IN THE HIGH COURT FOR THE STATES OF

PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.\_\_\_\_\_\_\_\_\_of 2016

IN

R.O.R.N0. OF 2010

Suresh Kumar ---Petitioner

Versus

State of Punjab and others --Respondents

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Notes:

1. The main law points are canvassed in this writ petition are contained in para No. at page No. and
2. Relevant Rule and Statutes: Constitution of India and Punjab Land Revenue Act, 1887.
3. Any other case, if any: Nil

4. Whether caveat notice has been received: No

Place: Chandigarh **( SURESH AHLAWAT )**

**ADVOCETE**

DATED 21.06.2016

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. NO. \_\_\_\_\_\_\_\_\_\_ OF 2016

IN R.O.R. NO. OF 2010

Suresh Kumar son of Sh. Surjan Singh, resident of village Bhagsi Tehsil Dera Bassi, District Mohali

..Petitioner

Versus

1. State of Punjab through its Finance Commissioner, to Govt. of Punjab, Revenue Department, Punjab Sectariat, Sector-9, Chandigarh
2. Commissioner, Patiala Division, Patiala.
3. Collector, Sub Division Dera-Bassi, District Mohali.
4. Assistant Collector, 1st Grade, Dera Bassi, District Mohali.
5. Sohan Singh
6. Gurnam Singh
7. Tarsem Lal
8. Gurmit Singh sons of Prem Singh
9. Mohan Singh
10. Mahinder Singh sons of Sarup Singh
11. Ram Kumar
12. Sahib Singh sons of Surjan Singh

Residents of village Bhagsi, Tehsil Dera Bassi, District S.A.S. Nagar

**------------ ..Respondents**

Place: Chandigarh (SURESH AHLAWAT)

DATED 21.06.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside the orders dated 30.11.2015 (Annexure P-6) passed by the Learned Finance Commissioner, (Revenue) Punjab in R.O.R. No. 50 of 2010 , order dated 21.04.2010 (Annexure P-5) passed by the Learned Commissioner Patiala Division, and order dated 21.05.2007 (P-2) passed by Learned AC 1st Grade, Dera Bassi and further prayed order dated 15.10.2007 (P-4) passed by the Collector Sub Division, Dera Bassi, may kindly be upheld

And/Or

for issuance of any other appropriate, Writ, Order or direction which this Hon'ble, High Court may deem fit and proper in the facts and circumstances of the case.

*RESPECTFULLY SHOWETH:-*

**1.**  That the Petitioner is resident of District Mohali (Punjab) and the Citizen of India and as such is entitled to invoke the extra ordinary writ jurisdiction of this Hon’ble Court under articles 226/227 of the Constitution of India.

**2.**  That brief facts of the case are that the respondent No.5 to 10 have filed three partition applications for agriculture land in the month of October-2002 against the petitioner and his brothers i.e. respondent no. 11 to 12. But no service of summons were ever effected upon the petitioner and from reliable resources, the petitioner came to know in the month of May-2007 that partition proceeding is going on before the Court of Assistant Collector 1st Grade, Dera Bassi and the ld. Court has proceeded against him ex-parte proceedings, whereas he was never served and no noticed of the proceedings has ever come to the petitioner. Although petitioner has no connection with his brothers, but still as per the knowledge of the petitioner, they have also not been served with the notice. Petitioner is residing in his village separately and his brothers are also residing separately from the petitioner.

1. That on 11.05.2007, the petitioner has filed an application for setting aside the ex-parte proceedings against the petitioner. But without deciding the said application dated 11.05.2007, the trial court proceed further and passed the impugned order dated 21.05.2007 and approved the Naksha ‘Irri’ without affording any opportunity of hearing to the petitioner in the interest of natural justice. A copy of the application dated 11.5.2007 for set-aside the ex-party proceeding is attached herewith as **Annexure P-1** and a copy of the impugned order passed by the A.C.1stGrade dated 21.05.2007 is annexed herewith as **Annexure P-2**.

**4.** That on 28.06.2007, the petitioner filed an appeal before the ld. Collector Sub Division, Dera Bassi, against the impugned order dated 21.05.2007 (Annexure P-1) passed by the ld. AC 1st Grade. The petitioner has also mentioned that the respondents has concealed the material facts from the ld. Court of AC 1st Grade, Dera Bassi that the agriculture land in question has already been partitioned with the compromise (dated 19.3.2000) written in the present of Panchayat of the village and all the parties have signed the same and in view of the compromise dated 19.3.2000 possession of the land has also been transferred as per their respective share and tube well have also been installed by all the parties in their respective land. But now in absence of the petitioner, the land allotted in view of the compromise has been disturbed and injustice is being caused to the petitioner as good land is being allotted to the answering respondents which are against the law of land. Although the application for setting aside the ex-parte proceedings against the petitioner, has been moved but still the petitioner has not been heard. A copy of the compromise dated 19.3.2000 by which, oral partition took place is attached herewith as **Annexure P-3.** Coll

**5.** That on 15.10.2007 after hearing the petitioner as well as respondent/applicant and pursuing the record of the case, the ld. Collector Sub Division, i.e. respondent no.3 Dera Bassi, has remanded the case to AC 1st Class Dera Bassi i.e. respondent no. 4 with the direction that case be decided on merit after hearing the parties. A copy of the order dated 15.10.2007 passed by the respondent no.3 is annexed as **Annexure P-4**.

**6.**  That on 05.12.2007, the respondents/applicants has preferred an appeal before the ld. Commissioner, Patiala Division, Patiala i.e. respondent no.2 against the order dated 15.10.2007 passed by the Collector, Sub Division, Dera Bassi, District S.A.S Nagar. The Commissioner, Patiala Division Patiala has wrongly accepted the appeal filed by the respondents/applicants vide impugned order dated 21.04.2010. A copy of the impugned order dated 21.04.2010 is annexed as **Annexure P-5**.

**7.**  That the petitioner filed the revision petition (R.O.R.) before the Finance Commissioner (Revenue) Punjab, against the order dated 21.04.2010 passed by the ld. Commissioner. But at the time of hearing the ld. Finance Commissioner not considering the proper facts and law and straight way dismissed the revision petition filed by the petitioner vide order dated 30.11.2015. The order passed by the Ld. Finance Commissioner is non-speaking and cryptic which is attached herewith as **Annexure P-6.**

It is pertinent to mention here that there is no writ petition is being filed by either parties before this Hon,ble High Court regarding this dispute and further submitted that on dated 17.6.2016 Ld. A.C. 1st Grade i.e. respondent no.4 has been issued the execution notice of ‘Sanad Taksim’ to the petitioner and others .

**8.**  That the impugned orders dated 30.11.2015 **(Annexure P-6)** passed by the Ld. Finance Commissioner (Revenue) Punjab, order dated 21.04.2010 (P-5) passed by the Ld. Commissioner Patiala Division, Patiala and order dated 21.05.2007 (P-2) passed by the AC 1st Grade, Dera Bassi, District Mohali are patently erroneous and the same are liable to be set aside on the following grounds:-

1. That the Assistant Collector 1st Grade, Dera Bassi committed an error whole not deciding the application field by the petitioner for setting aside the ex-parte proceedings against him whereas the application was preferred on 11.05.2007 (Ann.P-1) and without deciding the application filed by the petitioner, the AC 1st Grade, Dera Bassi passed the order dated 21.05.2007 while approving the Naksha ‘Irri’. Whereas it was incumbent upon the AC 1st Grade, Dera Bassi that the application dated 11.05.2007 filed by the petitioner was to be decided before passed the order dated 21.05.2007 as the material fact that the agriculture land of the parties has already been partitioned with the written compromise dated 19.03.2000 (Ann.P-3) in the presence of the panchayat and this fact has not been brought in the notice of the court of A.C.1st Grade i.e. respondent no.4 by the respondents/applicants. Therefore, the order dated 21.05.2007 (P- 2) is erroneous and illegal and liable to be set aside and the appellate court i.e. Collector, Sub Division Dera-Bassi has rightly accepted the appeal filed by the petitioner and remanded the matter back to Assistant Collector 1st Grade ( respondent no.4) for decision on merit after hearing the both parties.

ii. That the ld. Commissioner i.e. respondent no.2 has wrongly accepted the appeal preferred by the respondent/applicants against the order passed by the respondent no.3 i.e. Collector, Sub Division and set aside the order dated 15.10.2007 by which the matter has been remanded back only. No prejudice is being caused if the matter is decided on merit after hearing the parties.

iii. That the ld. Commissioner i.e. Respondent no.2 has not appreciated that the petitioner has not been served and munadi is only paper work which has not been done and petitioner never came to know about the proceedings pending before the A.C. 1st Grade, Dera Bassi i.e. respondent no.4.

iv. That the Commissioner has wrongly held that the appellant has appeared personally on 16.12.2002 but lateron, he intentionally absent himself. Whereas the petitioner has explained in the application that someone has signed the forged signatures of the petitioner in the zimni orders whereas the petitioner has not ever received any notice of the case and the proceedings of the A.C. 1st Grade, Dera Bassi are erroneous as the petitioner has not been served and in the absence of the material facts which has not been brought in the notice of the court by the respondent/applicant , justice has not been done in the present case.

v. That the Commissioner, Patiala Division has further committed an error while holding that the Sanad Taksim has already been issued whereas the fact is that the petitioner has moved an application for setting the ex-parte proceedings on 11.05.2007 and without deciding the application, the AC 1st Grade, Dera Bassi has proceed further and approved the Naksha ‘Irri’ on 21.05.2007. Therefore, the impugned orders are illegal and against the facts of the case.

vi. That the respondent No.1 i.e. Finance Commissioner, Punjab who is the competent authority to hear the such case after issuance of the ‘Sanad Taksim’ but Ld. F.C. passed the order in straightway which is totally cryptic and non-speaking against law and facts .

vii That agriculture land is joint, where as the land in dispute has already been partitioned between the parties as per possession and a written deed/compromise dated 19.3.2000 (Ann. P-3) was prepared by the Gram Panchayat and relatives of the parties in this regard. If the partition is affected as per the said partition, then the land of the parties shall be fragmented in small pieces. And ‘sanad teksim’ is also against the mode of Partiion if it will be considered.

**9.**  That the main and substantial questions of law which arise for the kind determination of this Hon'ble Court are;-

1. Whether it is a fit case for issuance of writ in the nature of Certiorari as prayed for?
2. Whether the petitioner is not provided the reasonable opportunity to defend his side ,because all the proceedings are carried out the back of petitioner?
3. Whether the grave injustice has been done to the petitioner?
4. Whether the article 14 and 16 Constitution of India is violated?
5. Whether once it is proved that mandatory provision of Punjab Land Revenue Act-1887 has not been followed, then in the absence of same the proceeding liable to be set-aside?

10. That now there is no provision of appeal or revision against the impugned order and as such the petitioner is left with no other equally efficacious remedy against the impugned orders except to file the writ petition under Article 226/227 of the Constitution of India.

11. That the petitioner has not filed any other such or similar writ petition in this Hon'ble High Court or in the Hon'ble Supreme Court of India.

It is, therefore, respectfully prayed that the records of the case may be summoned and the following relief may kindly be granted to the petitioner:-

1. To issue a writ, in the nature of certiorari for setting aside the orders dated 30.11.2015 (Annexure P-6) passed by the Learned Finance Commissioner, Punjab in ROR No.49 of 2010 order dated 21.04.2010 (Annexure P-5) passed by the Learned Commissioner Patiala Division, and order dated 21.05.2007 (P-2) passed by Learned A.C. 1st Grade, Dera Bassi and further prayed order dated 15.10.2007 (P-4) passed by the Collector Sub Division, Dera Bassi, may kindly be upheld

ii. For issuance of any other appropriate, Writ, Order or direction which this Hon'ble, High Court may deem fit and proper in the facts and circumstances of the case.

iii. Filing of legible copy of vernacular may kindly be exempted.

ii. Filing of certified copies/true typed copies of annexures may kindly be dispensed.

It is further prayed that during the pendency of the present writ petition, the status-quo regarding the existence position be maintained and further prayed that the official respondents be restrained not to implement the impugned orders in the interest of justice.

CHANDIGARH.

DATED:21.06.2016

THROUGH COUNSEL

(SURESH AHLAWAT)

ADVOCATE

VERIFICATION:

Verified that the contents from paras 1 to , and are true and correct to my knowledge. And para is believed to be true on the basis of legal advice. No part of it is false and nothing has been concealed therein.

CHANDIGARH

DATED : 21.06.2016

IN THE HON’BLE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P.No.\_\_\_\_\_\_\_\_\_of 2016

Suresh Kumar ---Petitioner

Versus

State of Punjab and others --Respondents

Affidavit of Suresh Kumar son of Sh. Surjan Singh, resident of village Bhagsi Tehsil Dera Bassi, District Mohali.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent has not filed any such or similar petition either in this Hon’ble Court or in the Hon’ble Supreme Court of India.

2. That deponent verified that the contents of my accompanying writ petition from No.1 to & to of the writ petition are true and correct to my knowledge while the contents of paragraph No. are believed to be correct on the basis of legal advice. No part of it is false and nothing has been concealed therein.

Place: Chandigarh

Date: 2016 Deponent

VERIFICATION

Verified that the contents of my above affidavit from para No.1 & 2 are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Place: Chandigarh

Date: 2016 Deponent

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.\_\_\_\_\_\_\_\_\_of 2016

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Court Fees

Place: Chandigarh (SURESH AHLAWAT)

DATED 21.06.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. NO. \_\_\_\_\_\_\_\_\_\_ OF 2016

**In R.O.R. N0. 50 OF 2010**

Suresh Kumar son of Sh. Surjan Singh, resident of village Bhagsi Tehsil Dera Bassi, District Mohal. ………..**..Petitioner**

**Versus**

1. State of Punjab through its Finance Commissioner to Govt. of Punjab, Revenue Department, Punjab Sectariat, Sector-9 Chandigarh
2. Commissioner, Patiala Division, Patiala.
3. Collector, Sub Division Dera-Bassi, District Mohali.
4. Assistant Collector, 1st Grade, Dera Bassi, District Mohali.
5. Sohan Singh
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7. Tarsem Lal
8. Gurmit Singh sons of Prem Singh
9. Mohan Singh
10. Mahinder Singh sons of Sarup Singh
11. Ram Kumar
12. Sahib Singh sons of Surjan Singh
13. Puran Singh son of Munshi
14. Mam Chand
15. **Sardara Ram**
16. **Sant Ram sons of Lachman son of Rachana**
17. **Sunehri daughter of Lachman**
18. **Chalti Devi widow of Lachman**
19. **Jyoti Ram**
20. **Isher Dass sons of Rachna Ram**
21. **Pawan Kumar**
22. **Chaman Lal**
23. **Mohan Lal**
24. **Krishan Lal**
25. **Gurdit sons of Fakir Chand**
26. **Ashok Kumar**
27. **Yogeshwar**
28. **Vijay Pal**
29. **Om Bhuraj**
30. **Ajay Pal sons of Om Parkash**
31. **Teja Ram son of Nurata**
32. **Laja Ram**
33. **Jaswant Singh sons of Nurata**

**Residents of Village Bhagsi, Tehsil** Dera Bassi, Distt. SAS Nagar

----------------- **Respondents**

Place: Chandigarh (SURESH AHLAWAT)

DATED 21.06.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

**LIST OF EVENTS**

**10.2002** Respondents no.5 to 10 filed the three application for partition of agriculture land against the petitioner and his brothers concealed the material facts from the ld. Court of AC 1st Grade, Dera Bassi that the agriculture land in question has already been partitioned with the compromise dated 19.3.2000 (Annexure P-3 ) written in the present of Panchayat of the village and all the parties have signed the same and in view of the compromise dated 19.3.2000 possession of the land has also been transferred as per their respective share and tube well have also been installed by all the parties in their respective land. **( Annexure P-3)**

**May-2007** But no service of summons were ever effected upon the petitioner and from reliable resources, the petitioner came to know in the month of May-2007 that someone has signed his signatures in the Zimni orders before the Court of Assistant Collector 1st Grade, Dera Bassi and the ld. Court has proceeded against him ex-parte proceedings in all three applications.

**11.05.2007,** the petitioner has filed an application for setting aside the ex-parte proceedings against the him. But without deciding the said application dated 11.05.2007, the trial court proceed further

and passed the impugned order dated **21.05.2007** and approved the Naksha ‘Irri’ without affording any opportunity of hearing to the petitioner in the interest of natural justice.

**28.06.2007,** the petitioner filed an appeal before the ld. Collector Sub Division, Dera Bassi, against the impugned order dated 21.05.2007 (Annexure P-1) passed by the ld. AC 1st Grade.

**15.10.2007** after hearing the petitioner as well as respondent/applicant and pursuing the record of the case, the ld. Collector Sub Division, i.e. respondent no.3 Dera Bassi, has remanded the case to AC 1st Class Dera Bassi i.e. respondent no. 4 with the direction that case be decided on merit after hearing the parties.

**05.12.2007,** the respondents/applicants has preferred an appeal before the ld. Commissioner, Patiala Division, Patiala i.e. respondent no.2 against the order dated 15.10.2007 passed by the Collector, Sub Division, Dera Bassi, District S.A.S Nagar.

**21.4.2010** The Commissioner, Patiala Division Patiala has wrongly accepted the appeal filed by the respondents/applicants vide impugned order dated 21.04.2010.

**30.11.2015** That the petitioner filed the revision petition (R.O.R.) before the Finance Commissioner (Revenue) Punjab, against the order dated 21.04.2010 passed by the ld. Commissioner. But at the time of hearing the ld. Finance Commissioner not considering the proper facts and law and straight way dismissed the revision petition filed by the petitioner vide order dated 30.11.2015.

**17.6.2016** Ld. A.C. 1st Grade i.e. respondent no.4 has been issued the execution notice of ‘Sanad Taksim’ to the petitioner and others .

**Hence this writ petition**

Place: Chandigarh (SURESH AHLAWAT)

DATED 21.06.2016 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT FOR THE STATES OF

PUNJAB AND HARYANA AT CHANDIGARH

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Notes:

1. The main law points are canvassed in this writ petition are contained in para No. at page No. and
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3. Any other case, if any: Nil

4. Whether caveat notice has been received: No

Place: Chandigarh **( SURESH AHLAWAT )**

**ADVOCETE**

DATED 21.06.2016

COUNSEL FOR THE PETITIONER