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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16354-2016
Date of decision : 21.03.2024

Nirmal Singh and another **.....Petitioners**

versus

Financial Commissioner and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present :- Mr. Rajan Bansal, Advocate
for the petitioners.

Mr. Tribhawan Singla, Senior DAG, Punjab.

Mr. K.B. Raheja, Advocate
for respondent No.3.

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<u>RAJESH BHARDWAJ, J.</u>

Prayer in the present petition is for quashing the order dated 21.01.2015 (Annexure P-2) passed by respondent No.2 vide which learned Assistant Collector 1st Grade (Tehsildar), Bathinda has wrongly and illegally prepared the mode of partition and order dated 10.08.2015 (Annexure P-3) passed by respondent No.2 vide which learned Assistant Collector 1st Grade (Tehsildar), Bathinda has wrongly and illegally sanctioned the *naksha bey* and order dated 10.12.2015 (Annexure P-5) vide which learned Assistant Collector 1st Grade (Naib-Tehsildar), Bathinda has erroneously, illegally against facts, arbitrarily, unconstitutional against the mandatory provisions of Punjab Land Revenue Act, 1887 and Punjab Land Record Manual, hurriedly also against the principles of natural justice, equity, good conscience has dismissed the ROR No.513 of 2016 filed by petitioners *in limine* on the ground of limitation only.

The present petition has been emanated from the partition proceedings which were initiated by respondent No.3-Harnek Singh. Respondent No.3 filed the application dated 14.12.2012 for the partition of joint land measuring 469 kanals 08 marlas situated at Village Naruana, Tehsil & District Bathinda.

Inter alia it has been contended by counsel for the petitioners that the impugned order dated 14.07.2016 passed by the learned Financial Commissioner dismissing the revision petition filed by the petitioners on the ground of limitation by not condoning the delay of 125 days, is totally unsustainable in the eyes of law. He has submitted that respondent No.3 filed the application for partition dated 14.12.2012. He has submitted that the Assistant Collector 1st Grade, Bathinda without following the statutory provisions of Section 20 of the Punjab Land Revenue Act, 1887 ordered for sanctioning the naksha 'Alf' dated 21.01.2015. The naksha bey was sanctioned by the Assistant Collector 1st Grade, Bathinda vide order dated 10.08.2015 and *naksha zeem* was sanctioned on 27.11.2015. He has submitted that the Assistant Collector 1st Grade without following the due process of the partition proceedings issued the *sanad takseem* vide order dated 10.12.2015. He has submitted that no service as per the mandate of Section 20 of the Act was effected upon the petitioners and thus, they came to know about the partition proceedings in the first week of July, 2016. It was found that the best quality of the land has been allotted to respondent-Harnek Singh. Petitioner arranged the necessary documents and thereafter filed ROR No.513 of 2016 along with the application for condonation of delay which was *bona fide* and unintentionally before the learned Financial Commissioner-respondent No.1. However, respondent No.1 without taking into consideration the plea taken by the petitioners in the application for condoning the delay has illegally dismissed the revision petition filed in *limine* merely on the ground of delay. He has submitted that the partition proceedings have been carried out without associating the petitioners and thus, grave injustice has been caused to the petitioners by the *ex parte* partition proceedings carried out by the respondents-authorities. It is submitted that the view taken by the learned Financial Commissioner in dismissing the petition on the ground of delay without taking into consideration the merits of the case is totally unsustainable and is against the equality and the settled principles of law. He submits that the impugned order being unsustainable in the eyes of law, deserve to be *set aside* by directing the respondent-Financial Commissioner to decide the case on merits.

Per contra, learned counsel for respondent No.3 has opposed the submissions made by counsel for the petitioners. He submits that the petitioners intentionally avoided the service to be effected upon them and simply in order to prolong the partition proceedings, they have not appeared before the partition proceedings. He submits that there being no justifiable ground in condoning the delay, respondent No.1-Financial Commissioner has rightly dismissed the revision petition filed by the petitioners on the ground of delay. It is submitted that the impugned order being passed in accordance with law, suffers from no infirmity and thus, the petition deserves to be dismissed.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the partition proceedings were initiated in the year 2012 by respondent No.3. The precise submissions made by counsel for the petitioners is that the partition proceedings have been carried out *ex parte* qua the petitioners. He has submitted that the best quality of the land has been allotted to respondent No.3 by carrying out the partition proceedings at the back of the petitioners. There is no gainsaying that the revision petition filed by the petitioners has been dismissed simply on the ground of delay of

125 days and thus, the case has not been appreciated on the basis of the merits. Needless to say that the partition proceedings are carried out among the co-sharers and the objections are invited from all the co-sharers regarding the mode of partition. However, this is an admitted fact that the petitioners were not the party to the partition proceedings. Thus, the petitioners have explained the reason for delay of 125 days. However, the same was not condoned and thus, the revision petition has been dismissed *in limine*.

In the considered opinion of this Court and in the light of the facts and circumstances of the present case, the revision petition filed should have been decided on merits by respondent No.1 by not dismissing the same only on the ground of delay. A serious prejudice has been caused to the petitioners as they have not been heard on merits. Thus, the delay of 125 days in filing the revision petition is condoned. The impugned order dated 14.07.2016 passed by the Financial Commissioner is *set aside*. Resultantly the case is remanded to the learned Financial Commissioner for deciding the same afresh on merits by hearing all the parties to the partition proceedings. Learned Financial Commissioner is directed to decide the case afresh on merits expeditiously, preferably, within three months from the date of receipt of copy of this order.

Office is directed to send copy of this order to respondent No.1 forthwith who on receipt of the same will issue notice for appearance to all the parties concerned and proceed further in the matter.

(RAJESH BHARDWAJ)
JUDGE

21.03.2024
m. sharma

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