

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

CWP-25906-2016

Date of decision : 31.08.2023

Manjit Kaur

.....Petitioner

versus

AC-Ist Grade Jalandhar-II and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashok Giri, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Sarbjeet Singh Khaira, Advocate
for respondent No.2.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for setting aside the impugned order dated 02.08.2016 (Annexure P-5) whereby proposed mode of partition was ordered by keeping the possession intact and also order dated 23.08.2016 (Annexure P-6) whereby the same was sanctioned in utter disregard to the objections filed by the petitioner.

Learned counsel for respondent No.2 has submitted that impugned order is appealable and thus, the present petition deserves to be dismissed on this ground alone.

Learned counsel for the petitioner has submitted that when the present writ petition was filed, there was no provision of any statutory appeal. However, he has fairly submitted that now as per amendment made in the year 2020, there is a provision for appeal provided under Section 117 of the Punjab Land Revenue Act. He has also submitted that

since the learned counsel for contesting respondent is raising an objection that the appeal is maintainable so petitioner is ready to file an appeal but the interim order dated 09.01.2017 be continued for a period of two weeks to enable him to approach the Court of Collector for filing the appeal. It is further prayed that contesting respondent should not raise any objection regarding the maintainability of appeal and even with regard to the delay caused in filing the appeal. He has relied upon the decision rendered by this Court in **Gurmeet Singh and others Vs. A.C. First Grade-cum-Naib Tehsildar Patiala and others** in CWP-9002-2017 vide order dated 01.02.2023.

Learned counsel for private respondent has opposed the prayer made by learned counsel for petitioner for extension of interim order.

After hearing both the counsel for the parties, this Court does not agree with learned counsel for respondent No.2. As the stay was granted on 09.01.2017 at the initial stage, so it should be extended for two more weeks enabling the petitioner to avail his statutory remedy.

Keeping in view the facts and circumstances of the present case, the present writ petition is disposed of in the following terms:

- (i) Petitioner would be at liberty to file an appeal against the order dated 27.03.2017 before the Collector, Jalandhar within a period of two weeks from today. The said appeal would be heard and decided by the Collector on merits. Respondent No.2 would not raise any plea with respect to the maintainability of the said appeal or oppose the same on the ground of limitation.*
- (ii) Interim order dated 09.01.2017 will remain in force till the time an application for stay filed by the petitioner alongwith the appeal is considered. It is made clear that*

the said direction would ensue in favour of the petitioner only in case the appeal is filed within a period of two weeks from today alongwith a stay application.

(iii) The Collector, Jalandhar would consider the appeal alongwith the stay application for preliminary hearing within a period of four weeks from today and after considering the same, would independently pass an order on the stay application. Extension of interim stay granted by this Court would not be construed as an expression of opinion on the merits of the case and the Collector, Jalandhar would decide the said application as well as the main case independently, in accordance with law.

31.08.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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