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

CWP-5362-2022

Date of decision : 23.03.2023

Daljit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Pal Singh Rehan, Advocate for the petitioner.

Mr. Yadwinder S. Bhangu, AAG, Punjab
for respondent Nos.1 to 4.

Mr. R.S. Chauhan, Advocate and
Ms. Deepika Chauhan, Advocate for respondent No.5.

VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents not to proceed further in pursuance of final order of partition dated 15.02.2021 (Annexure P-5) passed by respondent No.4- Assistant Collector, Ist Grade, Gurdaspur in partition application filed by respondent No.5 bearing No.47/T dated 24.08.2017/33/NT dated 29.04.2019 titled as "Jeevan Verma Vs. Balwant Kaur etc.".

Learned counsel for respondent No.5 has raised a preliminary objection with respect to the maintainability of the present writ petition and has submitted that against the order dated 15.02.2021 (Annexure P-5), the petitioner has filed an appeal before the SDM-cum-Collector, Gurdaspur

and the said appeal is pending and is now listed for 24.03.2023. It is further submitted that subsequent to the filing of the present writ petition, revision petition bearing No.ROR No.829 of 2022 has also been filed before the Financial Commissioner, which is also stated to be pending. It is stated that as per instructions, no stay has been granted in the said revision petition and the petitioner, has thus, initiated multiple litigation challenging the same order dated 15.02.2021 which is not permissible in law. It is contended that in the present case, *sanad takseem* has been prepared on 02.04.2021 and thus, appropriate remedy is to file a revision petition before the Financial Commissioner. In support of the same, he has relied upon the judgment titled as **Ram Gopal Vs. State of Haryana and others**, reported as **2009(11) RCR (Civil) 336**, in which, a Coordinate Bench of this Court had observed that the petitioner, at the first instance, after preparation of *sanad takseem* should approach the Financial Commissioner by way of filing a revision.

On the other hand, learned counsel for the petitioner has not disputed the fact that an appeal against the order dated 15.02.2021 as well as revision before the Financial Commissioner against the same order dated 15.02.2021 have been filed but has submitted that in the present case, respondent No.5 has filed an application for partition on 24.08.2017 and had arrayed Gurnam Singh, father of the petitioner, as respondent No.11 although, Gurnam Singh had died on 23.07.2017 and thus, proceedings against the father of the petitioner which had been continued ex parte, were illegal. It is submitted that since, the petitioner has a good arguable case on merits thus, the present writ petition is maintainable. It is also submitted that respondent No.5 has played fraud by impleading a dead person as

respondent No.11 and thus, the petitioner deserves to be granted interim relief till the time the Financial Commissioner does not decide the revision petition filed by the petitioner against the order dated 15.02.2021. Learned counsel for the petitioner has however, fairly submitted that although before the Financial Commissioner, the petitioner had moved an application for stay and counsel had pressed for stay but no stay was granted by the Financial Commissioner, even though, there is no specific order of rejection of stay.

Learned counsel for respondent No.5, in rebuttal, has submitted that an application for partition was filed on the basis of jamabandi for the year 2014-15 which was the relevant jamabandi at the time of filing of the application for partition and all the persons who were mentioned in the jamabandi were made party and since, respondent No.11-Gurnam Singh was also shown as a co-sharer in the said jamabandi thus, he was also impleaded as party. It is contended that respondent No.5 had no knowledge about the death of said Gurnam Singh and there is nothing on record to suggest that respondent No.5 had knowledge about the death of Gurnam Singh. It is also contended that since, the Financial Commissioner has not granted any stay and the proceedings before the Financial Commissioner are not under challenge before this Court thus, grant of interim stay has been vehemently opposed.

This Court has heard learned counsel for the parties and perused the paper book.

It is not in dispute that against the order dated 15.02.2021, the petitioner had already filed an appeal before the Collector as the grounds of

the same have been annexed as Annexure P-6 with the paper book and the said appeal is pending and is stated to be listed on 24.03.2023. Revision petition challenging the order dated 15.02.2021 had also been filed before the Financial Commissioner. It is not in dispute that the appropriate remedy after issuance of *sanad takseem* is filing a revision petition before the Financial Commissioner and the said revision petition has been rightly filed by the present petitioner. No stay has been granted in the said revision petition pending before the Financial Commissioner and neither the proceedings before the Financial Commissioner nor orders passed by the Financial Commissioner are the subject matter before this Court or have even been placed on record in the present case. As a matter of settled law, a person has to choose his/her remedy and cannot seek three different remedies for the same cause of action. It would be relevant to note that when the case was taken up by the Coordinate Bench of this Court on 16.03.2022, apart from having made submissions on merits, it was submitted by learned counsel for the petitioner that the petitioner had also applied for certified copies of instrument of partition and other documents and had prayed that till such time, certified copies of the same are made available to him, the possession be not disturbed and the Coordinate Bench of this Court, vide order dated 16.03.2022, was thus, pleased to observe that the petitioner be not dispossessed limited till the next date of hearing and the case was adjourned to 01.08.2022. On 01.08.2022, a written request for an adjournment was circulated by learned counsel for the petitioner and the matter was adjourned to 08.09.2022. The order dated 01.08.2022 is reproduced hereinbelow:-

“Learned counsel for respondent No.5 submits that the petitioner has challenged the sanad through an appeal. Such appeal is not maintainable in law. Thus, the facts have been misrepresented before this Court for obtaining an interim order.

In view of written request circulated by learned counsel for the petitioner, adjourned to 08.09.2022.

August 01, 2022

Sd/- (SUDHIR MITTAL)

JUDGE”

Thereafter, on 08.09.2022, none had appeared on behalf of the petitioner and the matter was adjourned to 23.03.2023 i.e., today. It is not in dispute that after having obtained certified copies of the documents, the petitioner has already instituted ROR No.829 of 2022.

Keeping in view abovesaid facts and circumstances and also the fact that the appropriate remedy to challenge *sanad takseem* is by way of filing a revision petition before the Financial Commissioner, which has already been filed and is pending adjudication, the present Civil Writ Petition is dismissed.

Liberty is, however, granted to the petitioner to pursue his remedy before the Financial Commissioner.

It would be open for all the parties to raise all the pleas available to them before the Financial Commissioner.

23.03.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No