

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

**CWP-18650-2020
Decided on : 05.11.2020**

Raj Kumar

. . . Petitioner(s)

Versus

Financial Commissioner (Appeals) Punjab and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Manu Loona, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

Prayer in the instant petition filed under Articles 226/227 of the Constitution of India is *inter alia* for issuance of writ in the nature of *Certiorari* for quashing the order dated 22.07.2019 (Annexure P-14) vide which the application for restoration of the appeal was dismissed and further for stay of the execution of warrant of possession dated 05.10.2016 (Annexure P-9).

A brief run up to the sequence of events leading to the filing of the instant petition may be noticed. Respondent No.4 – Gulab Ram, filed an application before respondent No.2 – Assistant Collector-I, Fazilka, for partition of land measuring 13 Kanals – 11 Marlas, situated in village Sappan Wali, Tehsil Abohar, District Fazilka, which upon notice, was duly contested by the petitioner by filing of his written statement dated 05.01.2014 (Annexure P-1). In his written statement, petitioner stated that a family partition had already been affected between the parties on 09th July, 2002, as per law and all the parties were in possession of their respective shares. The other respondents were, however, proceeded against *ex-parte*. vide order dated 28th January, 2015 (Annexure P-2),

kept intact. Consequently 'Naksha Bay' and 'Jeem' were called against the petitioner, who then submitted his objections *qua* the same vide statement dated 14.08.2015 (Annexure P-3). Respondent No.2 – Assistant Collector-I, Fazilka, dismissed the objections by holding that there was no merit in the same and allowed the partition of the suit land vide order dated 30th September, 2015 (Annexure P-4). Subsequently, the petitioner challenged the said order passed by respondent NO.2 before the SDM-cum-Collector, Abohar. Respondent No.5 – Khiali Ram also challenged the said order in a connected appeal before the learned Collector, Abohar. Both these appeals were dismissed vide orders dated 30.03.2016 and 19.09.2016 (Annexures P-6 & P-7, respectively), by holding that Sections 116, 117, 118 of the Punjab Land Revenue Act, 1887 (for brevity, 'the Act of 1887'), did not provide for any remedy against the final order of partition, subsequent to the drawing up of the 'Sanad Takseem'. The petitioner, thereafter, moved respondent No.1 – Financial Commissioner (Appeals), Punjab, Chandigarh, by way of a revision petition, which was dismissed on 28th April, 2017 (Annexure P-11), without considering the case on merits and by giving liberty to file a restoration application before the SDM-cum-Collector, Abohar. Thereafter, the petitioner moved this Court by filing a writ petition (CWP No. 27095 of 2017) to impugn the order dated 28th April, 2017 (Annexure P-11), passed by respondent No.1. The said CWP was dismissed by this Court in the following terms:-

“After hearing learned counsel for the petitioner and examining the record, am of the considered opinion that there is no error in the order dated 28.04.2017 of the Financial Commissioner because the petitioner had already availed the remedy of appeal, in which he did not appear and got it dismissed for non-prosecution. The petitioner is only assuming that the Collector does not have the jurisdiction to decide the appeal and did not file any application to

get the appeal restored by recalling the order dated 30.03.2016. Had any such application been filed, the Collector would have passed an appropriate order in the same but the petitioner cannot straightaway challenge the order dated 30.09.2015 of the Assistant Collector Ist Grade by way of a revision petition before the Financial Commissioner, who has rightly dismissed the revision petition on the ground that the petitioner has the remedy of restoration of appeal by filing of an application before the Collector at the first instance.”

Notice of motion.

On the asking of the Court, Ms. Anu Chatrath, Addl. AG, Punjab, who is attending the Court proceedings through video conferencing, accepts notice on behalf of respondents No.1 to 3. Advance copy of this petition has already been supplied to the State.

Learned counsel for the petitioner *inter alia* contends that the impugned order has been passed against the settled law and without appreciating the case on merits. In support of his contention, learned counsel for the petitioner has placed reliance upon **Amar Khan Vs. State of Punjab, 2009(1) RCR(C) 741**.

After hearing learned counsel for the parties and the perusing the case law cited by the learned counsel for the petitioner, I am of the considered opinion that the order 28th April, 2017 (Annexure P-11), passed by respondent No.1 – Financial Commissioner (Appeals), Punjab, is erroneous. As per Section 16(1) of the Act of 1887, a revision petition lies before the Financial Commissioner and the Collector has no authority to decide an appeal once Sanad Takseem has been issued. Respondent No.2 - Financial Commissioner (Appeals), Punjab, has thus erred while giving liberty to file a restoration application before the SDM-cum-Collector, Abohar. Rather, it is the Financial Commissioner (Appeals), Punjab,

who was required to look into the revision petition and adjudicate the matter on

merits.

In the facts and circumstances of the case, the present petition is disposed of and the matter is remanded back to the Financial Commissioner (Appeal)s, Punjab – respondent No.2, to pass a detailed order on merits. Needless to add, till then the execution of warrant of possession shall remain stayed.

(MANJARI NEHRU KAUL)
JUDGE

November 05, 2020

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No