

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CWP-12667-2016

Makhan Singh

... Petitioner

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

2. CWP-13785-2016

Sukhdev Singh and another

... Petitioners

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

3. CWP-13786-2016

Sukhdev Singh and another

... Petitioner

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

4. CWP-13790-2016

Makhan Singh and others

... Petitioners

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

5. CWP-13808-2016

Rajinder Singh and another

... Petitioners

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

6. CWP-13814-2016

Karnail Kaur

... Petitioner

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

7. CWP-13305-2016

Makhan Singh and others

... Petitioners

Versus

The Financial Commissioner Appeal Punjab and others

... Respondents

Date of decision : 17.05.2023

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.R.S. Chauhan, Advocate,
Ms.Deepika Chauhan, Advocate,
Mr.Balam Singh, Advocate,
Mr.Kripal Singh, Advocate and
Mr.Rohit Sapehiya, Advocate
for the petitioners.

Mr.Rohit Ahuja, DAG, Punjab
for respondents no.1 to 4.

Mr.Raj Kumar Kakkar, Advocate
for private respondents.

VIKAS BAHL, J.(ORAL)

1. This order will dispose of seven writ petitions i.e., CWP-12667-2016 titled as “Makhan Singh Vs. The Financial Commissioner Appeal Punjab and others, CWP-13785-2016 titled as “ Sukhdev Singh and another Vs. The Financial Commissioner Appeal Punjab and others, CWP-13786-2016 titled as “Sukhdev Singh and another Vs. The Financial Commissioner Appeal Punjab and others, CWP-13790-2016 titled as “Makhan Singh and others Vs. The Financial Commissioner Appeal Punjab and others”, CWP-13808-2016 titled as “Rajinder Singh and another Vs. The Financial Commissioner Appeal Punjab and others, CWP-13814-2016 titled as “Karnail Kaur Vs. The Financial Commissioner Appeal Punjab and others” and CWP-13305-2016 titled as “Makhan Singh and others Vs. The Financial Commissioner Appeal Punjab and others”

2. Challenge in all the writ petitions is to the order dated 20.11.2015 (Annexure P-9) passed by respondent no.1 vide which revision petitions filed by the private respondents have been allowed and the matter has been remanded to the Assistant Collector Ist Grade to decide the matter afresh keeping in view separate khewats and co-sharers therein. With the consent of all counsels, CWP-12667-2016 is being taken up as the lead case.

4. Learned counsel for the petitioners has submitted that the petitioners in all the writ petitions had filed seven applications for partition with respect to land comprised in 7 khewats as per jamabandi for the year 2002-03 situated at Daulatpura Niwan, Tehsil and District Moga. It is submitted that in the said partition proceedings, an order dated 14.11.2005 (Annexure P-2) was passed in which, it was specifically observed that it is

because the parties were in possession of different khewats. It is further submitted that vide the same order, the mode of partition was also proposed and as per clause 7 of the mode of partition, it was stated that the partition would be effected keeping in view the rules of consolidation and the case was adjourned to 30.11.2005 for filing objections to the mode of partition. It is stated that objections were filed by the contesting respondents to the mode of partition but the same were considered and rejected vide order dated 24.05.2006 (Annexure P-3) and the mode of partition was approved. It is argued that the order dated 24.05.2006 attained finality and neither any challenge was made to the same nor any further objections were filed and thereafter Naksha Arra was prepared and time was granted to the private respondents to file objections against the same and since no objection was raised against Naksha Arra, thus, Naksha Arra was approved vide order dated 29.09.2006 and even no challenge has been made to the said order. It is submitted that thereafter, Naksha Irri was prepared and no objection was filed to the said Naksha Irri and thus, Naksha Irri was also approved vide order dated 22.11.2006. It is stated that on 13.03.2007 i.e., after a delay of 3½ months from the date of passing of order dated 22.11.2006, an appeal was filed before the Collector and the Collector vide order dated 25.09.2007 (Annexure P-6), dismissed the appeal after observing that full opportunity of hearing had been given to the respondents in the partition proceedings. It is pointed out that even before the Collector, challenge was only to the order dated 22.11.2006 and not to the order dated 14.11.2005 or the other subsequent orders. It is submitted that Sanad Takseem was prepared on 24.12.2007 and thus, the partition proceedings were finalised and it is only in the year 2008 that seven revision petitions were filed before the

petitions after considering the fact that no appeal had been filed against the mode of partition and thus, the same had attained finality. It was also observed that since Sanad Takseem had been prepared, thus, no appeal or revision lies and that the Sanad Takseem dated 24.12.2007 was not challenged before the Commissioner. It is submitted that thereafter seven revision petitions were filed before the Financial Commissioner and even before the Financial Commissioner, sole challenge was to the order dated 18.06.2009 and no challenge was laid to the Sanad Takseem or the order dated 14.11.2005, but however, the Financial Commissioner by merely observing that different khewats are involved with different co-sharers, set aside the entire proceedings and remanded the matter to the Assistant Collector Ist Grade to decide the same afresh. It is submitted that once, no objection has been filed to the mode of partition and the order dated 14.11.2005 specifically stated that all the khewats had to be clubbed and the said order had attained finality, thus it was not open to the Financial Commissioner in a challenge to the subsequent proceedings to indirectly set aside the said order and undo the entire proceedings which had culminated into the issuance of Sanad Takseem. Reliance in this regard has been placed upon the judgments of coordinate Benches of this Court reported as **1992 PLJ, 45** and **1994 PLJ 156**. It is further submitted that as per the procedure for partition if objections / appeal is not filed at the appropriate stage and a particular order becomes final, then the same would operate as constructive res judicata for the purpose of further proceedings in partition. It is submitted that the said aspect has not been considered by the Financial Commissioner and thus, at any rate, the order of Financial Commissioner deserves to be set aside with a direction to the Financial Commissioner to

are all closely related to each other and co-sharers in all the khewats.

4. Learned counsel for the private respondents, on the other hand, has opposed the present writ petitions and has submitted that it is a matter of settled law that in case co-sharers in different khewats are not the same, then in such a situation, the khewats cannot be clubbed except in case all the co-sharers consent to the clubbing of the said khewats. For the said purpose, reliance has been placed upon a judgment of a coordinate Bench of this Court reported as **2019(2) Law Herald 1527**. It is submitted that the petitioners had initially objected to the clubbing of the said khewats and said objections were dismissed on 24.05.2006. It is also submitted that in the present case on account of clubbing of khewats, area that has been given to the private respondents is either more or less than what they own in each khewat which is not permissible.

5. Learned counsel for the petitioners, in rebuttal, has argued that nor challenge to the order dated 24.05.2006, dismissing the objections of the private respondents would, in effect amount to consent of the parties to the clubbing of khewats.

6. The arguments of both the learned counsels raises several issues. During the course of arguments, it has not been disputed by the learned counsel for the petitioners as well as private respondents that the Financial Commissioner, in the operative part of the order, has not considered the said arguments and has solely on the ground that there were different co-sharers in different khewats, set aside the entire proceeding and directed the Assistant Collector Ist Grade, to decide the matter afresh. It has been jointly submitted that in case the matter is remanded to the Financial Commissioner, all the counsels would make every endeavour to pursue the

without delay so that the matter could be decided afresh expeditiously.

7. Keeping in view the above said facts and circumstances, this Court is of the opinion that the order of the Financial Commissioner does not deal with the issues which arise in the present cases and thus, in light of the same, all the writ petitions are partly allowed and the order of the Financial Commissioner dated 20.11.2015 in all the revision petitions is set aside with the following directions:-

- i) The parties are directed to appear before the Financial Commissioner on 24.05.2023. It would be open to the Financial Commissioner to issue notice to any party which is unrepresented and which is necessary for the purpose of adjudication.
- ii) The Financial Commissioner would summon the record of the Assistant Collector Ist Grade. It would be open to the parties to move an application for summoning any other record which would be relevant for adjudication and the application would be decided by the Financial Commissioner independently, in accordance with law.
- iii) The Financial Commissioner would make every endeavour to decide the revision petitions as expeditiously as possible.

8. It is made clear that this Court has not opined on the merits of the case and the Financial Commissioner would decide the revision petitions afresh, in accordance with law, after considering all the arguments raised by all the counsels.

May 17, 2023
Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No