

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

112

Civil Writ Petition No.27821 of 2018

Date of Decision: January 7th, 2019

Satnam Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pankaj Mahavir Chauhan, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the orders dated 31.05.2018 (Annexure P-1) passed by the Financial Commissioner, Haryana, upholding the order dated 16.08.2017 (Annexure P-2) passed by the Commissioner, Ambala Division, Ambala, whereby the appeal preferred by respondents 5 and 6 was allowed and the matter remanded back to the Assistant Collector Ist Grade for fresh decision keeping in view the plea which has been taken that the house of respondents 5 and 6 would be demolished in case the path, which is being carved out, is actually given effect to.

2. It is the contention of learned counsel for the petitioner that while passing the impugned order dated 16.08.2017, the Commissioner, Ambala Division, Ambala, had remanded the matter to the Assistant Collector Ist Grade without issuing any notice to the petitioner. He asserts that grave prejudice has been caused to the petitioner by not even hearing him. That apart, he contends that the house of respondents 5 and 6 in any manner is not being got to be demolished as has been projected by the authorities below in the impugned orders and the *sanad taksim* has to be

given effect to because parties had consented to the same. He, therefore, asserts that the impugned orders cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the impugned orders as also the documents appended along with the writ petition.

4. Perusal of the order dated 31.05.2018 (Annexure P-1) passed by the Financial Commissioner, Haryana, would clearly indicate that as far as the grievance of the petitioner is concerned that he was not heard by the Commissioner while remanding the case back to the Assistant Collector Ist Grade for fresh decision on the question of house of respondents 5 and 6 being likely to be demolished and for reconsideration thereof, the same has been taken care of as the pleas which ought to have been taken and were taken before the Financial Commissioner, have been dealt with in the right perspective. Counsel for the petitioner has pointed out that there is a reference to point 'C' in the order dated 31.05.2018 passed by the Financial Commissioner, Haryana, and, therefore, it appears that there has been no application of mind by the Financial Commissioner.

5. This contention of learned counsel for the petitioner cannot be accepted as what is essentially the aspect and the factor, which had weighed on the mind of the Financial Commissioner while deciding the revision petition was that the house of respondents 5 and 6 was likely to be demolished on carving out the passage as per Sanad Taksim. It is in this context that he had upheld the order passed by the Commissioner and remanded the case back to the Assistant Collector Ist Grade. The conclusion as drawn by the Financial Commissioner, Haryana, appears to be correct.

The operative part of the order reads as follows:-

“The order of the Ld. Commissioner seems to be justified as he has directed the Assistant Collector, Ist Grade to assess the necessity of present passage and in case passage is required then find out alternate passage with the consent consensus of all the shareholders so as to avoid demolition of the house of the other side. The cited case law fully supports the stand of the respondents. In the said judgment the Division bench of the Punjab and Haryana high Court has held that remand of the case to the Assistant collector 2nd Grade for fresh decision can be no stretch of imagination be said to be a case where it could cause any harm too either of the parties.”

6. This Court does not find any reason to interfere with the orders passed by the authorities below.

7. The petition, therefore, stands dismissed.

8. Let the Assistant Collector Ist Grade, Pehowa, consider and finalise the proceedings at an early date preferably within a period of four months from the date of receipt of certified copy of this order.

January 7th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No