

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

CWP-12652-2017

Date of Decision: 26.04.2024

Gurbhaj Singh and another

..... Petitioners

Versus

Financial Commissioner and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Veneet Sharma, Advocate, for the petitioners.

Mr. N.S.Diwana, Sr. DAG, Punjab.

Mr. G.S. Nagra, Advocate, for respondent No.5.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the order dated 10.11.2016 passed by respondent No.1 (Annexure P-8), order dated 06.01.2010 passed by respondent No.3 (Annexure P-5), order dated 22.01.2009 passed by respondent No.4 (Annexure P-2) and *Sanad Takseem* dated 05.03.2009 dated 05.03.2009 (Annexure P-3) passed by respondent No.4, being illegal, arbitrary and contrary to the provisions of Punjab Land Revenue Act and thus, the same is liable to be set aside. Further prayer has been made for staying the operation of the impugned orders.

2. It has been contended by learned counsel for the petitioners that respondent No.5- Surjit Kaur filed an application on 25.06.2007 for partition of her share out of land comprising 46 K 9M claiming herself to be co-sharer in respect of 4/21 share before respondent No.4-Assistant Collector Ist Grade. It is submitted that on filing of application, respondent No.4 while violating the mandatory provisions of Section 20 of the Punjab Land Revenue Act (for short, 'the Act'), without effecting personal service of the co-sharers, ordered proclamation to be made. He has submitted that

respondent No.4 sanctioned *Naksha B* on 06.01.2009 and *Naksha C* on 22.01.2009. Thereafter, *Sanad Takseem* was issued on 05.03.2009. It is submitted that *Sanad Takseem* was issued in a hasty manner without affording any sufficient opportunity of hearing to the petitioners. It is submitted that aggrieved by the same, the petitioners filed an appeal before respondent No.3 Collector-cum-SDM, who dismissed the same vide his order dated 06.01.2010 on the ground that *Sanad Takseem* had already been issued and the petitioners were duly served by way of proclamation. It is further submitted that again aggrieved by the order passed by respondent No.3, the petitioners filed their revision petition before respondent No.2 i.e. Commissioner, Jalandhar Division, Jalandhar, who accepted the same and remanded the case for a fresh decision vide his order dated 23.11.2010. However, respondent No.5 assailed the order dated 23.11.2010 by way of filing revision petition before respondent No.1 i.e., however, respondent No.1 Financial Commissioner without appreciating the evidence on record and the law settled, has illegally set aside the well reasoned order passed by respondent No.2, vide impugned order dated 10.11.2016, which is totally unsustainable in the eyes of law. Learned counsel for the petitioners had invited the attention of this Court to the zimini orders passed by Assistant Collector Ist Grade, which are read as under:-

“The Applicant has submitted an application and the same to be presented after checking.

S/d-
AC Ist Grade, Tarn Taran
25/06/2008

Sir,

It is prayed that the documents attached with the file was perused and the same was correct and the file is presented for necessary orders.

S/d-
AC Ist Grade, Tarn Taran
25/06

The case to be registered. The summons be issued to the respondents and the case is adjourned to dated 01/07/2008.

S/d-
AC Ist Grade, Tarn Taran
25/06

The file has been presented. Nobody is present. The case is adjourned to 08/07/2008.

S/d-
AC Ist Grade, Tarn Taran
01/07

The file has been presented. The Counsel is present. The summons were not received back. The same to be awaited and the case is adjourned to 16/07/2008.

S/d-
AC Ist Grade, Tarn Taran
08/07

The file has been presented. The applicant along with the counsel is present. The notice has not been received back. The same to be issued again and simultaneously the proclamation/Mushtri-Munadi be also got effected and Naksha-A be also got summoned and registered notices be issued. The case is adjourned to 28/02/2008.

S/d-
AC Ist Grade, Tarn Taran
16/07

The file has been presented. The applicant along with counsel is present. The registered letters have been received back. The proclamation has also been effected in the village and the same has also received back. Only the Bank employee is present in the Court and nobody else has come present. Since they have not come present, ex-parte

proceedings are effected against them. The case is adjourned to 05/08/2008.

S/d-
AC Ist Grade, Tarn Taran
28/07”

3. Learned counsel for the petitioners thus, vehemently contended that from perusal of the aforesaid zimini orders, it is evident that the partition proceedings were carried out in a gross violation of Section 20 of the Act. He has further submitted that petitioner No.1 is in possession of the land bearing Khasra No.39//5 and hence, this Khasra number has been wrongly allotted to respondent No.5 and possession of petitioner No.1 has been disturbed without allotting him any alternative land in the partition proceedings. He further submits that the land allotted to respondent No.5 is abutting the passage, which is most valuable part of the suit land and thus, the same is violative of the settled principles of partition proceedings. He has vehemently submitted that name of petitioner No.2 was wrongly mentioned and wrong addresses were also given, which has vitiated the partition proceedings. He has submitted that learned Collector had illegally dismissed the appeal filed by the petitioners, however, learned Commissioner had rightly set aside the same by remanding the case to the Assistant Collector Ist Grade for decision afresh. However, learned Financial Commissioner again fallen in error in overlooking the overwhelming evidence on record that proceedings qua the petitioners were carried out *ex parte* in gross violation of principles of natural justice and thus, the same deserve to be set aside.

4. Learned counsel for respondent No.5 has opposed the submissions made by counsel for the petitioners. He has submitted that the petitioners had intentionally avoided to accept the service of summons and

thus, were rightly proceeded *ex parte*. It is submitted that proper procedure as per mandate of Section 20 of the Act was adopted and proclamation was made for effecting the service of the petitioners. He submits that *Sanad Takseem* was issued and possession of taks was transferred as per the settled principles of partition proceedings. It is submitted that the petitioners were enjoying the fruit of the land and thus, they are trying to delay the partition proceedings. It is further submitted that the present petition being devoid of any merit, deserves to be dismissed.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record with their able assistance, it is apparent that deceased-respondent No.5, namely, Surjit Kaur, who is represented by her LRs, filed an application for partition of land to get her share partitioned. On filing of the application, it is evident from the zimini orders reproduced above, the summons were issued and proclamation was also simultaneously issued and thereafter, the petitioners were proceeded *ex parte*. Though the petitioners assailed the same before the Collector, however, the same was dismissed by the Collector. Thereafter, it was assailed before the Commissioner, who after hearing both the sides found the partition proceedings carried out vitiated on various grounds as the same was not only carried out *ex parte* qua the petitioners but the exact share of the co-sharers was also not calculated. Thus, finding the partition proceedings to be carried out in an illegal manner, the orders of the Assistant Collector Ist Grade and the Collector, were set aside and the case was remanded to the Assistant Collector Ist Grade for decision afresh. However, learned Financial Commissioner, set aside the same in the revision petition filed by

respondent No.5 and thus, upheld the *ex parte* partition proceedings carried by the authorities below. There is no denial to the fact that the partition proceedings were carried out *ex parte* qua the petitioners.

7. As submitted by learned counsel for the petitioners, petitioner No.1 is in possession of Khasra No.39//5 which has been allotted to respondent No.5 and thus, his possession has been disturbed in the *ex parte* proceedings carried out. Once the partition proceedings are carried out in violation of principles of natural justice without even calculating the exact share of the concerned co-sharers, then this Court has no hesitation in holding the impugned order to be unsustainable in the eyes of law and thus, the impugned order dated 10.11.2016 (Annexure P-8) passed by the Financial Commissioner is hereby set aside and the order dated 23.11.2010 (Annexure P-7) passed by the Commissioner is restored. The case is remanded to the Assistant Collector Ist Grade concerned for decision afresh.
8. Let both sides appear before the Assistant Collector Ist Grade concerned on 09.05.2024, who would pass a fresh order after hearing both the sides in accordance with law expeditiously preferably within a period of two months from 09.05.2024.
9. Registry is directed to send a copy of this order to the Assistant Collector Ist Grade concerned, who on receipt of the same would proceed with the matter in accordance with law.
10. The petition stands allowed in above-said terms.

26.04.2024
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No