

(1993) 09 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12964 of 1991

Sohan Lal

APPELLANT

Vs

Financial Commissioner (Appeals), Punjab at Chandigarh and
others

RESPONDENT

Date of Decision : 28-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1994 P&H 30

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ashwani Chopra, for the Appellant; M.L. Sarin and Ms. Alka Sarin,
for the Respondent

Judgement

1. The dispute between the two brothers (the petitioner and respondent No. 4) is over a trifle. It relates to the partition of a piece of land. The claim of the petitioner has been rejected by the Assisiant Collector Grade I, the Collector and even the Financial Commissioner. Aggrieved by these orders, the petitioner has filed this writ petition and challenged the findings recorded by the revenue authorities. A few facts may be noticed.

2. On an application for partition of the land measuring about 53 Kanals, the Assistant Collector sanctioned the mode of partition and sent the papers to the Girdawar for preparation of the necessary documents. The petitioner and the respondent were given opportunity to file objections. None were filed. Vide order dated January 10, 1989 fa copy of the order is at Annexure P-2), the Assistant Collector recorded that the parties have stated that they have verified the papers to be correct and requested for acceptance of the same. So in the absence of any objection, the partition is accepted. Feeling aggrieved by the order, the petitioner filed an appeal before the Collector. It was rejected vide order dated June, 12, 1989, a copy of which has been produced as Annexure P-3 with the writ petition. He filed a revision petition before the Commissioner (Appeals), Jalan-dhar

Division, Jalandhar. The Commissioner made a recommendation to the Financial Commissioner for acceptance of the revision petition. However, vide order dated April 15, 1991, the Financial Commissioner held that "the petitioner will get 1 Karam more out of Khasra No. 927 than the area ordered by A.C. Ist". With this modification, the revision petition was declined. Aggrieved by this order, the petitioner has approached this Court through the present writ petition. The orders passed by the various revenue authorities have been challenged as being in violation of the accepted mode of partition and the agreement arrived at between the parties.

3. In the written statement filed on behalf of respondent No. 4 certain preliminary objections have been raised. The averments made in the petition have been controverted and it has been stated that the order is in strict conformity with the agreement and the settled mode of partition.

4. I have heard Mr. Ashwani Chopra, learned counsel for the petitioner, Mr. M. L. Sarin, has argued the case on behalf of respondent No. 4.

5. It deserves notice at the outset that Mr. M.L. Sarin made an unequivocal offer at the outset that if the petitioner was not satisfied with the piece of land which has fallen to his share, he may exchange it with that of the respondent. This offer was not accepted by the learned counsel for the petitioner. In this situation, it is reasonable to assume that the land of the petitioner is in no way less or inferior to that of the respondent.

6. Irrespective of the above, it appears that even on merits, the petitioner has no cause for grievance which may be remediable by resort to the present proceedings. The primary argument urged by the learned counsel for the petitioner is that the order passed by the Assistant Collector, 1st Grade was not in conformity with the settled mode of partition or the agreement pleaded by respondent No. 4. He has further submitted that even the orders passed by the higher authorities suffer from the same infirmity.

7. The contention raised by the learned counsel cannot be accepted. The Assistant Collector, 1st, Grade has categorically observed in his order that no objection had been raised by any of, the parties to the partition papers as prepared by the field staff. Even though, this observation has been disputed by the learned counsel for the petitioner, yet nothing has been produced on record to show that any objection had in fact been raised. In fact, if any objection had been raised, the petitioner would have filed a copy thereof along with the writ petition. None has been filed. Still further, in the written statement filed on behalf of respondent No. 4, the averment of the petitioner that the Assistant Collector did not offer any opportunity to the petitioner to file objections, has been clearly denied. No affidavit has been filed to controvert the statement. In such a situation, it has to be assumed that the observation made in the order of the Assistant Collector is correct. That being so, it has to be held that the petitioner had accepted the correctness of the partition papers and had not raised any

objection in that behalf before the Assistant Collector. The order of the Assistant Collector, 1st Grade, a copy of which has been produced as Annexure P-2, was thus legal and valid.

8. Mr. Chopra, however, submits that the petitioner had filed an appeal before the Collector and thereafter, a revision before the Commissioner. The learned Commissioner had recommended the acceptance of the revision petition but the Financial Commissioner had erroneously rejected the recommendation with a slight modification in the order. He contended that the orders passed by the two authorities were not in conformity with law in as much as the binding terms of the agreement between the parties had been ignored.

9. The contention raised by the learned counsel cannot be accepted. Firstly, if the petitioner was not satisfied with the partition of the land as proposed by the field staff, he should have raised objections before the Assistant Collector, He did not do so. Once that had happened, there was no ground to file an appeal. In any event, even if, it is assumed that there was a minor deviation from the original agreement arrived at between the parties, the Financial Commissioner has in his order recorded that respondent No. 4 had agreed to give 1 Karam of land out of Khasra No. 927. This having happened, the petitioner had no valid grievance.

10. Mr. Chopra referred to the three complaints which had been produced by him along with Civil Miscellaneous Application No. 1679 of 1992 to contend that the partition should have been carried out in accordance with Plan No. II.

11. Partition of a holding is a matter for the field staff to carry out. The revenue authorities have the expertise. They are on the spot and are in a better position to appreciate the existence situation. The writ Court has neither the expertise nor the benefit of knowing the facts as they exist at the spot. In such a situation, the Writ Court is not equipped to interfere with the orders passed by the appropriate authorities. It can interfere only when any order is shown to be either apparently arbitrary and unfair or in violation of a provision of law. Nothing of the sort appears to have happened. In fact, it appears, as has been stated by the learned counsel for the respondent that the petitioner has actually got more than half the land. It is, thus, no wonder that he is not willing to exchange his land with that of respondent No. 4. In these circumstances, no interference whatsoever with the orders passed by the appropriate authorities, is called for.

12. The petition is lacking in merit. It is, accordingly, dismissed. However, even though, it was eminently a case for the award of compensatory costs, yet none are being awarded as the dispute is between the two brothers only.

13. Petition dismissed.