

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

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Civil Writ Petition No.4969 of 2019

Date of Decision: April 10th, 2019

Dalbir Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mange Ram Sharma, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court impugning the order dated 10.09.2018 (Annexure P-1) passed by the Financial Commissioner, Haryana, whereby the order dated 05.06.2014 (Annexure P-2) and order dated 23.11.2017 (Annexure P-4), whereby the *sanad taksim* and the warrants of possession were issued by the Assistant Collector 1st Grade, Rajound, have been set aside.

2. It is the contention of learned counsel for the petitioners that the Financial Commissioner has proceeded to entertain the revision petition of respondent No.5 despite coming to a conclusion that he has not been able to prove that he was a minor at the time when the impugned order dated 05.06.2014 was passed. His submission is that there has been an inordinate delay on the part of the said respondent in filing the revision petition which could not have been entertained as the delay has not been condoned by the Financial Commissioner while proceeding to pass the order dated 10.09.2018. Assertion has also been made that the petitioners have rightly mentioned in the partition application that Shri Sahi Pal, father of respondent No.5-Pankaj, has died and they have also impleaded his legal heirs namely Smt. Kushum Lata widow of Shri Sahi Pal and

Pankaj son of Shri Sahi Pal-respondents 4 and 5 in the said application. It is because of the fault of the office of the Assistant Collector Ist Grade that the summons were issued in the name of Sahi Pal, for which the petitioners cannot be held liable and they should not suffer. Counsel further contends that the partition proceedings having attained finality, should not have been interfered with by the Financial Commissioner in the impugned order. Prayer has, thus, been made for setting aside the order dated 10.09.2018 (Annexure P-1) passed by the Financial Commissioner, Haryana.

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

4. Perusal of the record would show that after the passing of the order of *sanad taksim*, respondents No.11, 12, 13, 18 and 19 had preferred an appeal against the said order, which appeal has been dismissed by the Collector vide order dated 23.10.2015. It is under these circumstances that the revision petition has been preferred by respondent No.5. The submission of the petitioners, therefore, that the revision petition is time barred, has not been accepted by the Financial Commissioner, rather ignored as it appears that the Financial Commissioner has exercised his powers of revision primarily based upon the facts that the petitioners in the revision i.e. respondent No.5 and his mother respondent No.4 although were a party to the partition application, were not served because the summons were issued against a dead person-Sahai Pal, who was husband of respondent No.4 and father of respondent No.5. Unfortunately the Process Server, in his report, had stated that the dead person namely Sahi Pal on seeing him had run away from the spot. This clearly indicates that the report, which has been

submitted by the Process Server, with regard to effecting service upon Sahi Pal, is totally false. The Financial Commissioner has, therefore, in the given facts and circumstances, proceeded to set aside the order dated 05.06.2014 of the Assistant Collector Ist Grade, Rajound, relating to the *sanad taksim* and the order of issuance of warrants of possession dated 23.11.2017 as respondents 4 and 5 have not been served.

5. This Court does not find any illegality in the order passed by the Financial Commissioner, especially in the light of the fact that the service upon respondent No.5 and his mother Kushum Lata widow of Sahi Pal had not been effected in the partition proceedings. It can, in the light of the above, be safely said that no summons for effecting service on them have ever been issued and, therefore, the question of effecting service on them does not arise.

6. As regards the submission of the counsel for the petitioners that because of wrong issuance of summons to a dead person and wrong report by the Process Server cannot be a reason to delay the partition proceedings, cannot be faulted with and nor can it be attributed to the petitioners but because of the negligence and misconduct of the officials of the revenue department, especially the serving agency of Assistant Collector Ist Grade, cannot be allowed to deny respondents 4 and 5 their basic right of hearing by permitting violation of the principles of natural justice. The plea of the counsel for the petitioners cannot be accepted.

7. There may be delay on the part of respondent No.5 in approaching the Financial Commissioner by filing the revision petition but keeping in view the facts and circumstances of the present case, this Court does not find any illegality in the order passed by the Financial

Commissioner, which would call for interference in exercise of its extraordinary writ jurisdiction.

8. The writ petition being devoid of merit, therefore, stands dismissed.

April 10th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No