

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

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Civil Writ Petition No.15190 of 2014

Date of Decision: January 31st, 2019

Anita

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

Mr. Manish Dadwal, Assistant Advocate General, Haryana.

Mr. P.R. Yadav, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the orders dated 17.05.2011 (Annexure P-5) passed by the Collector, Rewari and the order dated 20.02.2014 (Annexure P-7) passed by the Financial Commissioner, Haryana, in the revision petition preferred by the petitioner.

2. It is the contention of learned counsel for the petitioner that application for partition was preferred by petitioner-Anita. The matter was being heard when the case was transferred on the orders of the Collector, Rewari, to Assistant Collector Ist Grade, Kosli. In pursuance to the said order, the matter was taken up and initially the counsel for respondent No.4 appeared but subsequently absented himself and accordingly the partition proceedings came to an end with the issuance of the sanad on 27.03.2009. Possession was delivered on 20.07.2009. With this, all the revenue authorities except for the Financial Commissioner, ceased to have any power to interfere. An appeal was preferred by respondent No.4 before the Collector, Rewari, which appeal was barred by

allowed with the remand of the case back to the Assistant Collector Ist Grade, Kosli, for fresh decision. Petitioner thereafter preferred an appeal before the Commissioner, Gurgaon Division, which appeal was allowed on 29.03.2012 on the grounds that with the possession having been delivered to the parties as per the sanad taksim, the Collector had ceased to have jurisdiction over the matter and the matter could only be agitated in revision petition or in the writ petition before this Court. The said order was challenged by respondent No.4 by filing a revision petition before the Financial Commissioner, who has proceeded to set aside the well reasoned order passed by the Commissioner, Rewari. He, thus, contends that the impugned orders cannot sustain, especially in the light of the fact that the Appellate Authority did not have the jurisdiction after the preparation of the sanad taksim and given effect to by handing over the possession.

3. On the other hand, learned counsel for respondent No.5, who has purchased the land from respondent No.4 and has stepped into his shoes, asserted that he concedes the factum that the appeal would not be maintainable before the Collector, Rewari, as has been preferred by respondent No.4-Lal Singh but he states that the appeal, which was preferred by the petitioner before the Commissioner, Gurgaon Division, would also not be maintainable. The only competent authority, therefore, would be the Financial Commissioner, who could have entertained the revision petition against the order passed by the Assistant Collector Ist Grade, Kosli, who has passed the order of partition. The Revisional Authority, therefore, had the jurisdiction to entertain the revision and it could even call for the records of any case at any time and there is no limitation as such for entertaining such a petition. He, on the

basis of these assertions, submits that the Financial Commissioner has gone through the records of the case and has ultimately come to the conclusion with regard to the factum that respondent No.4, who was the predecessor-in-interest of respondent No.5, was not aware of the factum of the transfer of the case and after that there has not been any appearance on the part of respondent No.4 before the Assistant Collector Ist Grade and, therefore, the order has been passed in the absence of respondent No.4. His assertion is thus, that the order dated 20.02.2014 (Annexure P-7) as passed by the Financial Commissioner, Haryana, is in accordance with law.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the records of the case as also the zimni orders, which have been passed by the Assistant Collector Ist Grade, Kosli.

5. Having considered the submissions made by the counsel for the petitioner and respondent, this Court is also in agreement with the assertion of the petitioner's counsel that no appeal was maintainable after the sanad taksim having been given effect to and, therefore, the appeal as preferred by respondent No.4 before the Collector, Rewari, is not maintainable. However, the appeal which was preferred by the petitioner before the Commissioner, Gurgaon Division, would also be without jurisdiction and, therefore, the said orders cannot be said to be in accordance with law. As regards the remedy, which would have been available to respondent No.4, was a revision petition before the Financial Commissioner and even if a petition is preferred to the Financial Commissioner, he has powers to himself call for the records of the case and on perusal thereof, take remedial steps in case some illegality is

found in the passing of any order by any authority subordinate to him. In the light of that power and since the matter ultimately came up before the Financial Commissioner, he exercising his revisional powers has proceeded to decide the said matter, therefore, the said order has to be looked into with regard to the correctness or otherwise thereof, wherein the order passed by the Assistant Collector Ist Grade, Kosli, has been set aside as also the orders of the authorities below.

6. Perusal of the order dated 20.02.2014 (Annexure P-7) passed by the Financial Commissioner details therein the factual gamut of the matter and, therefore, need not be gone into except with regard to the assertion of respondent No.4, now being represented by respondent No.5, as to whether the said respondent was made aware of the factum of transfer of the case to the Assistant Collector Ist Grade, Kosli. There is nothing on the record to indicate that such information was ever conveyed to respondent No.4 that the matter has been transferred. Thereafter the appearances marked are also not with regard to specific counsel appearing for any parties but general submission has been recorded that counsel for the parties are present. This aspect has been very clearly and elaborately dealt with by the Financial Commissioner in his order dated 20.02.2014 (Annexure P-7) and paras 5 and 6 thereof deals with this aspect. The said paragraphs are reproduced herein:-

“5. I have considered the contentions raised by Learned Counsels for the parties and have also carefully gone through the record. A reading of the record and the orders passed by the Assistant Collector Ist grade Kolsi shows that this partition case which was initiated on 13-03-2008 at the instance of Respondent Anita, who has 1/3rd share (2 kanal) in the land in question, jimni order dated 04-06-

2008 shows that Learned Counsels for both the parties had come present in the court. Thereafter, the case got transferred to to Assistant Collector, Kosli vide order dated 17-09-2008. Petitioner Lal Singh alleges that he was not given any notice or information by the court to whom this case got transferred and his counsel had told him that he will be intimated the date as soon as he gets information about the same. In the orders passed by the Assistant Collector 1st grade Kosli on the 3 dates given in November, 2008, and 2 dates given in December 2008, it has been recorded that Learned Counsels for the parties are present though there is no specific mention of any names of the counsel. Nor does it appear that Petitioner's counsel of the present petitioner who was respondent in that case raised any objection or got the statements recorded or did anything else which would show that he was actually present. Naksha 'BE' has been passed on 16-01-2009, when it is shown that counsel for respondent (Lal Singh) is not present and naksha 'BE' was passed in his absence. Before that vide order dated 05-12-2008, opportunity to file reply to the application was closed. It is strange to note that in case counsel for Lal Singh had not been present on all these dates, why there no noticeable action that would show that counsel's effective presence. Non filing of reply to the application and not getting the evidence of his client recorded in the case, all these give credence to allegation that the present Petitioner has levelled in this case.

6. The version of Present Petitioner appears credible and a reading of the narrations made by him in the appeal filed before Collector and the Revision filed before this Court shown that the counsel has not come present, yet no clear ex-parte order has been passed on the file. Furthermore, when the case got transferred to Assistant Collector Kosli there is no mention of any specific date for appearance before the court where the case got transferred. The last order dated 26-08-2008 shows that case is fixed for 25-09-2008 and there is nothing on file that would indicate that Petitioner was informed of this change or the next date when he was to appear. It has also been observed by

Collector in his remand order that the allegation of ignoring possession of Petitioner is correct as it has been found that clause-2 of the mode of partition has been violated. The same allegation is being levelled by the Petitioner. In view of the above mentioned facts and circumstances I am of the considered view that Petitioner has been successful in substantiating the allegations levelled by him beyond reasonable doubt. A perusal of the file of Assistant Collector 1st grade and the orders passed therein also support the same. The interference caused by Learned Commissioner in quashing the reasoned speaking order passed by Collector does not appear to be justified. Finding merit the Revision Petition is accepted, orders passed by Learned Commissioner and Assistant Collector 1st grade are quashed and order passed by Collector is restored.

To be communicated.”

Perusal of the above, leaves no matter of doubt that the order which has been passed against respondent No.4 was in his absence and he was never informed about the transfer of the case from the Court of Assistant Collector Ist Grade, Rewari, to the Court of Assistant Collector Ist Grade, Kosli. No notices have also been issued by the Assistant Collector Ist Grade, Kosli, either to the counsel for respondent No.4 or to respondent No.4 himself. The subsequent proceedings also leaves no manner of doubt that respondent No.4 had not ever appeared before the Assistant Collector Ist Grade, Kosli. That explains the delay in filing the appeal by respondent No.4 also before the Collector, which although is not maintainable as stated above but that does give an indication that he was not aware of the passing of the said order. This Court is in full agreement with the findings as recorded by the Financial Commissioner, Haryana, in his order dated 20.02.2014

7. The writ petition being devoid of merit on this score, therefore, stands dismissed.

8. It has been brought to the notice of the Court that the matter is already pending before the Assistant Collector Ist Grade, Kosli, wherein parties have appeared. Direction, is therefore, issued to the Assistant Collector Ist Grade, Kosli, to finalise the matter within a period of three months from the date of appearance of the parties.

9. Parties are directed to appear before the Assistant Collector Ist Grade, Kosli, on **25.02.2019** at **10:00 AM**.

10. Copy of this order be sent to the Assistant Collector Ist Grade, Kosli, forthwith for information and compliance.

January 31st, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No