

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

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Civil Writ Petition No.1608 of 2019

Date of Decision: January 21st, 2019

Dalip and others

...Petitioners

Versus

Financial Commissioner, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gaurav Tyagi, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court praying for quashing of the order dated 26.11.2018 (Annexure P-10) passed by the Financial Commissioner, Haryana, vide which revision preferred by the petitioners against the order dated 23.02.2018 (Annexure P-6) passed by the learned Assistant Collector Ist Grade, Guhla and Naksha Jeem (Annexure P-7) and Sanad Taksim (Annexure P-8) both dated 09.08.2018, stands dismissed, on the ground that the petitioners have been proceeded against *ex parte* by the Assistant Collector Ist Grade, Guhla, which cannot be attributed to the petitioners, rather it was the counsel, who had not appeared on their behalf.

2. It is the contention of learned counsel for the petitioners that because of the fault of the counsel, petitioners should not be made to suffer. He contends that after engaging the counsel, the petitioners proceeded on the belief that the counsel would inform the petitioners with regard to the dates as also the pleadings and the stand to be taken in the partition proceedings. Under a *bona fide* belief, the petitioners have not approached the counsel and because of the absence of the counsel, partition has resulted

being the co-sharers. His further contention is that the petitioners should be given an opportunity of hearing and thereafter the partition may be allowed to proceed afresh.

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

4. Perusal of the order dated 26.11.2018 (Annexure P-10) passed by the Financial Commissioner, Haryana, would show that this was not the first time that the petitioners have been proceeded against *ex parte*. In these very partition proceedings, earlier also, petitioners were proceeded against *ex parte* by the Assistant Collector Ist Grade, Guhla, vide his order dated 12.11.2014. They filed an application and this order was set aside vide order dated 30.01.2015. Petitioners were thereafter proceeded against *ex parte* vide order dated 23.02.2018. They had filed the revision petition against the said order, which has been rejected by the Financial Commissioner, Haryana, by properly appreciating the facts and the position in law.

5. Court would only come to the rescue of a person, who is vigilant enough to protect his own rights and not for a person, who would sleep over his rights. Once they have already been proceeded against *ex parte* on 12.11.2014 and the said order had been set aside on 30.01.2015, it was required on the part of the petitioners to be very careful with regard to the proceedings. Instead of blaming it on the counsel, they had never approached the counsel to know the fate of the partition proceedings. This clearly depicts the inaction and negligence on the part of the petitioners. In the garb of and behind the back of a counsel, they cannot be

permitted to take undue benefit.

6. This writ petition is, therefore, not entertained as the Court refrains itself from exercising its equitable jurisdiction for the persons, who have been sleeping over their rights.

7. The writ petition, therefore, stands dismissed.

January 21st, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No