

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

CWP No. 2543 of 2017

Date of Decision: 19.11.2019

Karnail Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. M.L. Saini, Advocate
for the petitioner.

Ms. Simran Grewal, AAG Punjab.

Mr. Tapish Gupta, Advocate for
Mr. Puja Chopra, Advocate
for respondent No.8.

RAJIV NARAIN RAINA, J. (Oral)

1. As per office note dated 16.09.2017, respondent No.7 who could not be served earlier as reported by the process server recording that he was not found residing at the given address, has been served with the summons of this petition in another attempt. Neither does he appear nor does his counsel enter appearance for him. He is ordered to be proceeded against ex-parte.

2. Case is taken up for final disposal. Respondents present through counsel have been heard.

3. Respondent No.5 herein was the applicant/petitioner before the District Magistrate-cum-Maintenance Tribunal, Patiala who treated

the complaint as a maintenance application, and proceeded to pass the impugned order dated 21.09.2016 with the directions to the Tehsildar, Patiala for demarcation of the disputed land /share of Gurdeep Singh and possession be got delivered to him within 30 days.

4. Faced with these directions, the revenue staff on visiting the spot, prepared a report of the Field Kanungo to the effect that the Khewat is joint and same cannot be demarcated. No demarcation could be carried out until the *tamima* of the Khasra No. is not carved out and sanctioned, the Assistant Collector-Ist Grade, Patiala stated this in his note dated 23.01.2017 for submission before the District Magistrate, Patiala.

5. The present petitioner was the sole respondent in the maintenance application instituted on 22.04.2016. The final order was passed on 21.09.2016. Confronted with the prospect of dispossession under the order of the Tribunal, the petitioner has approached this Court contending that the order is per se illegal and without jurisdiction and the opinion of the Assistant Collector Ist Grade, Patiala confirms factually before this Court that the order of the Tribunal does not deserves to stand as the property cannot be demarcated before partition defining the shares and dividing the property amongst the joint shareholders.

6. The petitioner asserts that he is in long settled possession of that part of the property in which a house is constructed and he resides

therein. Therefore, the right of use and occupation of the house by long settled possession will have ultimately to depend on partition of land dividing the proportionate shares of each of the co-sharers. Partition has not taken place between the parties.

7. In my considered view this is a fit case for interference since the Tribunal has adopted a procedure unknown to law where a land dispute in an action brought under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has led to the prospect of demarcation of land without any authority of law. What is more alarming is the further direction that if anybody is in possession of the share of the original sole respondent (and presently arrayed as respondent No.5), then the possession be taken from him as per rules and delivered to complainant Gurdeep Singh.

8. The Tribunal in its strange order has grossly exceeded its jurisdiction travelling beyond the Act under which it is constituted. It has exercised jurisdiction not vested in it; and, done so erroneously with material irregularity and, therefore, the order is found to be patently illegal and it deserves to be invalidated.

9. The Tribunal could not have acted as a revenue Court and ordered demarcation of the disputed land in a maintenance proceedings with directions to change the possession of the petitioner before the partition takes place between the co-sharers of what is admittedly joint undivided land. The original applicant and the sole respondent are not

father and son or part of one family but are distantly related as co-sharers with no legal duty or obligation to maintain each other. The application itself was wholly misconceived.

10. Accordingly, this petition succeeds and the impugned order dated 21.09.2016 with copy appended as Annex. P-6 is quashed with costs throughout in favour of the petitioner and against the complainant before the Tribunal which are open to calculation and recoverable from the latter as arrears of land revenue.

(RAJIV NARAIN RAINA)
JUDGE

19.11.2019

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*