

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
207

CWP-23825-2012

Date of decision: 14.03.2019

ASHOK KUMAR

...PETITIONER

VS.

FINANCIAL COMMISSIONER, HARYANA, CHANDIGARH AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Jain, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana,
for the State.

Mr. J.P.Sharma, Advocate,
for respondents No. 5, 6 and 10.

Mr. Paramdeep Singh, Advocate,
for Mr. R.K.Sharma, Advocate,
for respondents No. 7 to 9.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 18.12.2009 (Annexure P-6) passed by the Collector, Sub-Division, Narnaul, vide which ex-parte proceedings initiated against the respondents were set aside even after *Sanad Takseem* had taken place and even the possession has been handed over on 29.05.2009 and the order dated 12.09.2012 (Annexure P-8) passed by the Financial Commissioner, Haryana, upholding the order passed by the Collector and remanded the case back to the Assistant Collector Grade-I, Narnaul for fresh decision on merits vide order dated 12.09.2012 (Annexure P-8).

It is the contention of the learned counsel for the petitioner that after the partition application had been filed by Smt. Meer Puri and Smt. Champa, the petitioner purchased some land from one of the co-sharers. Petitioner was impleaded as a party to the partition proceedings. Parties were duly served but the private respondents preferred not to appear before the Assistant Collector Ist Grade, Narnaul resulting in passing of the order of mode of partition followed by further proceedings to the extent of finalization of the *Sanad Takseem* with the handing over of the possession on 29.05.2009. He contends that an appeal has been preferred by the private respondents before the Collector, Narnaul on the plea that they have been wrongly proceeded against ex-parte, the Collector, Narnaul, vide order dated 18.12.2009 (Annexure P-6), set aside the order passed by the Assistant Collector, Ist Grade, Narnaul, whereby the private respondents were proceeded against ex-parte, and remanded the case to the Assistant Collector Ist Grade, Narnaul for fresh decision on hearing the parties. This order was challenged by the petitioner before the Commissioner, Gurgaon Division, Gurgaon, who set aside the order dated 18.12.2009 (Annexure P-6) passed by the Collector, Narnaul, vide order dated 29.07.2011 (Annexure P-7), against which revision preferred by the private respondents was allowed vide order dated 12.09.2012 (Annexure P-8) upholding the order passed by the Collector.

It has been asserted by the counsel for the petitioner that the civil suit was preferred by the private respondents challenging the partition proceedings. The civil suit was filed on 11.06.2009, which was finally withdrawn on 30.10.2012. He, on the basis of the above, asserts that once the parties have been duly served, there was no question of setting aside an

order passed by the authorities especially when the partition proceedings have attained finality and even the possession has been handed over. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

On the other hand, learned counsel for the private respondents has asserted that merely because the parties were proceeded against ex-parte should not be a sole ground for not considering the claim of the respondents. He contends that some of the respondents were indeed not served because they have not been living in the village as they had been married and they, after their marriage, had started living in their matrimonial homes. He, thus, contends that the orders, which have been passed by the authorities in favour of the private respondents, being based upon proper consideration and appreciation of facts may not be interfered with.

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

A perusal of the orders, which have been passed by this Court, would indicate that on 16.03.2017, this Court had given an opportunity to the counsel for the parties to point out the prejudice, if any, caused to the parties to the partition proceedings.

On the basis of the same, the parties have been heard and a Site Plan has also been produced in Court today by the counsel for the petitioner, which has not been disputed by the counsel for the respondents. A perusal of the same would show that the partition, which has been carried out as per Naksha 'Bey', is fair and just by taking into consideration the respective claims of the share holders. Three different taks have been formed, one

each for the applicants or the successors therein and the other two for the respondents. The nature and quality of the land has also been taken care of. No prejudice, as such, has been caused to any of the parties to the partition proceedings and, therefore, this Court does not find any justification for disturbing the partition proceedings which have been concluded on 29.05.2009.

In the light of the above, the writ petition is allowed and the impugned orders dated 18.12.2009 (Annexure P-6) passed by the Collector, Sub-Division, Narnaul, and the order dated 12.09.2012 (Annexure P-8) passed by the Financial Commissioner, Haryana, are, hereby, set aside by upholding the order passed by the Assistant Collector, Ist Grade, Narnaul dated 21.04.2009 (Annexure P-4).

March 14, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No