OPINION OF THE PUNJAB REVENUE COMMISSION ON THE JURISDICTION OF THE FINANCIAL COMMISSIONER TO ENTERTAIN REVISION PETITIONS AGAINST 'SANAD TAKSEEM.'

The Principal Secretary Labour-cum-Financial Commissioner (Appeals) Punjab has expressed that the drafting of Section 16 (1) of the Punjab Land Revenue Act, 1887 ('Act'—for short) was not done properly while carrying out the amendment, which has led to the controversy regarding the jurisdiction of the Financial Commissioner to entertain revision petitions against 'Sanad Takseem' directly from the orders of the Assistant Collector 1st Grade. The Financial Commissioner, Revenue, has sought comments of this Commission on the issue.

The Commission has examined the question regarding the jurisdiction of the Financial Commissioner to entertain revision petitions against 'Sanad Takseem'. The Hon'ble High Court, in the case from which this issue has arisen, *inter alia* observed that the Financial Commissioner had entertained a revision petition filed by the petitioner in the said case directly against the order of the Assistant Collector 1st Grade by passing the intermediate revenue authorities and that too, if it all any appeal or revision was to be filed.

In this regard it may be noticed that Chapter IX of the Act relates to 'Partition'. For the present purpose Section 118 of the Act (as amended by Punjab Act No. 15 of 2011) and which is now extant, is apposite. The said Section 118 of the Act reads as under:

"118. Disposal of other questions. (1) When there is a question as to the property to be divided, or the mode of making a partition, the Revenue Officer shall, after such enquiry, as he deems necessary, record an order stating his decision on the question and the reasons for the decision.

(2) No appeal shall lie against the decision referred to in sub-section (1)."

The above provision relates to disposal of question as to the property to be divided or the mode of making a partition and that no appeal would lie against an order disposing of the said questions. However, Section 16 of the Act provides for the exercise of revisional jurisdiction by the Financial Commissioner.
The said Section 16 of the Act has been twice amended in the recent years, that is, by the Punjab Land Revenue (Amendment) Act, 2011 (Punjab Act No. 15 of 2011) and by the Punjab Land Revenue (Amendment) Act, 2013 (Punjab Act No. 5 of 2013). The position regarding the said Section 16 as it existed prior to 2011, after the amendment in 2011 and after the amendment in 2013 is submitted in an annotated form. At present, Section 16 of the Act after its amendment in 2013 reads as under:

"16 Power to call for examine and revise proceedings of Revenue Officers.

(1) Except a case pertaining (sic. pertaining) to question of division of property or the mode of making a partition under section 118,

(i) The Financial Commissioner may, at any time, call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him; and

(ii) A Commissioner or Collector may call for the record of any case pending before or disposed of by any officer under his control.

(2) If (sic. in) any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with him (sic. his) opinion thereon for the orders of the Commissioner whose decision shall be final.

(3) The Financial Commissioner or Commissioner may, in any case called for by himself under sub-section (1) or under sub-section (2), as the case may be, pass such orders as he thinks fit:

Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any
question of right between private persons without giving those persons an opportunity of being heard.

(4) Notwithstanding anything contained in this section, the cases called for by the Commissioner or Collector, as the case may be, under subsection (1) and (2) as it existed prior to the commencement of the Punjab Land Revenue (Amendment) Act, 2012, shall be decided by them as heretofore."

A reading of the above Section 16 of the Act does indeed create a confusion and at first blush would go to show that the Financial Commissioner is not to exercise revisional jurisdiction in respect of matters relating to partition under Section 118 of the Act. A close look at the said provision would, however, show that the revisional jurisdiction of the Financial Commissioner is not to be exercised only in respect of cases pertaining to (i) question of division of property or (ii) the mode of making a partition under Section 118 of the Act.

The procedure in partition cases is provided for under Chapter 18 of Punjab Land Records Manual¹ (Manual – for short). For the purpose of the present case Para 18.10 of the Manual, which deals with ‘Enquiry and method of partition’ and Para 18.11 of the Manual, which deals with ‘Orders of Assistant Collector on method of partition’ are apposite. The relevant extract of Para 18.10 reads as under: -

"Enquiry and method of partition. If there are no disputes as to title, or all such disputes have been decided under section 117, and the case been returned to him for report, the tehsildar should proceed to enquire into any question to the property to be divided and the method to be followed in dividing it [section 116(b)]."

The relevant extract of Para 18.11 of the Manual for the present purpose reads as under: –

"Orders of Assistant Collector on method of partition. On receiving the file from the investigating officer, the officer

empowered to decide the case should, if he finds that there is a dispute between the parties on any of the points connected with the proposed mode of partition, fix a date for hearing the case, and have the parties duly informed thereof, so as to give them an opportunity of appearing before him. On the date so fixed, he should examine, so far as may appear necessary, any of the parties who may be present, and should then record with his own hand his orders as to the method of partition, the amount of costs, and the proportion in which they are to be recovered from the different and unmistakable, and care should be taken that every essential question raised by the investigating officer's report, or contained in the pleadings, is decided."

The process for partition of land by a person desirous of seeking partition is initiated by filing an application in terms of Section 111 of the Act before the Assistant Collector 2nd Grade exercising jurisdiction over the revenue estate in which the land sought to be partitioned is situated. The Assistant Collector 2nd Grade at the preliminary stage formulates "NaqshaAlaf" which is in Form PTN-I of the Appendix of the Manual (Para 18.10) and it relates to the 'Statement of the area to be divided and the share of the parties.' This is then followed by the preparation of 'Naqsha Bey', which is in Form PTN-2 of the Appendix of the Manual (Para 18.12) and relates to, 'Statement comparing area by share and area allotted.' The 'Naqsha Bey' in Form PTN-2 deals with, 'Method of carrying out partition.' This is final; however, it is not finalized for a period of thirty days so that a party aggrieved against the same may, if it is aggrieved, assail it. It is after the expiry of thirty days that 'NaqshaJeem' or the 'Sanad Takseem' is drawn up. The 'Sanad Takseem' is in the nature of a decree and is an 'Instrument of partition' in terms of Section 121 of the Act, which reads as under:

"121. Instrument of partition. - When a partition is completed, the Revenue-officer shall cause an instrument of partition to be prepared and the date on which the partition is to take effect to be recorded therein."
The position has been that once an Instrument of partition or 'Sanad Takseem' is drawn up there is to be a finality to the same and an appeal or revision against the same has virtually never been entertained. Aggrieved parties against a 'Sanad Takseem' had been mostly approaching the High Court in the exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India.

This position is borne out from the decision of the High Court in Ranbir Singh v. Financial Commissioner, Haryana 2005 (3) RCR (Civil) page 385 wherein it is said that it is no doubt true that the Punjab Land Revenue Act does not provide a remedy against the final order of partition, which is concluded by the drawing up of the "Sanad Takseem". However, as has been held in Raja Ram alias Rajender and another's case2, the final order of partition can be impugned by filing a writ petition under Article 226 of the Constitution of India. It was further said that while examining the orders, passed in partition proceedings, the High Court does not appraise the correctness thereof as an appellate or revisional forum and would confine itself to examine any legal infirmities in the proceedings.

This view was later changed by a Division Bench judgment of the High Court in the case of Amar Khan v. State of Punjab 2009 (1) RCR (Civil) page 740 wherein it was held that no appeal against the preparation of 'Sanad Takseem' is maintainable, however, an aggrieved party can invoke the jurisdiction of the Financial Commissioner under Section 16 (1) of the Act. This was followed by other several judgments of the High Court, copies of some of which are attached.

It is, in the said circumstances that the Financial Commissioner entertains revision petitions from preparation of 'Sanad Takseem' directly as an element of finality is attached to it, which is not subject to appeal, and earlier for revision even. However, it may be noticed that the judgments relating to entertaining of revision petitions by the Financial Commissioner against the preparation of 'Sanad Takseem' are based on the unamended Section 16 (1) of the Act. In any case, a close look at the amended Section 16 of the Act, as it now stands, does not in any way affect the exercise of revisional jurisdiction of the Financial Commissioner against the preparation of 'Sanad Takseem.' This is for the reason that in terms of the extant Section 16 of the Act, the bar to the exercise of

2 2001 (2) RCR (Civil) 739 (P&H)
revisional jurisdiction of the Financial Commissioner is confined only to question pertaining to (i) division of property or (ii) the mode of making a partition under Section 118 of the Act. These are the interim stages covered by Paras 18.10 and 18.11 of the Manual and do not amount to or cover the partition in its entirety. The spirit of Section 16 of the Act is that the partition proceedings are finalized without being delayed by interference at intermediary stages and it rather enables the Financial Commissioner to examine the same by exercising his revisional jurisdiction at the final stage, which is the preparation of 'Sanad Takseem'. Section 16 does not, therefore, in any manner bar the exercise of revisional jurisdiction of the Financial Commissioner against the preparation of 'Sanad Takseem' or the instrument of partition as contemplated by the provisions of Section 121 of the Act. Besides, since no appeal is maintainable against the preparation of 'Sanad Takseem', the Financial Commissioner can certainly exercise revisional jurisdiction in terms of Section 16 (1) of the Act so as to satisfy himself as to whether partition has been correctly carried out.

The Commission is of the view that the Financial Commissioner can exercise revisional jurisdiction against the preparation of 'Sanad Takseem' or final Instrument of Partition. This is to be directly exercised by the Financial Commissioner as appeal or revision before the other Revenue officers against the preparation of 'Sanad Takseem' is not to be done so as to give a finality to the partition proceedings.

The Commission shall undertake the task of reframing and correcting the confusion that has been created with the amendment carried out in Section 16 of the Act so that there is complete clarity in the matter.

Dated 17-5-2019

Member Secretary, Revenue Commission