

113

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

CWP-25741-2023

Date of decision : 18.12.2023

Salinder Kumar**.....Petitioner**

versus

Financial Commissioner and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. P.S. Jammu, Advocate
for the petitioner.

*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for setting aside the impugned *sanad takseem* dated 28.06.2013 (Annexure P-1) passed by respondent No.2-Assistant Collector vide which partition application filed by respondents No.81 and 82 was allowed without hearing all the necessary parties and present petitioner as well as impugned order dated 06.07.2023 (Annexure P-4) passed by respondent No.1 vide which ROR No.588 of 2015-16 filed by respondent No.3 has been dismissed and the application filed by the present petitioner for transposing him as co-petitioner in ROR has not been entertained as the said orders are illegal, arbitrary and are liable to be set aside.

It has been submitted by counsel for the petitioner that respondent No.81-Dalip Singh had filed a partition application for seeking partition of the land against as many as 75 other co-sharers including the present petitioner. He has submitted that petitioner as well as other co-sharers were proceeded ex parte as no notice was served upon them. It is submitted that learned Assistant Collector had passed the order dated

09.02.2012 and accepted the naksha beh. Thereafter vide impugned order dated 28.06.2013, sanad takseem was prepared. He has submitted that respondent No.3-Amar Singh challenged the sanad takseem dated 28.06.2013 by filing ROR No.588 of 2015-16 before respondent No.1-Financial Commissioner. He has submitted that on receiving the notice, petitioner came to know about the pendency of the partition proceedings. He submits that respondent No.3 in connivance with respondent No.81-Dalip Singh and respondent No.82-Ugarsain filed an application for withdrawal of the ROR. He submits that the petitioner and other co-sharers were equally aggrieved with the sanad takseem. Hence, he filed an application for transposing the petitioner who was respondent in the revision as co-petitioner. It is submitted that similar application was filed by co-sharers who are respondents No.41 and 42 in the present case. He submits that petitioner and other co-sharers contended before learned Financial Commissioner that the partition proceedings was carried out by the Assistant Collector totally in contravention to the established principles of law and thus, the same be set aside and the case be remanded to Assistant Collector for fresh decision. He submits that respondent No.1 failed to appreciate the same and thus, illegally dismissed ROR vide impugned order dated 06.07.2023. He has submitted that the Assistant Collector has illegally granted passage to the co-sharers whereas land of the co-sharers is already touching the main passage. He submits that the partition proceedings have been carried out totally in contravention to the mode of partition and thus, respondent No.1 has failed to appreciate the same and passed the impugned order which is totally unsustainable in the eyes of law. He submits that the impugned order being illegal and unsustainable in the eyes of law, deserves to be set aside.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated way back by respondents No.81 and 82. Notice was issued to the co-sharers. Though counsel for the petitioner has contended that the partition proceedings were proceeded *ex parte* qua him however, the same is not substantiated from the record of the case. It is evident that the service was effected on the petitioner as per the mandate of the law. The petitioner did not file any objection at any stage. It has been found by respondent No.1 on perusing the record that the petitioner did not file any objection at any stage of partition proceedings despite having joined the partition proceedings. Their presence during the partition proceedings is also substantiated from the record of the partition proceedings. The partition proceedings are also found to have been conducted as per the terms and conditions of the approved mode of partition. It is also found that the petitioner submitted an affidavit dated 17.04.2023 deposing therein that they have amicably settled the issue with the respondents. Except minor variations which are unavoidable in partition proceedings, no material irregularity has been found to have been committed. It is apparent from the record that sanad takseem i.e. final instrument of partition was issued way back on 28.06.2013. Thus, finding no perversity in the impugned order, this Court does not find any merit in the present petition and hence, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

18.12.2023
m. sharma

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