

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

CWP-5024-2024

Date of decision : 04.03.2024

Reshamjit Singh Chinna

.....Petitioner

versus

Financial Commissioner (Appeals), Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. K.B.S. Mann, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 04.08.2023 (Annexure P-10) passed by respondent No.1 whereby the case has been remanded back and the order of partition dated 28.09.2018 and sanad takseem dated 18.04.2019 along with consequential proceedings have been set aside in the revision filed by respondents No.3 to 5. Further prayer has been made for staying the impugned order dated 04.08.2023 (Annexure P-10) passed by respondent No.1.

It has been contended by counsel for the petitioner that petitioner filed an application dated 06.07.2017 under Section 111 of the Punjab Land Revenue Act, 1887 for partition of land measuring 227 kanals 14 marlas situated at Village Wadala Bhitteawad, Tehsil Amritsar-2, District Amritsar. The Revenue Authorities issued the notice to respondents No.4 and 5 who joined the partition proceedings. However, on appearing before the authorities, counsel for respondent No.4 intentionally did not appear in the partition proceedings and hence, they were proceeded *ex parte*. It is submitted that the mode of partition was passed by respondent No.2 on 10.08.2017 wherein it was agreed that the

partition would be carried out by breaking the possession. The partition application was allowed and the land was partitioned between the parties vide order dated 28.09.2018 by the learned Assistant Collector-cum-Tehsildar, Grade-1, Amritsar-2. Thereafter, *sanad taksim* i.e. instrument of partition was issued on 18.04.2019 and the warrants of possession were issued on 26.04.2019. He submits that respondents No.4 and 5 filed a civil suit for permanent injunction against the petitioners on 09.08.2019. Respondents No.3 to 5 filed a revision before the learned Financial Commissioner (Appeals) Punjab against the order dated 28.09.2018. The *status quo* was granted in the revision filed on 11.09.2020, however, same was vacated on 24.09.2021. It is submitted by counsel for the petitioner that respondents No.3 to 5 filed CWP-23480-2021 in which the order regarding *status quo* of possession was passed. This CWP was disposed of by this Court vide order dated 24.05.2023 directing respondent No.1 to decide the ROR expeditiously and in accordance with law, within a period of five months. He submits that the learned Financial Commissioner has illegally allowed the revision petition without considering the facts and circumstances of the case and the law settled by remanding back the case to Naib Tehsildar-cum-District Collector Grade-I, Amritsar to decide afresh after giving opportunities to the parties. He submits that the impugned order passed being totally against the facts and circumstances of the case, evidence on record and the statutory provisions, deserves to be *set aside*. It is submitted that respondents No.4 and 5 intentionally did not appear before the Assistant Collector and thus, they were rightly proceeded *ex parte*. It is submitted that the pendency of the partition proceedings were well within the knowledge of respondents No.4 and 5 and they filed the civil suit as well. Thus, the averments made by them of

not having the knowledge about the pendency of partition proceedings are totally against the facts and circumstances of the case but the learned Financial Commissioner has failed to appreciate the same and thus, has arrived at wrong conclusion in remanding the case vide impugned order dated 04.08.2023. It is submitted that the impugned order being illegal and arbitrary 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 at the behest of the petitioner on 06.07.2017. However, it is evident from the record that respondents No.4 and 5 were proceeded *ex parte*. As per the mode of partition, the partition proceedings were to be carried out keeping in view the value of land and thus, by breaking the possession. On perusal of the record, it is found that the partition proceedings have been carried out in violation of the terms and conditions of the mode of partition. The petitioner got his entire share on the main road and thus, was allotted the most valuable land which was evidently against the approved mode of partition. Without appreciating the same, the revenue authorities carried out the partition proceedings. Learned Financial Commissioner finding the glaring violations accepted the revision petition and *set aside* the order dated 28.09.2018 and 18.04.2019 by remanding the case for decision afresh.

In the facts and circumstances of the case, when there are patent illegalities in carrying out the partition proceedings, this Court is in agreement with the view taken by learned Financial Commissioner in remanding the case for decision afresh after taking into consideration the whole record of the case. Thus, the petition, being devoid of any merits, is hereby dismissed. However, the Assistant Collector to whom the case has

been remanded is directed to decide the partition proceedings expeditiously on hearing both the parties preferably, within three months, from the date of receipt of copy of this order, subject to stay order etc. if any passed by any Court pertaining to the land under partition.

04.03.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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