with law.

Accordingly, the present petition is disposed of with the aforesaid observations.

September 19, 2018 **(G.S.SANDHAWALIA)**
Pka **Judge**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No