

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.110

CWP-18842-2019 (O&M)

Date of decision : 18.2.2020

Mukhtiar Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vijay Rana, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner was proceeded against ex parte in partition proceedings vide order dated 9.1.2018. Partition was sanctioned vide order dated 30.11.2018 and sanad was prepared on 12.2.2019. Thereafter, the petitioner moved an application dated 29.5.2019 seeking setting aside of the ex parte proceedings. However, the said application was dismissed vide order dated 14.6.2019. Thus, the present writ petition has been filed challenging the sanad dated 12.2.2019 as well as order dated 14.6.2019, whereby, the application for setting aside the ex parte proceedings was dismissed.

Learned counsel for the petitioner submits that the petitioner was residing abroad. It is so recorded in the order of the Assistant Collector, First Grade dated 30.11.2018. Since, the petitioner was not served, directions were issued to the partition applicant to submit the correct address alongwith registered envelop. The partition applicant pleaded ignorance of the correct address of the petitioner and thereafter, the Assistant Collector straightway proceeded to get a mushtari munadi conducted. Thereafter, notice was published in the newspaper, but no personal service

was effected on the petitioner. Thus, partition proceedings carried behind the back of the petitioner, are vitiated and the same deserve to be set aside.

A perusal of the order dated 30.11.2018 of the Assistant Collector, First Grade shows that attempts were made to serve the un-served respondents allegedly residing abroad through munadi carried out in the revenue estate as well as through publication in the newspaper. A perusal of memo of parties of the partition application further shows that the petitioner is one of the sons of Mohinder Singh. His brothers residing in the village were served and appeared in the partition proceedings. Under the circumstances, it cannot be held that the petitioner was not aware of the partition proceedings.

Learned counsel for the petitioner has relied upon M/s Capital Builders Vs. Financial Commissioner and others, 2013 (4) RCR (civil) 348, Gobind Vs. State of Haryana and others, 2009 (2) RCR (civil) 583 and Mohd. Bashir Vs. Maqsood and others, 2006(3) RCR (civil) 781, in support of his argument. However, none of these judgments are applicable in the current fact situation. In case of M/s Capital Builders (supra), the Assistant Collector had proceeded to serve the parties through proclamation straightway. That is not the situation in the present case. In Gobind's case (supra), a party had refused to receive the summons and accordingly, it was found that in view of Section 20 of the Punjab Revenue Land Act, 1887 (for short 'the Act'), there was a requirement in law of pasting the summons at his last known address. On facts, this judgment is also distinguishable. In the case of Mohd. Bashir (supra) one combined summons was issued in the names of the petitioner and his two brothers and this action was held to be violative of Section 20 of the Act. Again, this position does not exist in the present case.

For the aforementioned reasons, I do not find any merit in this writ petition and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

18.2.2020
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No