CNR No: PHHC010935832026
2026:PHHC:183609

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17526-2026 (O&M)
Reserved on: 15.09.2026
Date of decision: 01.10.2026

JASWINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

1	The date when the judgment is reserved	15.09.2026
2	The date when the judgment is pronounced	01.10.2026
3	The date when the judgment is uploaded on the website	01.10.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	N.A.

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Argued by: Mr. Vivek Thakur, Advocate
for the petitioner.

Mr. Luvinder Sofat, Sr. DAG, Punjab.

Mr. Arpandeep Narula, Advocate,
Mr. Kartik Kataria, Advocate,
Mr. Vrishketu, Advocate,
Mr. Piyush Mittal, Advocate and
Ms. Anjali Pathak, Advocate
for respondent No.2(a), 2(c) and 2(d).

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KIRTI SINGH, J.

1. The petitioner, a grandson of late Fauja Singh (respondent No.2, since deceased and represented through his legal heirs), has invoked the writ jurisdiction of this Court to assail the order dated 19.11.2025 (Annexure P-3), passed by the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Bholath, District Kapurthala, whereby the registered Transfer Deed

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executed by Fauja Singh in his favour in respect of land measuring 5 Kanals 2 Marlas 5 Sarsahi situated in Village Ramgarh, Tehsil Bholath, was cancelled under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, "the Act") in proceedings in which the petitioner was proceeded against ex parte, as also the order dated 29.04.2026 (Annexure P-5), whereby his application seeking the setting aside of that order was dismissed.

2. Briefly stated as per the undisputed facts, on 13.04.2022, Fauja Singh executed five separate registered transfer deeds of his land in Village Ramgarh, four in favour of his sons Malkiat Singh, Sukhpal Singh, Kashmir Singh and Rajinder Singh, and the fifth in favour of the petitioner, who is the son of his fifth son, Buta Singh (also spelt Boota Singh). The deeds conveyed nearly equal shares. The deed in favour of the petitioner (Annexure P-1) records that it is a transfer by a grandfather in favour of his grandson for which stamp duty stood exempted. According to the private respondents themselves, the five deeds were executed pursuant to a family arrangement under which the one-fifth share earmarked for Buta Singh was, with his consent, transferred directly to the petitioner.

3. More than three years later, Fauja Singh submitted an application dated 14.08.2025 (Annexure P-2) seeking cancellation of the deed executed in favour of the petitioner, alleging that the petitioner quarrelled with and harassed him and did not give him maintenance expenses. The matter was registered as File No.03/MWP. The order dated 19.11.2025 records that notice was issued to the petitioner, that it transpired during service that he resides abroad, that the applicant, on being asked for his foreign address, stated that the same was not within his knowledge, and that publication was thereupon

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ordered on 24.09.2025 in the newspaper "Punjabi Tribune" for 29.10.2025. The order proceeds to record that no one appeared on behalf of the petitioner, that he was proceeded against ex parte, and, observing that the transfer had been made in consideration of the petitioner taking care of and serving his grandfather, cancels the transfer under Section 23 of the Act.

4. As per pleaded facts, the petitioner has been residing in Belgium since the year 2011, and the Belgian passport issued to him on 30.07.2024 is on record as part of Annexure P-6. Through his General Power of Attorney, Jatinder Kumar, he moved an application under Order IX Rule 13 read with Section 151 CPC (Annexure P-4) before the Tribunal. It was pleaded therein that the petitioner's address had deliberately not been furnished so that he could be served only through publication, which never reached him; that a counsel engaged on his behalf had filed a memo of appearance on 19.11.2025 to seek time to arrange a power of attorney, but the Tribunal decided the matter the same day; and that the petitioner came to know of the order on 26.11.2025. The Tribunal records the date of institution of this application as 19.12.2025. By the order dated 29.04.2026, passed by the successor Presiding Officer, the application was dismissed on the reasoning that the order dated 19.11.2025 had become final, that no stay could be granted, and that no application could be filed before the same Court against its own final decision. Fauja Singh had in the meantime passed away on 20.12.2025, as reflected in the death certificate produced by the private respondents as Annexure R-2/2, that is, the day after the petitioner's application was instituted. The order dated 29.04.2026 does not advert to his demise.

5. On 27.05.2026, a coordinate bench of this Court while issuing the notice of motion, stayed the operation of the order dated 19.11.2025, and

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framed the following question for consideration: "*Whether, after the final adjudication of the application under the Maintenance Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, application under Order IX Rule 13 CPC read with Section 151 thereof, is maintainable or not*?"

6. Learned counsel for the petitioner contends that the petitioner has been residing abroad since March 2011, a fact which was within the knowledge of the Tribunal, whose own order records that he resides abroad. It is submitted that although Section 8 of the Act permits a summary procedure, the Tribunal is vested with the powers of a Civil Court for taking evidence, enforcing the attendance of witnesses and compelling the production of documents; its proceedings are therefore quasi-judicial and affect valuable civil rights, so that proper service and a fair opportunity of hearing cannot be dispensed with. It has been contended that Rule 5 of the Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012 requires notice to be issued along with a copy of the application and its enclosures through the prescribed modes, including e-mail, authorized courier, SMS and telephone, and, permits the opposite party to be proceeded against ex parte only upon his failure to respond to such duly served notice, and makes Order V CPC applicable for the purpose of service. Learned counsel has further argued that under Order V Rule 20 CPC, substituted service could be resorted to only upon the Tribunal being satisfied that the petitioner was avoiding service or that ordinary service was not possible, and even then only through a newspaper circulating in the locality where he last actually and voluntarily resided. There was, however, no finding that the petitioner was avoiding service, no effort was made to serve him at his foreign address or through any

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legally recognised mode, and the publication was made in the lone newspaper "Punjabi Tribune", which has no circulation where he resides.

7. Learned counsel further contends that the application was filed by respondent No.2 with an ulterior motive, by mentioning an incorrect address of the petitioner, in a clear attempt to suppress service upon him and somehow obtain an ex parte order. Reliance is placed on ***Rabindra Singh v. Financial Commissioner, Cooperation, Punjab and others, (2008) 7 SCC 663.***

8. As regards the order dated 29.04.2026, it is contended that the Tribunal dismissed the petitioner's application on the ground of finality without even noticing that the original order had been passed without valid service. It is submitted that no alternative and efficacious remedy of appeal or revision is available to the petitioner, and it is prayed that both the orders be set aside.

9. Learned counsel for respondents No.2(a), 2(c) and 2(d) while opposing the prayer and submissions made by the counsel opposite has raised three preliminary objections. The first is that, Fauja Singh having passed away, the proceedings under the Act have lost their substratum and the writ petition has become infructuous, for which reliance is placed on ***Deepak Jain v. District Magistrate and Chairman Appellate Tribunal, Yamunanagar and others, CWP No.15381 of 2023, decided on 08.07.2026.*** The second is that the petitioner had an efficacious remedy of appeal under Section 16 of the Act, which, as held by a Division Bench of this Court in P***aramjit Kumar Saroya v. Union of India and another, CWP No.7282 of 2010, decided on 28.05.2014***, is available to any affected party. The third is that the petitioner's father, Buta Singh, who is also a legal heir of Fauja Singh, has not been impleaded.

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10. On merits, it is contended that the petitioner's own passport shows that he was in India between 24.08.2025 and 07.09.2025 and again between 26.01.2026 and 02.02.2026; that the notice dated 25.08.2025 (Annexure R-2/1) was issued through the Tehsildar, Bholath, for 27.08.2025, when the petitioner was in India; that the report of the process server that the petitioner was residing abroad was procured through his father, who had retired from service in the same Tehsil; that the petitioner never disclosed any address abroad, so that his last known place of residence continued to be the village; and that the publication in Punjabi Tribune on 14.10.2025 (Annexures R-2/3 and R-2/4), a newspaper circulating in District Kapurthala, was therefore valid, the newspaper having also sent a copy of the notice by post.

11. Reliance is placed on ***Karnail Singh v. Malkiat Singh, Civil Revision No.5466 of 2017,*** to contend that Order V Rule 25 CPC is not attracted where the address of the party abroad is not known. It is urged that the petitioner's own averment that his counsel appeared before the Tribunal on 19.11.2025 establishes his knowledge of the proceedings, and that he has nowhere denied the allegations of maltreatment. In the alternative, it is contended that the order dated 19.11.2025, having attained finality during the lifetime of the senior citizen, survives in favour of his legal heirs, who are entitled to defend it.

12. As regards the question framed by this Court, it is contended that the Act confers no power of review or recall on the Tribunal, which becomes functus officio upon final adjudication; that Order IX Rule 13 CPC cannot be imported into summary proceedings under a special statute; and, relying upon ***Gadde Venkateswara Rao v. Government of Andhra Pradesh and others,***

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AIR 1966 SC 828, that a Tribunal invested with the powers of a Civil Court for limited purposes does not thereby become a Civil Court for all purposes.

13. It is further contended by the respondents that the notices were duly issued at the ancestral address of the petitioner, where his family, the answering respondents and other family members continue to reside, so that service upon an adult member of the family at that address would be valid under Order V Rule 15 CPC, and that the judgments in ***Rabindra Singh (supra)*** and ***Karamjit Singh (supra)*** are, for that reason, distinguishable; that once due process was followed, a presumption of regularity attaches to official acts and the burden lay upon the petitioner to displace it; and that the petitioner had never himself raised the question of maintainability of an application under Order IX Rule 13 CPC, either before the Tribunal or in the writ petition, and cannot be permitted to build up a new case at this stage.

14. I have heard learned counsel for the parties and perused the relevant material on record.

15. Every objection raised by the respondents ultimately turns upon the question whether the petitioner was duly served before he was proceeded against ex parte. That question, therefore, requires consideration at the outset.

16. Section 8(1) of the Act permits the Tribunal, while holding an inquiry, to follow such summary procedure as it deems fit, but subject to the rules prescribed by the State Government. Rule 5 of the ***Punjab Maintenance and Welfare of Parents and Senior Citizens Rules, 2012*** prescribes the manner of service of notice upon the opposite party and requires the notice, along with a copy of the application and its enclosures, to be served through the prescribed modes, including hand delivery, registered post, e-mail, authorised courier, SMS or telephone. Rule 5(4) further makes the provisions

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of Order V CPC applicable, mutatis mutandis, for the purpose of service. The summary nature of the proceedings, therefore, does not dispense with due notice. The power to proceed ex parte can be exercised only after the opposite party has been duly served and fails to respond.

17. Tested on the aforesaid touchstone, the record produced by the private respondents does not establish due service upon the petitioner. The only material relied upon for ordinary service is the memo dated 25.08.2025 (Annexure R-2/1), whereby the Tehsildar, Bholath, was asked to have the petitioner “made bound” to appear on 27.08.2025. There is nothing on record to show that the prescribed notice in Form ‘C’, accompanied by a copy of the application and its enclosures, was served upon the petitioner. The report stated to have been made by the process server has also not been placed on record. The Tribunal records only that, during the process of service, it came to know that the petitioner was residing abroad. Thereafter, it sought his foreign address from the applicant and, upon being informed that it was not known, proceeded to publication. No material is shown to establish service upon the petitioner through any of the modes contemplated by Rule 5 after the Tribunal came to know that he was residing abroad, nor is there any consideration reflected of the procedure contemplated under Order V Rule 25 CPC.

18. The order directing substituted service is itself deficient. The publication notice dated 29.09.2025 (Annexure R-2/3) merely records that the Court “is assured” that service in the ordinary manner is not possible. In ***Neerja Realtors Private Limited v. Janglu (Dead) through Legal Representative*, (2018) 2 SCC 649,** the Hon’ble Supreme Court has held that substituted service is an exception to the ordinary mode of service and can be

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ordered only upon satisfaction that the defendant is keeping out of the way to avoid service or that, for any other reason, the summons cannot be served in the ordinary manner. The order directing substituted service must reflect application of mind to these requirements. A bare recital that the Court "is assured", without recording the requisite satisfaction and reasons, does not meet that standard.

19. There is a further defect in the publication. Order V Rule 20(1-A) CPC requires the newspaper used for substituted service to be one circulating in the locality in which the defendant is last known to have actually and voluntarily resided. The Tribunal and the private respondents proceeded on the basis that the petitioner was residing abroad. The mere fact that his foreign address was not known to the applicant could not convert Village Ramgarh into the place where the petitioner actually and voluntarily resided. The position is squarely covered by ***Rabindra Singh v. Financial Commissioner, Cooperation, Punjab and others,*** **(2008) 7 SCC 663**, where the Supreme Court held that substituted service at the former village address was not valid when the person was residing abroad. The Supreme Court also approved the principle in ***Great Punjab Agro Industries Ltd. v. Khushian,*** **(2005) 13 SCC 503**, concerning publication in newspapers circulating only in Punjab. The attempt to distinguish ***Rabindra Singh*** on the ground that the notices were sent to the ancestral address, where the petitioner's family resides, does not succeed, for that is precisely the situation in which substituted service was held to be invalid. The fact that a copy of the publication was also sent by post does not cure the defect, since the address used was the same village address where the petitioner was not residing.

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20. The circumstances relied upon by the respondents do not alter the position. The petitioner's temporary visit to India does not establish that he had resumed actual and voluntary residence at his native village. There is no report that he was found there and refused service, nor any finding that he was deliberately avoiding service. By the time publication was ordered, he had already left India. The allegation that his father influenced the process server is unsupported by any material from the proceedings before the Tribunal. Order V Rule 15 CPC is also of no assistance, as there is no report of service upon any adult member of the petitioner's family. The reliance upon ***Karnail Singh v. Malkiat Singh,*** **Civil Revision No.5466 of 2017, is equally misplaced,** as the factual setting therein was materially different: the respondent there had been served in the suit and had contested it, and substituted service was sought only at the stage of execution.

21. Even assuming that Order V Rule 20 CPC could be invoked where the address of a party residing abroad is not known, the satisfaction required by sub-rule (1) and the publication contemplated by sub-rule (1-A) were both absent here.

22. Nor does the alleged appearance of counsel on 19.11.2025 cure the defect. By that date, the petitioner had already been proceeded against ex parte on 29.10.2025. The petitioner's case is that counsel appeared only to seek time to arrange the power of attorney, whereas the order dated 19.11.2025 records that no one appeared on his behalf and does not advert to such appearance. In any event, knowledge acquired on the date of the final order cannot retrospectively validate proceedings which had already proceeded ex parte without due service. ***Rabindra Singh*** **(supra)** also

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recognises that knowledge on the part of a constituted attorney does not, by itself, deprive the affected party of the right to challenge an ex parte order.

23. As cautioned by Hon'ble the Supreme Court in ***Sushil Kumar Sabharwal v. Gurpreet Singh and others*, (2002) 5 SCC 377**, a casual approach to service deprives a party of the valuable right to participate in the proceedings. Here, a registered instrument concerning immovable property was cancelled without the transferee being afforded an effective opportunity of hearing. The order dated 19.11.2025 is, therefore, vitiated by non-compliance with Rule 5 of the Rules, the requirements governing substituted service and the principles of natural justice.

24. The question framed by this Court on 27.05.2026 can now be answered. Order IX Rule 13 CPC does not, as such, apply to proceedings before the Maintenance Tribunal. That, however, does not mean that the Tribunal is powerless to recall an ex parte order shown to have been passed without due service. The issue is not one of importing the entire scheme of Order IX Rule 13 CPC into proceedings under the Act, but of recognising the limited procedural power of the Tribunal to correct an order passed on the erroneous assumption that the opposite party had been duly served.

25. Where the power to proceed ex parte is itself conditioned upon due service, the forum passing such an order must possess the incidental power to examine whether that condition was fulfilled and, if not, to recall the order. Such recall is procedural and distinct from a review of the decision on merits. The Supreme Court in ***Rabindra Singh*** (supra), while considering an ex parte order passed in breach of natural justice, recognised such incidental power and referred, inter alia, to ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal, 1980 Supp SCC 420***, where an Industrial Tribunal was

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held competent to recall an ex parte award. The reliance upon ***Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828***, does not advance the respondents' case. The petitioner was not invoking a general power of review; he was seeking recall on the specific ground that the condition precedent for proceeding ex parte had never been satisfied. For that limited purpose, the Tribunal was not *functus officio.*

26. The question framed by this Court is, accordingly, answered by holding that although Order IX Rule 13 CPC is not directly applicable to proceedings before the Maintenance Tribunal, an application seeking recall of an ex parte order on the ground of want of due service is maintainable before the Tribunal in exercise of its incidental procedural jurisdiction, and the Tribunal is required to examine whether due service was effected before proceeding ex parte.

27. The order dated 29.04.2026, in these circumstances cannot withstand scrutiny. The Tribunal did not examine the petitioner's specific grievance regarding service and dismissed the application merely on the premise that the earlier order had become final. Finality cannot cure the absence of the very condition upon which the petitioner was proceeded against ex parte. The Tribunal was required to first determine whether the petitioner had been duly served. Having failed to do so, the order dated 29.04.2026 is also unsustainable.

28. The next issue is the consequence of the death of Fauja Singh on 20.12.2025. In ***Deepak Jain*** **(supra)**, this Court, following the Division Bench judgment in ***Gurdeep Singh and others v. Sub Divisional Magistrate-cum-Presiding Officer and another, LPA No.2402 of 2017, decided on 21.07.2023***, held that proceedings under the Act are personal to the senior

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citizen and intended to secure his welfare during his lifetime. Upon his death, the substratum of proceedings under the Act stands extinguished, leaving the parties to avail their remedies under the general law.

29. This principle, however, does not render the present petition infructuous. The petitioner is not seeking continuation of proceedings under the Act after the death of Fauja Singh; he is challenging the legality of an order already passed during Fauja Singh's lifetime, on the ground that the petitioner was never duly served or heard. The subsequent death of Fauja Singh cannot retrospectively validate an order which was vitiated by violation of natural justice when it was passed. Once the order dated 19.11.2025 is set aside, there remains no valid order under the Act capable of being sustained against the petitioner by the legal heirs.

30. ***Deepak Jain (supra),*** however, governs the relief which can now be granted. Ordinarily, setting aside an ex parte order would result in restoration of the original proceedings for a fresh decision after hearing the affected party. That course is no longer available. Fauja Singh has died and, in view of the law noticed above, proceedings under the Act cannot now be revived for fresh adjudication of his application under Section 23. A remand would, therefore, serve no useful purpose.

31. The objection regarding alternative remedy also does not warrant dismissal of the petition. Even assuming that an appeal under Section 16 of the Act was available, the rule of alternative remedy is one of self-restraint and not an absolute bar to writ jurisdiction, particularly where the proceedings suffer from violation of natural justice. That is the very genesis of the present challenge. Further, the respondents cannot simultaneously contend that proceedings under the Act have come to an end upon the death of Fauja Singh

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and that an appeal in those very proceedings constituted an efficacious remedy.

32. The objection of non-joinder is also without merit. Buta Singh is the petitioner's father who, on the respondents' own showing, consented to the transfer being made in favour of the petitioner. He was not a party before the Tribunal, no relief is claimed against him, and nothing in the present adjudication determines title or succession inter se between the heirs of Fauja Singh.

33. It is clarified that this Court has expressed no opinion on the allegations made by Fauja Singh against the petitioner, whether the transfer dated 13.04.2022 was subject to any condition within the meaning of Section 23(1) of the Act, the family arrangement pleaded by the respondents, or the validity of the Transfer Deed under the general law. The finding recorded herein is confined to the legality of the impugned orders and, in particular, to the failure to duly serve and hear the petitioner. All substantive questions relating to the Transfer Deed, title, possession and succession are left open.

34. In view of the foregoing, the petition is allowed. The order dated 19.11.2025 (Annexure P-3) passed by the Sub Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Bholath, District Kapurthala, cancelling the registered Transfer Deed executed in favour of the petitioner, as well as the order dated 29.04.2026 (Annexure P-5) dismissing the petitioner's application, are set aside.

35. The question framed by this Court on 27.05.2026 is answered in the terms stated above. In view of the demise of Fauja Singh on 20.12.2025, the proceedings arising out of File No.03/MWP shall not be revived for fresh adjudication under the Act and shall stand treated as having abated.

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36. Consequently, any entry made in the revenue record solely pursuant to the order dated 19.11.2025, including Mutation No.2912 dated 02.01.2026, shall not survive. The concerned revenue authorities shall take consequential steps in accordance with law.

37. It is, however, clarified that nothing contained in this order shall be construed as an adjudication upon the validity of the Transfer Deed dated 13.04.2022 under the general law, or upon the questions of title, possession, succession or any other substantive rights of the parties. The private respondents and all persons claiming through late Fauja Singh shall remain at liberty to avail such remedies as may be available to them in law, and nothing stated herein shall prejudice such remedies

38. Pending application(s), if any, shall also stand disposed of.

(KIRTI SINGH)
JUDGE

October 01, 2026
Ithlesh

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

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