

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108

CWP-38035-2018

Date of decision: 09.09.2019

DALJIT SINGH

...PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashish Aggarwal, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab,
for the State.

Mr. Harchand Singh Batth, Advocate,
for respondent No. 5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 14.02.2012 (Annexure P-4) passed by the Assistant Collector Grade-1, Khadoor Sahib, District Tarn Taran-respondent No. 4, order dated 30.10.2012 (Annexure P-5) passed by the Sub-Divisional Magistrate-cum-Collector, Khadoor Sahib, District Tarn Taran-respondent No. 3, order dated 01.08.2016 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No. 2 and the order dated 02.03.2017 (Annexure P-7) passed by the Financial Commissioner (Revenue), Punjab-respondent No. 1, on the ground that the predecessor-in-interest of the petitioner Hardip Singh, who had died much prior to the filing of the

application for partition, was impleaded as a party and he was shown to have been duly served, because of which, none appeared and ex-parte proceedings were initiated leading to the finalization of the partition proceedings in the absence of the petitioner.

On 01.04.2019, following order was passed by this Court:-

“CM-4746-CWP-2019

Prayer in this application is for placing on record typed copy of report of the Tehsildar, Khadoor Sahib, as Annexure P-9 and exemption from filing certified copy thereof.

For the reasons mentioned in the application, the same is allowed. Report of the Tehsildar, Khadoor Sahib, is taken on record, subject to all just exceptions.

CWP-38035-2018

It is the contention of the learned counsel for the petitioner that the father of the petitioner, namely, late Shri Hardip Singh, had already expired when the partition application was filed in the year 2011. He contends that the father of the petitioner had expired in the year 2008 and despite knowing the said fact, a dead person has been impleaded as respondent. In any case, on the basis of the interim orders which have been passed by the Assistant Collector 1st Grade, Khadoor Sahib, District Tarn Taran, he contends that the report which was received, indicated that father of the petitioner who was impleaded as respondent No.22 had never been served. He contends that the petitioner had applied for certified copies of the summons and report of

the service of both the parties from the date of institution of the partition proceedings till the end of the partition case but the Reader of the Tehsildar has intimated that he has not received the records of the case at the time of taking over the charge.

Let two copies of the writ petition be handed over to Mr. Charanpreet Singh, Asstt. A.G., Punjab, during the course of the day under proper receipt, who shall make available the complete records of the partition proceedings which were initiated by Daya Singh against Nanto and others in the year 2011 resulted in passing of order dated 14.02.2012 (Annexure P-4) of the Assistant Collector 1st Grade, Khadoor Sahib, District Tarn Taran on the next date of hearing.

List on **29.04.2014** for consideration.”

Thereafter, on an affidavit filed by the Tehsildar, Khadoor Sahib, District Tarn Tarn dated 18.07.2019, following order was passed by this Court on 22.07.2019:-

“ Costs as imposed by this Court vide order dated 08.07.2019 stand paid to the petitioner as admitted by the counsel for the petitioner.

In compliance with the order passed by this Court on 01.04.2019, affidavit dated 18.07.2019 of Ramesh Kumar, Tehsildar, Khadur Sahib, District Tarn Taran, has been filed in Court, wherein it has been not disputed that the predecessor-in-interest of the petitioner i.e. father Hardip Singh died on 23.04.2008 and the application for partition was filed on 02.12.2010, wherein Hardip Singh was impleaded as

respondent No.22. It has been admitted in the affidavit that there is no report with regard to Hardip Singh having died nor is there anything on the record which would indicate that an application for impleading his legal representatives was ever filed or allowed by the Assistant Collector Ist Grade. What has been asserted is that since there was no report with regard to Hardip Singh having expired and the proclamation having been issued as per the provisions of the statute, he was proceeded against *ex parte* by the Assistant Collector Ist Grade.

Notice of motion.

On the asking of the Court, Mr. T.P.S. Chawla, Deputy Advocate General, Punjab, accepts notice on behalf of respondents 1 to 4.

Dasti notice to respondent No.5 be issued for **16.08.2019.**

To be shown in the urgent list.”

The records have been made available and have been inspected by the counsel for the parties.

Learned counsel for respondent No. 5 has tried to project that the authorities have taken into consideration the fact that the legal representatives of the deceased Hardip Singh, the predecessor-in-interest of the petitioner, were fully aware of the fact that the proceedings for partition were going on against them but intentionally did not appear before the Assistant Collector 1st Grade. He further contends that because of the orders, which have been passed by the Assistant Collector, 1st Grade, no prejudice has been caused to the petitioner as his share has been duly protected. He,

thus, contends that the writ petition does not call for any interference by this Court.

I have considered the submissions made by the counsel for respondent No. 5 but do not find myself in agreement with him on this question as the basic principle of natural justice stands violated when the petitioner has not been heard before passing the impugned order dated 14.02.2012 (Annexure P-4) followed by the subsequent orders where the application of the petitioner and the prayer for setting aside the ex-parte proceedings and the impugned order has not been accepted.

In view of the above, the writ petition is allowed. The impugned order dated 14.02.2012 (Annexure P-4) passed by the Assistant Collector Grade-1, Khadoor Sahib, District Tarn Taran-respondent No. 4, order dated 30.10.2012 (Annexure P-5) passed by the Sub-Divisional Magistrate-cum-Collector, Khadoor Sahib, District Tarn Taran-respondent No. 3, order dated 01.08.2016 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No. 2 and the order dated 02.03.2017 (Annexure P-7) passed by the Financial Commissioner (Revenue), Punjab-respondent No. 1, are, hereby, set aside.

Parties are directed to appear before the Assistant Collector 1st Grade, Khadoor Sahib, District Tarn Taran, on 25.09.2019, who shall proceed to decide the matter on merits at an early date and in any case, within a period of six months from the above-mentioned date of appearance of the parties.

September 09, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No