

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP-15130-2019

Date of decision: 30.05.2019

RAM LAL

...PETITIONER

VS.

STATE OF HARYANA & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Mahir Sood, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 05.11.2013 (Annexure P-12) passed by the Assistant Collector Ist Grade, Bawat at Rewari-respondent No. 3, *Naksha Bey* dated 25.02.2015 (Annexure P-13), *Naksha Zeem* dated 25.02.2015 (Annexure P-14), *Sanad Takseem* dated 23.03.2015/23.06.2015 (Annexure P-15) passed by the Assistant Collector Ist Grade, Bawat at Rewari-respondent No. 3 and order dated 30.01.2019 (Annexure P-17) passed by the Financial Commissioner (Haryana) at Chandigarh-respondent No. 2 in the revision petition preferred by the petitioner, whereby challenge was to the orders passed by the Assistant Collector Ist Grade, Bawat at Rewari-respondent No. 3, referred to above, dismissing the revision petition.

It is the contention of the learned counsel for the petitioner that an application for partition was filed. Mode of partition was proposed on 18.06.1996 (Annexure P-3). After receipt of *Naksha Bey*, objections were invited and on hearing the parties, the same were approved on 25.10.1996, which was challenged in appeal before the Collector, Rewari, which was disposed of vide order dated 02.05.1997 remanding the case back for the Assistant Collector Ist Grade to visit the spot for the purposes of ascertaining the possession keeping in view the price of the land and share of the share-holders as per their possession. Spot inspection, in pursuance thereto, was carried out by the Assistant Collector Ist Grade on 11.03.1998. Amended *Naksha Bey* was approved by the Assistant Collector Ist Grade vide order dated 25.08.1998, which was challenged by Ram Mehar-respondent No. 5 by filing an appeal before the Collector, Rewari, which was accepted vide order dated 05.04.1999 and the case was remanded back to the Assistant Collector Ist Grade to comply with the previous order dated 02.05.1997. Assistant Collector Ist Grade approved the *Naksha Bey* vide order dated 17.12.1999, which was again challenged by Ganga Ram-respondent No. 4 and Ram Mehar-respondent No. 5 by filing an appeal before the Collector, Rewari, which was again accepted vide order dated 15.03.2001, which was challenged by one Sh. Jaswant Singh (since deceased) before the Commissioner, Gurugram Division, Gurugram, which was dismissed on 26.08.2004. After this decision, Assistant Collector 2nd Grade, Rewari, vide order dated 11.11.2005, directed the Girdawar Halqa to send amended *Naksha Bey* and on receipt thereof, objections were invited. Ganga Ram and Jaswant Singh (since deceased) filed their objections, which were disposed of by the Assistant Collector on 11.04.2007. An

amended *Naksha Bey* was directed to be presented before the Halqa Patwari as per order dated 11.04.2007. Petitioner challenged this order before the Collector, Rewari, who remanded the case back vide order dated 27.05.2008 with a direction to decide the matter afresh after hearing both the parties and inspecting the site.

In pursuance to the order passed by the Collector, Rewari dated 27.05.2008, the Assistant Collector Ist Grade, Bawal issued notices to the parties and thereafter, vide order dated 20.12.2008, directed Halwa Girdawar to send amended *Naksha Bey*. Aggrieved with the order dated 20.12.2008, Ram Lal-petitioner, Nand Lal and Raj Kumar preferred an appeal before the Collector, Rewari. During the pendency of the appeal, proceedings continued in the partition application where the parties failed to attend the same and the Assistant Collector Ist Grade, Bawal, vide order dated 18.05.2011, ordered the application to be dismissed in default. The appeal, which was preferred by the petitioner and others, was withdrawn by them on 25.07.2013 in the light of the dismissal of the partition application for default.

It is between this period i.e. on 24.09.2013, an application for restoration of the partition application was preferred by Ganga Ram, in which notices were issued to the parties and since the petitioner and some others failed to appear despite service, ex-parte proceedings were initiated. After restoration, amended *Naksha Bey* was received on 03.03.2015 and the same was approved on 24.03.2015. Halqa Girdawar was directed to send *Naksha Zeem* vide order dated 28.04.2015, which was received on 16.06.2015 leading to the preparation of the *Sanad Takseem* vide order dated 23.03.2015/23.06.2015, which was challenged by the petitioner by

filing a revision petition before the Financial Commissioner, Haryana, which has been dismissed by him vide order dated 30.01.2019 (Annexure P-17), which along with the orders, referred to at the very outset, has been challenged in the present writ petition.

It is the contention of the learned counsel for the petitioner that the ex-parte proceedings, which have been initiated against the petitioner vide order dated 05.11.2013 (Annexure P-12), cannot sustain in the light of the fact that the petitioner was never served. He contends that rather the petitioner had challenged the order dated 20.12.2008 (Annexure P-8) passed by the Assistant Collector Ist Grade, Bawal before the Collector, Rewari in an appeal which the petitioner withdrew in the light of the dismissal of the partition application for default on 18.05.2011 by the Assistant Collector Ist Grade, Bawal for non-appearance of the parties. He contends that withdrawal of the appeal by the petitioner on 25.07.2013 in the light of the dismissal of the partition application for default was quite natural and was the only order which could have been passed by the Collector, Rewari as the basic application stood dismissed and the cause of action did not survive for the petitioner to pursue his appeal. He contends that it is after the dismissal of the appeal preferred by the petitioner as withdrawn that an application for restoration of the partition application was preferred by respondent No. 4-Ganga Ram, in which although notices were issued but the petitioner was not served and, therefore, had no occasion to appear before the Assistant Collector. He, thus, contends that the impugned order dated 05.11.2013 (Annexure P-12) cannot sustain as the petitioner was wrongly proceeded against ex-parte against the provisions of the Punjab Land Revenue Act, 1887.

It is further contention of the learned counsel for the petitioner that the subsequent orders of *Naksha Bey* dated 25.02.2015 (Annexure P-13), *Naksha Zeem* dated 25.02.2015 (Annexure P-14), *Sanad Takseem* dated 23.03.2015/23.06.2015 (Annexure P-15) passed by the Assistant Collector Ist Grade, Bawat at Rewari-respondent No. 3, cannot sustain as all these orders are passed after the petitioner was proceeded against ex-parte. He, accordingly, contends that order dated 30.01.2019 (Annexure P-17) passed by the Financial Commissioner (Haryana) at Chandigarh-respondent No. 2 also cannot sustain as the said authority has not been able to ascertain the fact that the petitioner was never served in the restoration application which has been preferred by respondent No. 4-Ganga Ram. Prayer has, thus, been made for setting aside the impugned orders and remanding the case back to the Assistant Collector Ist Grade, Bawal at Rewari-respondent No. 3 for fresh decision.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case but do not find myself in agreement with the contentions of the counsel for the petitioner as the learned Financial Commissioner, Haryana has, after going through the records, passed a well-reasoned and appropriate order dated 30.01.2019 (Annexure P-17) which does not call for interference as it deals with the true factual aspects coming to a conclusion that the petitioner has been duly served before the Assistant Collector Ist Grade, Bawal and with an intention to delay the partition proceedings has chosen not to appear before the Assistant Collector Ist Grade. Apart from this, the Financial Commissioner has also come to a conclusion that the petitioner had not approached the said authority with clean hands and had

tried to mislead the Court by producing wrong facts. For ready reference, the operative part of the order reads as follows:-

“ I have gone through the argument put forth by the counsel for both the parties and also carefully examined the record available on file. A perusal of record reveals that summon was properly served to petitioner Ram Lal and he put his signature on summon and same was witnessed by Sh. Shyam Sunder Panch. It shows that petitioner had not appeared before Assistant Collector Ist Grade, Bawal intentionally after receiving the summons and Assistant Collector Ist Grade correctly passed ex-parte orders against the petitioner. Moreover, in para No. 9 of the petition, petitioner mentioned that the petitioner was not aware about the application filed by respondent No. 1 seeking restoration of partition proceedings. For the 1st time, he came to know about the same in June, 2016 and immediately thereafter, he filed the present revision petition. However, on perusal of record reveals that petitioner Ram Lal moved an application before Assistant Collector Ist Grade, Bawal on 25.03.2014 stating that his absence on 05.11.2013 was bona fide and not intentional. This application itself proves that the petitioner received the summons for 05.11.2013 and he was rightly proceeded ex-parte. The petitioner tries to mislead the Court by producing wrong facts. I do not find any reason to interfere with the impugned orders passed by the Court below.”

In view of the above, this Court does not find any illegality in the orders which have been impugned by the petitioner in the present writ petition which would call for interference by this Court in exercise of its extra-ordinary writ jurisdiction.

The writ petition, therefore, stands dismissed.

May 30, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No