

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

CWP-5281-2024

Date of decision : 04.03.2024

Kishore Singh

.....Petitioner

versus

Financial Commissioner (Appeals) and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vivek K. Thakur, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for setting aside the impugned order dated 14.12.2023 (Annexure P-10) passed by learned Financial Commissioner (Appeals) Punjab in exercise of jurisdiction under Section 16 of the Punjab Land Revenue Act, 1887 whereby the revision petition filed by the respondents has been allowed after setting aside the order dated 28.05.2019 (Annexure P-9) passed by learned Commissioner, Jalandhar, order dated 16.01.2014 (Annexure P-8) passed by learned Collector, Pathankot as well as the order dated 03.11.2009 (Annexure P-6) passed by the Assistant Collector 1st Grade, Pathankot and the matter was remanded back to the Assistant Collector 1st Grade, Pathankot to decide the partition application afresh being completely illegal and contrary to the facts and law as expounded. Further prayer has been made for staying the operation of impugned order dated 14.12.2023 (Annexure P-10).

It has been submitted by counsel for the petitioner that father of the petitioner namely, Iqbal Singh filed an application for partition of land measuring 146 kanals 2 marla before the Assistant Collector 1st Grade on 10.03.1995. The mode of partition was sanctioned and the

objections raised by all co-sharers were rejected by the Assistant Collector 1st Grade vide order dated 19.03.1998. The appeal was filed against the same before the learned Collector, Pathankot and on hearing counsel for the parties, learned Collector, Pathankot remanded the case to the Assistant Collector 1st Grade vide his order dated 12.12.2000. Thereafter, the partition application filed by father of the petitioner was dismissed vide order dated 27.02.2004 by Assistant Collector 1st Grade on the ground that the land being abadi land comes outside the purview of the partition proceedings. Being aggrieved, the petitioner filed the appeal before the Collector who also dismissed the same vide his order dated 06.12.2005. The petitioner filed the appeal before the learned Commissioner against the order dated 06.12.2005 and the order dated 27.02.2004 wherein learned Commissioner *set aside* both these orders vide his order dated 04.06.2008. In pursuance to the same, Assistant Collector 1st Grade passed the final partition vide his order dated 03.11.2009 stating that according to Halqa Girdawar report, out of 146 kanals 02 marlas, 58 kanals 1 marla was vacant and therefore the said land could not be partitioned and while considering the mode of partition sanctioned on 05.12.1995, *naksha bey & zeem* was presented on 22.09.2009. No party raised any objection to the same and final partition order was passed. The *sanad taksim* was issued on 04.12.2009. Respondents filed the appeal before the Collector for setting aside the order dated 03.11.2009 passed by Assistant Collector 1st Grade and the said appeal was dismissed by the Collector on the ground that sanad has already been issued on 04.12.2009 and the same has been implemented in the revenue record on 16.01.2014. Thereafter again, the appeal was filed by respondents before the Commissioner against the orders dated

03.11.2009 and 16.01.2014 and the said appeal was dismissed and thus, the order passed by the Collector was upheld by the Commissioner, Jalandhar on 28.05.2019. Thereafter, the appeal filed by the respondents before the learned Financial Commissioner was allowed vide order dated 14.12.2023 on the ground that Assistant Collector has partitioned *gair-mumkin* land which is against the settled principles of law and thus, the case has been illegally remanded back to the Assistant Collector 1st Grade, Pathankot to decide the partition proceedings afresh.

Learned counsel for the petitioner vehemently contends that learned Financial Commissioner has failed to take into consideration that the *sanad taksim* (instrument of partition) had already been issued on 04.12.2009 but the respondents No.6 to 10 had never challenged. He has submitted that the mode of partition was presented on 22.10.2009 and no objection was filed by the respondents against the same. Hence the Assistant Collector 1st Grade vide order dated 03.11.2009 sanctioned the mode of partition. He has submitted that learned Financial Commissioner has failed to take into consideration that the learned Assistant Collector 1st Grade vide his order dated 03.11.2009 had already obtained his site report from Halqa Patwari wherein it was clearly stated that out of 146 kanals 2 marlas, 58 kanals 01 marla was vacant and the Assistant Collector 1st Grade had partitioned the said vacant land. It is submitted that the impugned order being against the evidence on record is unsustainable in the eyes of law and thus, the remand order as directed by learned Financial Commissioner deserve to be *set aside*.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated by father of the petitioner on 10.03.1995. In pursuance to the same, the

partition proceedings were initiated. The mode of partition was sanctioned and finally the *sanad taksim* was issued on 04.12.2009. Against the order dated 16.01.2014 passed by the Collector, Pathankot, the revision petition was filed before the learned Commissioner, Jalandhar. However, after hearing counsel for the parties, learned Commissioner dismissed the same vide order dated 28.05.2019. Being aggrieved, respondents No.5 to 9 filed the revision against the said order before the learned Financial Commissioner. However, learned Financial Commissioner after hearing the parties accepted the same by virtue of the order dated 14.12.2023, which has been impugned in the present petition. Learned Financial Commissioner on hearing the parties and perusing the record, has observed that the partition application was filed without impleading all the co-sharers who were the necessary party. However, the *abadi* area had also been partitioned. The Civil Suit No.154 dated 10.08.2005 filed by the petitioner was dismissed as withdrawn on 16.08.2011. Further it was found that the land for which the partition application was filed had come under the *abadi*. It is evident from the statutory provisions of Section 4, 112 and 119 of the Punjab Land Revenue Act that the land occupied as a site of the village or town and *gair mumkin* land has to be excluded from the operation of the partition proceedings, whereas in the case in hand, the *gair mumkin* land was included in the partition proceedings. The inclusion of the *abadi* and *gair mumkin* land is a blatant violation of the partition proceedings as the same are beyond the purview of the partition proceedings. As the revenue authorities failed to appreciate the same thus, learned Financial Commissioner has rightly interfered with the same by setting aside the orders passed in violation of the settled principles of partition and directing the Assistant Collector 1st Grade to decide the case

afresh on hearing all the co-sharers. The impugned order passed, in the considered opinion of this Court, meets the ends of justice. Thus, this Court does not find any reason to differ with the view taken by the learned Financial Commissioner in remanding the case for decision afresh. Thus, the present petition is hereby dismissed. However, in view of the facts and circumstances of the present case, the Assistant Collector 1st Grade is directed to decide the partition proceedings afresh on hearing all the necessary parties expeditiously preferably, within three months, in case there is no legal impediment and any stay order passed by any Superior Court in this case.

04.03.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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