

**IN THE HIGH COURT OF PUNJAB & HARYANA HIGH COURT
AT CHANDIGARH**

Civil Writ Petition No.13713 of 2010

Date of Decision: 23.03.2015

Joginder Singh and others

..... Petitioners

Vs.

Financial Commissioner Cooperative, Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Ravish Bansal, Advocate for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab
for respondent Nos.1 to 4.

Mr. Rai Singh Chauhan, Advocate
for respondent Nos.13, 15, 17 to 19, 27 and 36.

Mr. Parminder Pal Sharma, Advocate for respondent No.41.

JASWANT SINGH, J. (Oral)

The predecessors-in-interest of respondent Nos.6 to 8 along with respondent Nos.9, 10 and 11 being co-sharers and desirous of seeking a separate portion filed partition proceedings before the Assistant Collector 1st Grade, Shahkot on 26.08.1992.

The present petitioners filed their reply seeking a separation of their shares as well but with a separate joint *tak*.

The Assistant Collector 1st Grade, vide impugned order dated 30.06.2000 (**Annexure P-2**), finalized the partition as per the Naksha '*Ura*', '*Arra*' and '*Irri*'. The petitioners were allotted 181 Kanals as per their shares determined at Item No.6 of the impugned order dated 30.06.2000 (**P-2**). It was

noticed that in spite of innumerable opportunities granted to the petitioners, they had failed to file their objections to the amended Naksha '*Arra*'.

Aggrieved against the order dated 30.06.2000 (**P-2**), the petitioners/appellants filed an appeal, which was dismissed by the Collector, Shahkot, vide order dated 28.11.2000 (**P-3**).

Still dissatisfied, the petitioners filed a revision before the Additional Commissioner (Appeals), Jalandhar Division, which was also dismissed, vide order dated 08.10.2001 (**P-4**).

The next revision filed by the petitioners before the Financial Commissioner, Cooperation, Punjab was accepted, vide order dated 19.04.2004 (**P-6**) and the matter was remanded back on a limited issue to the Assistant Collector 1st Grade, Shahkot for a fresh adjustment regarding land measuring 20 Kanals 6 Marlas, comprised in Khasra No.12//18, 19, 20, 23, 17/3, 8 & 18 on the ground of possession of the petitioners in the said land.

It is not disputed that some of the present respondents challenged the order dated 19.04.2004 (**P-6**) by filing CWP No.9488 of 2004, which was disposed of vide order dated 12.08.2004 (**P-7**) on the concession made by the parties that the order be set aside and the matter be remanded back to the Financial Commissioner to be decided afresh on merits in accordance with law.

Thereafter, Financial Commissioner, vide order dated 06.11.2009 (**P-8**) has dismissed the revision filed by the present petitioners. Hence, the present writ petition laying challenge to orders at **Annexures P-2, P-3, P-4 and P-8**.

Learned Counsel for the petitioners has argued that the impugned order dated 06.11.2009 (**P-8**) has not been passed in compliance of the directions passed by this Court on 12.08.2004 (**P-7**) and, therefore, is liable to be set aside

and remanded back to be decided afresh on merits.

Learned Counsel for the respondents, on the other hand, have supported the impugned order dated 06.11.2009 (**P-8**).

It is not in dispute that the partition proceedings were initiated in the year 1992. It is also come on record that since the year 2000, the partition has been effected and the parties put in possession of their respective shares as per the settled Mode of Partition.

The mere grievance of the petitioners is that while laying down the mode of partition, their possession on some portion has been disturbed and in lieu of the same, another parcel granted, which is on a slightly elevated level, cannot be accepted to be a ground for setting aside the whole partition. It has to be accepted that while effecting partition, possession of the parties has to be protected as far as possible, however, the same is not the only criteria for effecting mode of partition. It is rightly noticed that the parties on the basis of partition proceedings are to be allotted land according to their due shares keeping in mind the price of the land and while partition disturbance of possession up to some extent is obvious.

In the present case, merely because the petitioners have been allotted a portion of agricultural land, which is at a higher level, cannot vitiate the entire partition proceedings, apart from putting the clock back now after 14 years of settled possession would also be highly unjust.

In view of the above, finding no merit in the present writ petition, the same is hereby dismissed.

March 23, 2015
Gagan

(JASWANT SINGH)
JUDGE