

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP-18542-2019

Date of decision: 11.07.2019

HANSRAJ SINGH

...PETITIONER

VS.

THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Balbir Singh Jaswal, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 22.01.2015 (Annexure P-5) passed by the Tehsildar-cum-Assistant Collector, Grade-I, Baba Bakala, District Amritsar, whereby the application for partition preferred by the private respondents has been accepted, wherein the petitioners have been proceeded against ex-parte, appeal against which preferred by the petitioner was dismissed by the Collector, Baba Bakala on 07.07.2015 (Annexure P-6) followed by dismissal of the revision petition by the Additional Commissioner (Appeals), Jalandhar Division, Jalandhar on 29.01.2018 (Annexure P-8) and then the second revision petition was dismissed by the Financial Commissioner, Punjab on 31.08.2018 (Annexure P-10).

It is the contention of the learned counsel for the petitioner that the petitioner has wrongly been proceeded against ex-parte. He contends

that the petitioner was never served during the partition proceedings and he, therefore, having not been served in the proceedings, the orders, which have been passed by the authorities below, cannot sustain.

It is the further contention of the learned counsel for the petitioner that the mode of partition, as has been finalized on 13.12.2013 (Annexure P-1), stands violated because as per Clause 2 of the mode of partition, possession was to be kept intact and as per Clause 14 and 15, the constructed portion of the property was not to be partitioned. If any co-sharer having tubewell or pumping set in some area of the partition property has constructed some area, then a note has to be given in the Naqasha Zeem. He, therefore, contends that these three conditions of the mode of partition having been violated by issuing the *Sanad Takseem*, the said *Sanad Takseem* cannot sustain and deserves to be set aside.

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 as well as the impugned orders but do not find myself in agreement with the contentions of the learned counsel for the petitioner.

As per the records and the orders, which have been passed by the authorities i.e. The Collector in appeal followed by the orders passed by the Additional Commissioner in the revision petition and further by the Financial Commissioner (Appeals), it has clearly been established that the petitioner had signed the summons which have been duly served by the Assistant Collector, Ist Grade-cum-Naib Tehsildar, Baba Bakala. That apart, even the *munadi* was carried out in the village but the petitioner chose not to appear before the Assistant Collector, Ist Grade and, therefore, it cannot be said that the petitioner has been wrongly proceeded against ex-

parte by the Assistant Collector, Ist Grade.

As regards the contention of the counsel for the petitioner that the mode of partition has been violated, suffice it to say that this has never been the stand taken by the petitioner before any of the authorities starting from that of the Collector to the Financial Commissioner, Punjab. The only plea, which has been taken, is that of he having not been served during the partition proceedings and the ex-parte proceedings had been wrongly initiated and proceeded with by the authorities.

This plea cannot be allowed to be raised at this stage and that too, in the writ petition especially in the light of the fact that there is no revenue record produced by the petitioner to substantiate his contention that the land, on which he has constructed his house, was indeed so existing at the time of filing of the partition application. Even the site inspection, which has been carried out, does not indicate that the house of the petitioner was in existence. This plea, therefore, cannot be accepted and the same is rejected.

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

July 11, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No