

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

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Civil Writ Petition No.29487 of 2018
Date of Decision: March 20th, 2019

Gurmail Singh

...Petitioner

Versus

Assistant Collector-I, Dirba, District Sangrur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sukhmani Patwalia, Advocate
for Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. Manish Kumar Singla, Advocate
for respondents No.2, 3, 4 (i) and (ii), 5 to 8.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 27.04.2017 (Annexure P-1) passed by the Assistant Collector Ist Grade, Dirba, District Sangrur.

2. It is the contention of learned counsel for the petitioner that in the earlier round of litigation between the parties, petitioner has filed *CWP No.20317 of 2010* titled as *Bant Singh and others Versus The State of Punjab and others*, wherein challenge was laid to the order dated 28.04.2010 passed by the Financial Commissioner, order dated 10.11.2009 passed by the Divisional Commissioner, Patiala Division, Patiala and the order dated 16.04.2009 passed by the Collector (Sub Divisional Magistrate), Sunam, as also the order dated 19.02.2009 passed by the Assistant Collector Ist Grade, Sunam, in partition proceedings.

3. After considering the arguments raised by the counsel for the parties, this Court in the order dated 14.02.2012 (Annexure P-1 A) held as

follows:-

“In view of the above, I am of the considered opinion that the order dated 19.02.2009 (Annexure P/2) passed by the Assistant Collector Ist Grade is a non-speaking order; similarly, the orders of the Collector and Commissioner, as well as, the Financial Commissioner who have not taken into consideration the effect of order dated 17.01.1978 (Annexure P/6) are not sustainable. As such, the above impugned orders are liable to be set aside. Ordered accordingly.

In view of the aforesaid discussions, the writ petition is allowed and the case is remanded to the Assistant Collector Ist Grade to decide the matter afresh by passing a well-reasoned speaking order after taking into consideration rapat roznamcha No. 94 dated 07.11.1967 order dated 17.01.1978 (Annexure P/6) and another partition application which has been dismissed for non-prosecution vide order dated 29.11.1994. The parties through their respective counsel are directed to appear before the Assistant Collector Ist Grade on 26.03.2012.”

4. It is the contention of learned counsel for respondents 4 (i) and (ii) that despite an order passed by this Court, whereby the parties were directed to appear before the Assistant Collector Ist Grade on the date specified i.e. 26.03.2012 nor after that, the petitioners have appeared before the said authority and now they cannot be permitted to raise an objection that no speaking order has been passed by the Assistant Collector Ist Grade, which is the subject matter of challenge in the present writ petition. He further contends that after the passing of the said order dated 27.04.2017, mode of partition has been finalised and the case is now fixed for naksha ara. He, therefore, contends that the petitioner himself having slept over his rights, cannot be permitted to raise his pleas, which are

27.04.2017 now passed by the Assistant Collector Ist Grade, Dirba, is a non-speaking order. He further contends that as per Section 13 of the Punjab Land Revenue Act, 1887, a statutory appeal is maintainable against the order passed, which is a subject matter of the present writ petition and, therefore, the petitioner, prior to approaching this Court, should have exhausted the statutory remedy. He, thus, contends that the writ petition should not be entertained and the same should be dismissed on this ground alone.

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

5. The operative part of the order dated 14.02.2012, which has been passed by this Court as reproduced above, leaves no manner of doubt that earlier also, the revenue authorities had not proceeded to pass the order on merits. Same is the position as of now as the impugned order dated 27.04.2017 is two line order, which reads as follows:-

“ORDER

File presented. After perusal of the file the plan Urra is sanctioned. File for mode of partition is adjourned to 18.05.2017

Sd/- AC-I, Dirba.”

6. The order as has been passed by the Assistant Collector Ist Grade, Dirba, referred to above, is not only illegal but would be rather contemptuous as well and, therefore, the objection as raised by the counsel for respondents 4 (i) and (ii) with regard to an alternative remedy being available to the petitioner statutorily provided for, would not make much of a difference keeping in view a totally non-speaking order having been

passed on the second occasion as well despite a direction issued by this Court. There can be no doubt that in case a statutory remedy is available, the Court should restrain itself from entertaining a writ petition directly but this is a case where it is a patent illegality as well as violation of the order passed by this Court.

7. Taking a lenient view in the matter, this Court is not issuing contempt notice to the Assistant Collector Ist Grade, Dirba, but would rather proceed to set aside the impugned order dated 27.04.2017 (Annexure P-1).

8. Ordered accordingly.

9. As a consequence thereof, all subsequent orders/proceedings shall also stand set aside.

10. Parties are now directed to appear before the Assistant Collector Ist Grade, Dirba, on **04.04.2019**.

11. It is made clear that in case the petitioner does not appear before the Assistant Collector Ist Grade, Dirba, on the date which has been fixed by this Court, it would be open to the Assistant Collector Ist Grade, Dirba, to pass a speaking order as per the order dated 14.02.2012 passed by this Court in CWP No.20317 of 2010, in the absence of the petitioner.

March 20th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No