

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

123

Civil Writ Petition No.462 of 2019
Date of Decision: February 22nd, 2019

Charan Kaur

...Petitioner

Versus

State of Punjab through Secretary of Department of Revenue, Punjab
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gourav Goel, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 13.08.2018 (Annexure P-8) passed by the Financial Commissioner, Punjab, whereby the revision petition preferred by the petitioner challenging the order dated 30.11.2012 (Annexure P-2), Naksha Ura dated 25.11.2011 (Annexure P-3), Naksha Ara dated 30.10.2014 (Annexure P-4) and Naksha Eri dated 18.11.2014 (Annexure P-5) and Sanad Taksim dated 28.11.2014 (Annexure P-6) passed/issued by Assistant Collector Ist Grade, Bassi Pathana, District Fatehgarh Sahib, has been dismissed because of the inordinate delay i.e. 1077 days in filing the same.

2. It is the contention of learned counsel for the petitioner that the petitioner was not served in the partition proceedings, which were initiated by respondents 4 to 7. He contends that the *ex parte* proceedings which were initiated against the petitioner are not sustainable and as a consequence thereof, all proceedings thereafter. He contends that the petitioner being not aware of the fact that the partition proceedings have been initiated and she has been proceeded against *ex parte*, could not challenge the order passed by the Assistant Collector Ist Grade, prior to the

date of knowledge. He contends that when she came to know about the Sanad Taksim having been issued by the Assistant Collector Ist Grade, wrong advise was given to her by the counsel to file a civil suit. The civil suit is still pending and, therefore, it is thereafter that the petitioner realised that the civil suit would not be the remedy available to her leading to the filing of the revision petition before the Financial Commissioner. The delay in filing the revision petition was neither intentional nor deliberate nor can it be attributed to the petitioner as she has proceeded to file the civil suit on the basis of the legal advise given by the counsel. He, therefore, contends that the order passed by the Financial Commissioner rejecting the revision petition of the petitioner being time barred, cannot sustain and deserves to be set aside.

3. I have considered the submissions made by learned counsel for the petitioner and have perused the record.

4. Perusal of the report (Annexure P-1) of the Process Server would indicate that the petitioner, who was respondent No.14 in the proceedings, had refused the summons, which amounts to service upon her. Further as per the order dated 30.11.2012 (Annexure P-2), whereby the petitioner was proceeded against *ex prate*, none had put in appearance on her behalf when the case was taken up by the Assistant Collector Ist Grade. The plea of the counsel for the petitioner, therefore, that the petitioner was not aware of the partition proceedings, is difficult to believe. That apart, choosing of the wrong forum itself cannot be a ground for accepting the petitioner having not approached the correct forum, especially when the order of the Sanad Taksim is dated 15.05.2015, whereas the civil suit has been filed in March 2016. The order as has been passed by the

Financial Commissioner, therefore, cannot be faulted with as the revision petition was barred by limitation as factually there was a delay of more than 1077 days in filing the same. The reasoning which has been assigned by the petitioner cannot be accepted to be a cogent ground for not approaching the Revisional Court.

5. Finding no merit in the present writ petition, the same, therefore, stands dismissed.

February 22nd, 2019

Puneet

**AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No