

CWP-2285-2022 and
CWP-2286-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(106)

1. CWP-2285-2022
Gurdeep SinghPetitioner
Versus
State of Punjab and othersRespondents

2. CWP-2286-2022
Gurdeep SinghPetitioner
Versus
State of Punjab and othersRespondents

Date of decision: - 13.01.2023

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurmeet Singh Saini, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

This order shall dispose of the above-said two writ petitions as the challenge in both the petitions is to the common order dated 27.08.2021 passed by the Financial Commissioner (Appeals), Punjab, Chandigarh, vide which the revision petitions filed by respondent No.2

Chand Singh have been allowed and the matter has been remanded back to the A.C. 1st Grade, Ferozepur for a fresh decision.

2. Brief facts of the case are that Babu Singh, father of the petitioner, had filed two applications under Section 111 of the Punjab Land Revenue Act, 1887 (for short 'the Act') for partition. The first application bearing No.70-AC-1 was instituted on 15.03.2004 and was with respect to land measuring 67 kanals and 4 marlas situated in village Talwandi Bhai, Tehsil and District Ferozepur. The second application bearing case No.71-AC-1 was instituted on the same date i.e. 15.03.2004 and was with respect to partition of land measuring 51 kanals and 13 marals, situated in village Talwandi Bhai, Tehsil and District Ferozepur. The Assistant Collector, 1st Grade, Ferozepur after proceeding against the private respondents ex-parte, sanctioned the Naqsha "Eri", vide order dated 12.01.2006 (Annexure P-1). Both the said applications were decided by a common order. Respondent No.2 Chand Singh filed two appeals i.e. Appeal No.45-AP of 2008 and Appeal No.46-AP of 2008 before the Collector, Ferozepur. The plea taken in the Court of appeal by said Chand Singh was that he was not aware of the proceedings and it was only on 03.12.2008, when said Chand Singh made certain inquiries, that he learnt about the said proceedings and thereafter, he applied for certified copy of the order, which was delivered to him on 18.12.2008 and thereafter, filed the appeal in the year 2008 itself. It was also stated that respondent Chand Singh had neither refused to accept service nor did he ever evade the service of summons. The grounds of appeal taken therein

have not been annexed with the present writ petitions, but learned counsel for the petitioner, during the course of arguments, has handed over the said grounds of appeal, which is taken on record and has been marked as “Mark A”. The Collector, Ferozepur allowed both the appeals by two separate orders of even date i.e., 04.11.2009. The Collector, Ferozepur observed that since there are apparent infirmities and miscarriage of justice had been caused, thus, the appeals accepted and the matters were remanded back to the Tehsildar-cum-A.C. 1st Grade, Ferozepur for a fresh decision. The arguments of respondent No.2 Chand Singh to the effect that there were illegality in the orders passed, including the arguments that partition of two separate khewats No.394 and 391 had been passed by a single order by the Assistant Collector, 1st Grade and that a passage of 3 karams width had wrongly been deducted and allotted from the land of said Chand Singh were also taken into consideration. The father of the petitioner Babu Singh had filed two appeals against the said order dated 04.11.2009 before the Commissioner, Ferozepur Division, Ferozepur i.e., Appeal Part-35 of 2010 and Appeal Part-35 of 2010 and both the said appeals were allowed and the Commissioner, Ferozepur Division, Ferozepur set aside the order dated 04.11.2009 passed by the Collector and restored the order dated 12.01.2006 passed by the Tehsildar-cum-1st Grade, Ferozepur. Thereafter, two revision petitions were filed by respondent No.2 Chand Singh before the Financial Commissioner (Appeals), Punjab, Chandigarh i.e. ROR-539 of 2013 and ROR-540 of 2013 and both the said revision petitions were allowed by a detailed order

passed by the Financial Commissioner (Appeals), Punjab. A perusal of the said order would show that it had been observed that there was a clear violation of Section 20 of the Act with respect to no due service having been effected on the respondents in the partition applications. Reference was made to the report dated 28.04.2004 of the process server, which was to the effect that “due to short date and more work, the summons could not be served” and also to order dated 29.04.2002, vide which the Assistant Collector 1st Grade, ordered the summons through proclamation and directed respondent No.1 to deposit the requisite fee which was in contravention of the provisions of Section 20 of the Act. It was observed that the personal service upon a co-sharer in a partition proceeding is a *sine quo non* and in case of refusal, the summons may be served by pasting a copy thereof on the outer door of the house of said person, whereas, the AC 1st Grade after receiving the service report of the respondents as unserved, straightway ordered the summoning of co-sharers by way of ‘munadi’. It was also observed that the proclamation, which is to be taken as the last resort, was adopted at the first instance and since the partition proceedings had taken place at the back of the Chand Singh, thus, the matter was remanded back to the A.C. 1st Grade, Ferozepur for a fresh decision. It is the said common order passed by the learned Financial Commissioner (Appeals), Punjab, Chandigarh in ROR No.539 of 2013 and ROR NO.540 of 2013 which has been challenged by the present petitioner by filing two separate writ petitions.

3. Learned counsel for the petitioner has raised two arguments.

The first argument which has been raised is that the Collector while passing the order dated 04.11.2009 as well as the Financial Commissioner (Appeals), Punjab, while passing the order dated 27.08.2021 had not taken into consideration the fact that the respondent No.4 had filed the appeal against the order dated 12.01.2006 passed by the Tehsildar-cum-Assistant Collector 1st Grade, Ferozepur after a delay of 2 years and 11 months and thus, the appeal was barred by limitation and deserved to be dismissed on the said ground alone. The second argument which has been raised by the petitioner is that the *sanad taksim* in the present case was prepared on 17.03.2006 and thereafter, the revenue authorities had no right to interfere in the proceedings.

4. This Court has heard learned counsel for the petitioner and has gone through the paperbook.

5. The Financial Commissioner (Appeals), Punjab in order dated 27.08.2021, has considered the provisions of Section 20 of the Act and by relying upon various zimni orders, has observed that after the service report had been received from the process server to the effect that “due to short date and more work, the summons could not be served”, the Assistant Collector 1st Grade, instead of issuing summons for personal service on the respondents, including respondent No.2 Chand Singh, had straightway ordered the summoning of the co-sharers by way of ‘munadi’. It was also observed that the said procedure was illegal and in violation of procedural law. The said finding has not been controverted before this Court. No zimni order has been referred to show that there is any

perversity in the order. No law has been cited by learned counsel for the petitioner in support of his contentions. This Court is, thus, of the view that the Financial Commissioner (Appeals), Punjab had rightly observed that respondent No.2 was not served in accordance with law. The Collector, Ferozepur in order dated 04.11.2009 had also noted the arguments of counsel for respondent No.2 Chand Singh therein to the effect that respondent No.2 was not served in accordance with law and great prejudice has been caused to him on account of non-service, inasmuch as, a passage of 3 karams width has wrongly been deducted and allotted from the land of said Chand Singh, who was a co-sharer and that the land allotted to respondent No.2 is lesser than his share in the joint land and that the possession has been disturbed and even the proceedings had been illegally carried out as partition of two separate khewats bearing No.394 and 391 had been considered by virtue of a single order passed by the Assistant Collector, 1st Grade, Ferozepur. In the said circumstances, the order passed by the learned Financial Commissioner (Appeals), Punjab, Chandigarh as well as by the Collector, Ferozepur remanding the matter and granting opportunity to respondent No.2 Chand Singh to contest the partition applications, cannot be stated to be illegal and against law. Since, respondent No.2 Chand Singh had been proceeded against ex parte illegally, and arguable points have been raised by the party, it will be in the interest of justice that the partition proceedings are carried out after considering the plea and objections of all the parties. The argument of learned counsel for the petitioner to the effect that the appeal

was filed before the Collector, Ferozepur after a period of 2 years and 11 months and that it should have been dismissed on the said ground alone, deserves to be rejected. Once it has been found that respondent No.2 was never served in accordance with law, thus, the question of limitation does not arise. The respondent No.2 had specifically taken the plea in paragraph No.6 of the grounds of appeal (taken on record as Mark A) to the effect that on 03.12.2008, he had come to know from the Circle Revenue Patwari, about the passing of the impugned order and immediately thereafter applied for the certified copy of the impugned order, which was delivered to the appellant on 18.12.2008 and thereafter, appeal had been filed in the year 2008 itself. The said paragraph No.6 of the grounds of appeal is as under: -

“6. That the appellant came to know from the Circle Revenue Patwari on 03.12.2008, about the passing of the impugned order and immediately the appellant applied for the certified copy of the impugned order, which was delivered to the appellant on 18.12.2008 and as such the appeal is within limitation from the date of knowledge. Though there is no delay in filing the present appeal, yet the delay, if any, is liable to be condoned, as the appellant has been wrongly proceeded against exparte. A separate application under Section 5 of Indian Limitation Act is being filed alongwith the present appeal.

In paragraph 2 of the said grounds of appeal, it has been stated by respondent No.2 that he had neither refused to accept any service nor he ever evaded the service of summons. There is no material on record to show that respondent No.2 Chand Singh had prior

knowledge about the said proceedings. At any rate, in the interest of justice respondent No.2 should be given an opportunity to defend the applications for partition.

6. The argument of learned counsel for the petitioner to the effect that once *sanad taksim* has been prepared, the revenue authorities had no right to interfere in the proceedings, also deserves to be rejected. A Division Bench of this Court in “**Amar Khan and others Vs. State of Punjab and others, reported as 2009(1) R.C.R. (Civil) 741**”, held that the Financial Commissioner under Section 16(1) of the Act has the power to call for the record of any case, pending before or disposed of by any revenue officer subordinate to him and it had been observed by the Hon'ble Division Bench that the said powers would take within their ambit challenge to a *sanad takseem* and thus, the Financial Commissioner has the power to consider the legality of an order passed by a revenue officer in partition proceeding even after the *sanad takseem* has been prepared.

7. In the present case, although respondent No.2 could have straightway filed the revision petition before the Financial Commissioner, after the preparation of the said *sanad takseem* but the facts of the present case show that ultimately the matter was taken up by the Financial Commissioner (Appeals), Punjab, on the revision petition filed by respondent No.2 Chand Singh against the order dated 08.04.2011 passed by the Commissioner, Ferozepur Division, Ferozepur and it is the Financial Commissioner (Appeals), Punjab, who, while exercising the

powers under Section 16 of the Act, had passed the impugned order dated 27.08.2021.. The said power as per settled law is vested with the Financial Commissioner.

8. Keeping in view the above-said facts and circumstances, the present writ petitions being sans merits, deserve to be dismissed and are accordingly, dismissed.

January 13, 2023
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes