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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25692-2024 (O&M)
Date of Decision: 26.11.2024

Baru Ram

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Saurav Bhatia, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

HARSH BUNGER, J. (Oral)

This petition has been filed under Articles 226 & 227 of the Constitution of India *inter alia* seeking issuance of a writ in the nature of Certiorari for setting aside *Sanad Takseem* dated 01.08.2019 (Annexure P-15) issued by the learned Assistant Collector 2nd Grade, Jind; order dated 27.10.2023 (Annexure P-20) passed by the learned Commissioner, Hisar Division, Hisar and order dated 07.08.2024 (Annexure P-21) passed by the learned Financial Commissioner, Revenue, Haryana.

2. Briefly, in August 2012, respondent No.7 (Ram Niwas) filed an application seeking partition of joint land comprised in *Khewat* No.577, measuring 114 *kanal* 16 *marla* situated at Village Dhigana, Tehsil and District Jind, as per *jamabandi* for the year 2009-10.

2.1 It appears that in the aforesaid partition proceedings, mode of

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partition dated 08.05.2014 (Annexure P-6) was prepared and thereafter, *Naksha Bey* was called from the field staff. Upon receipt of *Naksha Bey* on the partition case, objections thereto were called by the learned Assistant Collector.

2.2 It transpires that the petitioner submitted objections to *Naksha Bey* claiming that he was in possession of *killa* No.36//12,13 however, the said area has not been given to him. Another objection was raised by the petitioner that he has installed a tubewell in *killa* No.15/2 which has been allocated to Smt. Roshni Devi (respondent No.4 herein). It was also stated that water channels and passages were not provided in the land under partition.

2.3 The learned Assistant Collector 2nd Grade, Jind vide order dated 18.12.2014 (Annexure P-9) rejected the objections of the petitioner to *Naksha Bey* and approved *Naksha Bey*. Thereafter, *Naksha Zeem* was called.

3. Feeling aggrieved against the aforesaid order dated 18.12.2014 (Annexure P-9), the petitioner preferred an appeal before the learned Collector, Jind, which came to be dismissed vide order dated 21.09.2016 (Annexure P-12) by holding as under:

“After carefully examining all the evidence recorded in the file and hearing both the parties in detail, I have come to the conclusion that the order of the Subordinate Court dated 18.12.2014 has been passed correctly as per the rules. All the plots have been provided with roads and canals. While dividing, land is given from the adjoining land to complete the shares. There is no need to make any amendment in the order of the Subordinate Court dated 18.12.2014 because the Subordinate Court itself has made the Map- ‘B’ correctly as per the rules after inspecting the spot of the land. Therefore, I dismiss the appeal of the appellant. A copy of this should be sent to the

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Assistant Collector, Second Class and Sub-Tehsildar, Jind and after completing the file, it should be admitted in the record room.

This decision was pronounced in the Open Court today on 21.09.2016.”

4. A revision petition filed by the petitioner, before the learned Commissioner, Hisar Division, Hisar was also dismissed vide order dated 20.02.2018 (Annexure P-14), by holding as under:

“7. After hearing all sides and perusing the record, it is found that the partition is not as per killa lines. But there is no mandatory requirement that partition should be conducted only by giving complete killa to any co-sharer or group of co-sharers. Neither mode-of-partition suggested partition along the killa line. It is also impractical and not possible due to different shares and the attempt to protect the possession as-much-as-possible and also due to providing the access path to all groups and co-sharers.

8. Further when the irrigation through pipes then there is no requirement for depicting separate khal in Map-B. Access path is there to everybody. Changing of the access path in khasra No. 99/9 does not save the land utilized in access path. Nor there is any evidence of obstruction of madhi and this objection was not raised at the begining.

9. The petitioner filed second appeal, when the first appeal was dismissed. Punjab Land Revenue Act does not provide opportunity of second appeal. Proviso (i) to Section 13 of Punjab Land Revenue Act, 1887 clearly states that when an order is confirmed on first appeal, then further appeal shall not lie. Therefore, the appeal is not maintainable second time.

10. However, even it is treated as revision then also revisional jurisdiction of this court is quite limited. Unless there is patent illegality, material irregularity, error of jurisdiction or perversity, the order of lower court cannot be altered. There is no such malady proved here. So, concurrent orders of Assistant

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Collector and Collector cannot be interfered with, nor there is any ground to invoke revisional jurisdiction.

11. Dismissed. Parties are directed to appear before Assistant Collector on 15.05.2018 for further proceeding. The file may be consigned to record room. Lower court's record is returned."

5. It appears that the petitioner did not challenge the aforesaid order dated 20.02.2018 (Annexure P-14) any further. Thereafter, *Sanad Takseem* (instrument of partition) came to be issued by the learned Assistant Collector 2nd Grade, Jind on 01.08.2019 (Annexure P-15). Subsequently, the petitioner preferred a revision bearing No. 15017/Partition before the learned Commissioner, Hisar Division, Hisar, challenging the *Sanad Takseem* dated 01.08.2019 (Annexure P-15), which was dismissed on account of maintainability vide order dated 27.10.2023 (Annexure P-20).

6. Thereafter, the petitioner preferred a Revision Petition bearing ROR No.05 of 2023-24 before the learned Financial Commissioner, Haryana, which came to be dismissed vide order dated 07.08.2024 (Annexure P-21) by observing as under:

"2. The dispute raised by the Ld. Counsel for Petitioner is regarding the allotment of khasra nos. 36//14/2 (7-11), 15/2 (2-5) to Respondent no. 1 in the impugned Sanad Takseem. It is admitted that the Petitioner is in possession of the said area, which also contains his diesel pumpset and a kotha.

3. Several opportunities were given to the contesting parties to arrive at a mutually acceptable alternate solution, but they could not. It is submitted by the Ld. Counsel for Respondent no. 1 that the Respondent no.1 is not in possession of an inch of land, though she had purchased 11 kanals in the year 2011. He submits that the Respondent no. 1 has no objection if the specific area sold by Respondent no. 2 to her in the year 2011 is allotted to her. He further submits that the present petition is intended to delay the execution of the Sanad Takseem, since the

Petitioner is in possession of excess area. The Ld. Counsel for Respondent no. 1 further submits that the kotha in khasra no. 36//14/2 is old and dilapidated and the diesel pumpset installed in khasra no. 36//15/2 can be re-installed in the separate area allotted to the Petitioner. The Ld. Counsel for Respondent no. 1 undertakes to compensate the Petitioner the cost of the existing kotha and the cost of re-installing the tubewell.

4. I find no merit to interfere with the impugned Sanad Takseem. However, the Assistant Collector is directed to assess the cost of the Petitioner's kotha in khasra no. 36//14/2 and the cost of re-installing the diesel pumpset. The assessed cost shall be communicated to the Respondent no. 1, who shall make the payment through the Assistant Collector to the Petitioner.

ROR dismissed.”

7. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

8. Heard.

9. The only argument raised by learned counsel for the petitioner is that the possession of the petitioner over land comprised in *killa* No.36//14/2, 15/2 has been disturbed.

10. It is observed that the contention raised before this Court was also raised by the petitioner before the learned Assistant Collector while submitting his objections to *Naksha Bey*, which were dismissed vide order dated 18.12.2014 (Annexure P-9).

10.1 An appeal filed against the aforesaid order dated 18.12.2014 (Annexure P-9) was dismissed by the learned Collector, Jind vide order dated 21.09.2016 (Annexure P-12) and a further revision before the learned Commissioner, Hisar Division, Hisar was also dismissed vide order dated 20.02.2018 (Annexure P-14).

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10.2 Concededly, the order dated 20.02.2018 (Annexure P-14) was never challenged any further and the same has attained finality. On the basis of the approved *Naksha Bey*, *Naksha Zeem* and *Sanad Takseem* stand issued. Accordingly, at this stage, petitioner cannot reagitate the same objection as was raised at the time of *Naksha Bey*, which has already attained finality.

11. Be that as it may, the learned Financial Commissioner, Haryana vide order dated 07.08.2024 (Annexure P-21) directed that in case, there is some construction by the petitioner on *kill*a No.36//14/2, then the cost of the same be assessed and paid to the petitioner and as regards the installation of diesel pumpset in *kill*a No.36//15/2 is concerned, it has been directed that the same can be reinstalled in other land and the cost of reinstalling the said diesel pumpset be also given to the petitioner.

12. Considering the totality of circumstances, I do not find any merit in the present Writ Petition and the same is accordingly dismissed.

13. All pending application(s), if any, shall also stand closed.

26.11.2024 (HARSH BUNGER)
Himani JUDGE

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