

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

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Civil Writ Petition No.14380 of 2018
Date of Decision: March 7th, 2019

Mohan Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vipin Mahajan, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 10.10.2017 (Annexure P-8) passed by the Financial Commissioner (Appeals), Punjab, whereby the revision petition preferred by the petitioners has been dismissed on the grounds of delay of 315 days, order dated 26.04.2016 (Annexure P-5) passed by the Commissioner (Appeals), Jalandhar Division, Jalandhar, order dated 12.09.2012 (Annexure P-3) passed by Sub Divisional Magistrate-cum-Collector, Gurdaspur-respondent No.3 and the order dated 23.04.2012 (Annexure P-2) passed by the Assistant Collector Ist Grade, Gurdaspur-respondent No.4, whereby the mode of partition has been sanctioned.

2. It is the contention of learned counsel for the petitioners that the Financial Commissioner (Appeals), Punjab, should have considered the case of the petitioners in the revision petition preferred by them on merits instead of not entertaining the appeal and dismissing the same on the grounds of limitation alone. His further contention is that the order dated 26.04.2016 (Annexure P-5), which has been passed by the Commissioner (Appeals), Jalandhar Division, Jalandhar, also cannot sustain in the light of the fact that the Commissioner has proceeded on a wrong

premise that the petitioners have not challenged the mode of partition and, therefore, they have no grievance, rather they have approached him challenging the first order dated 12.09.2012 (Annexure P-3). He contends that the order passed by the authorities being in violation of the mode of partition as sanctioned on 13.04.2011 (Annexure P-1) cannot sustain. His contention is that clause 2 and 3 of the mode of partition have been violated, according to which the possession was to be kept intact and minimum *taks* were to be formed while partition was being carried out. Referring to the map which has been produced on record, he has tried to indicate that the petitioners have been given three separate *taks* and similarly the private respondents also. Instead of that since the land was in two parts, only two *taks* each should have been so made out instead of three *taks* each. He, thus, contends that the mode of partition has been violated. That apart, he asserts that the passage, which has been granted, is a waste of valuable fertile land which could have been easily avoided by providing alternative passages, firstly by consolidating the *taks* and by providing a shorter passage to the parties. He, thus, contends that the orders as passed by the authorities below and impugned in the writ petition cannot sustain.

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 mode of partition, when looked into and in the context of the site plan which has been produced, the same at the first blush, may appear to be correct that there have been different *taks* carved out but keeping in view the fact that nature of land has to be taken into consideration for giving each of the co-sharers the same quality and share as

per the respective claims, the creation of these three *taks* cannot be said to be unjustified. As far as one portion of the land which admittedly is not connected with the other portion of the land, both the parties have been given one tak each, where the plea which has been taken by the counsel for the petitioners is the location of the passage, which could have been shifted from one portion to the other, the said aspect cannot be gone into in the present writ petition.

5. As regards the plea of the counsel for the petitioners that in the other portion of the land, two *taks* each have been created for the parties, suffice it to say, the same appears to have been so carried out keeping in view the mode of partition as each of the co-sharers had to be given proportionate frontage and quality of land. Passage which has been given in the land which has been allotted to the parties is dependent upon the nature of the land and quality thereof and keeping that into consideration, the authorities have proceeded to form two different *taks*, which were for each of the parties which again cannot be faulted with. That apart, the petitioners had been sleeping over their rights as is apparent from the inordinate delay of 315 days, which had occurred in their filing a revision petition before the Financial Commissioner (Appeals), Punjab, which led to its dismissal on 10.10.2017.

6. In view of the above, the present writ petition is dismissed.

March 7th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No