

(2012) 07 P&H CK 0290

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12425 of 2010

Harchand Singh and another

APPELLANT

Vs

Financial

Commissioner/Revenue, Punjab
and others

RESPONDENT

Date of Decision: July 3, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Land Revenue Act, 1887 - Section 111

Citation: (2012) 168 PLR 419

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: Amit Jain, for the Appellant; B.B.S. Teji, Addl. AG, Punjab for the State and Mr. R.S. Chauhan, for the Respondent

Judgement

Ranjit Singh, J.

Respondent-Darshan Singh filed an application u/s 111 of Punjab Land Revenue Act, 1887 to seek partition of land measuring 335 kanals 15 marlas situated in village Piddi, Tehsil and District Tarn Taran. This application was contested by the petitioners. Mode of partition is sanctioned. The Assistant Collector Ist Grade through his order dated 18.05.2007 while carrying out partition is alleged to have not only disturbed the respective possession of the parties at the spot but has statedly caused deficiency of 10 kanals to the petitioner. Aggrieved against the same, the petitioner filed an appeal before the Collector, Tarn Taran, which was dismissed on 31.03.2008. The petitioner, thereafter, filed revision before the Commissioner, Jalandhar Division, Jalandhar, who on 29.04.2008 found that Darshan Singh had been given 27 kanals 10 marlas land instead of 22 kanals of land. The Commissioner also noticed that the partition was to be done keeping in view the possession of parties on the land, which was to be kept intact. This has been

ignored. The Commissioner, accordingly, accepted the revision petition filed by the petitioners and set aside the order passed by the Assistant Collector Ist Grade as well as of the Collector. The Commissioner, accordingly, remanded the case to Assistant Collector Ist Grade, Tarn Taran for deciding the case afresh while allowing the parties to keep possession intact. The respondents herein filed a revision against the same before the Financial Commissioner, who has now held that appeal before the Collector against the final instrument of partition was not maintainable. Accordingly, the Financial Commissioner has set aside the order passed by the Commissioner and has upheld the order of Collector as well as of Assistant Collector Ist Grade, Tarn Taran. It is now the turn of the petitioners to challenge the order passed by the Financial Commissioner through the present writ petition.

2. In response to notice issued, the respondents have filed reply. The order passed by the Financial Commissioner is sought to be justified on legal and factual issues. The perusal of the order passed by the Financial Commissioner, however, shows that he has mainly decided the case on the maintainability of appeal. It is viewed by the Financial Commissioner that appeal against the final instrument of partition was not maintainable before the Collector. Since the Commissioner had failed to go into the aspect of maintainability of appeal, while interfering with the order passed by the Assistant Collector Ist Grade, the Financial Commissioner has set aside the order passed by the Commissioner.

3. Counsel for the petitioners has referred to the case of Amar Khan and others v. State of Punjab and others 2009 (1) RCR (Civil) 741 in support of his pleas at the time of motion hearing. It is noticed by the Court that the Financial Commissioner has mainly set aside the order of Commissioner on the ground that the appeal was not maintainable against the order drawing up a Sanad Takseem. The submission is that the Financial Commissioner should have thereafter either examined the legality of partition proceedings or granted an opportunity to the petitioners to file a revision. In support the case of Amar Khan (supra) is relied. A Division Bench of this Court has observed in this case that no appeal against the preparation of Sanad is maintainable. Aggrieved party can invoke jurisdiction of Financial Commissioner u/s 16 (1) of Land Revenue Act against the order. As per this section, the Financial Commissioner is empowered to call for record of any case, pending before or disposed of by any revenue officer subordinate to him. In addition, the person can also invoke the jurisdiction under Article 226/227 of the Constitution as is observed by the Court in the case of Amar Khan's (supra).

4. Reference also is made to Balbir Chand v. Financial Commissioner (Appeals-II), Punjab and others 2010 (2) RCR (Civil) 263. A Single Bench of this Court has similarly viewed that once Sanad Takseem is prepared and sanctioned, the revenue authorities other than the Financial Commissioner cannot interfere with the same. As is observed, the Financial Commissioner in exercise of his powers u/s 16 (1) of the Land Revenue Act can consider the same and that finality attached to Sanad

Takseem can always be impugned by invoking the powers of High Court under Article 226 of Constitution of India.

5. Apparently, the petitioner had wrongly invoked jurisdiction of the Collector by filling the appeal. Even as per the judgment noticed above, the appeal against the partition of the land over Sanad Takseem is issued is not maintainable. The Commissioner has not kept the legal position in view that as per the law laid down in the cases of Amar Khan (supra) and Balbir Singh (supra), the revision was not maintainable before him. The appropriate remedy for the petitioners was to approach the Financial Commissioner by way of revision.

6. Once the petitioners had a remedy to file revision before the Financial Commissioner, the Financial Commissioner could even have invoked the suo motu jurisdiction u/s 16 (1) of the Act to see the legality and validity of the order, which was subject matter of challenge before him. The manner in which the case has been disposed of has left the petitioner without a remedy. It would, therefore, be appropriate to remand this case back to the Financial Commissioner. The petitioners would be at liberty to file a fresh revision petition if so advised. The respondents would also be at liberty to raise all the relevant pleas before the Financial Commissioner who may then decide the case in accordance with law. Since the instrument of partition has been issued in this case long ago, it would be just for the Financial Commissioner to decide this case within a time bound period. It would be appreciable if Financial Commissioner decide this case within a period of three months from the date of receipt of copy of this order. The parties through their counsel are directed to appear before the Financial Commissioner on 25.07.2012. Any observation made by the Financial Commissioner earlier may not influence the Financial Commissioner while now deciding the case. Since Section 16 of the Act was available on the statute on the date, the Financial Commissioner had passed an order, he in this case, would have valid jurisdiction to deal with the revision. The writ petition is, accordingly, disposed of.