

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: February 16, 2015

1. C.W.P. No. 21052 of 2011

Kulwant Singh

... Petitioner

Versus

Financial Commissioner, Revenue, Punjab and others

... Respondents

2. C.W.P. No. 1647 of 2012

Kulwant Singh

... Petitioner

Versus

Financial Commissioner, Revenue, Punjab and others

... Respondents

3. C.W.P. No. 23433 of 2012

Kulwant Singh

... Petitioner

Versus

Financial Commissioner, Revenue, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. S.K. Mahajan, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. A.G., Punjab.

Mr. K.S. Sidhu, Advocate,
for respondent nos. 5 to 7.

Paramjeet Singh, J. (Oral)

The above mentioned three Civil Writ Petitions i.e. CWP Nos. 21052 of 2011, 1647 and 23433 of 2012 are being disposed of by this common judgment as the subject matter of all the aforementioned writ petitions is same. Learned counsel for the petitioner has referred to the facts from CWP No. 21052 of 2012. Therefore, for the sake of convenience, facts are taken from this petition.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing order dated 20.01.2011 (Annexure P/14) passed by respondent no.1 – Financial Commissioner, Revenue, Punjab, order dated 22.09.2009 (Annexure P/13) passed by Additional Commissioner (Appeal), Jalandhar Division, Jalandhar and order dated 23.09.2008 (Annexure P/11) passed by respondent no.3 – Collector, Amritsar.

I have heard learned counsel for the parties and perused the record.

Affidavit dated 10.09.2014 has been filed by Mr. Sanjeev Kumar, Tehsildar, Amritsar-II, wherein he has admitted that Naksha *Arra* was not called. In spite of that, partition has been done. Para no.5 of affidavit dated 10.09.2014 is reproduced as under:-

“5. That subsequently mode of partition was prepared and field staff was deputed to prepare papers of partition. Accordingly the field staff had filed the papers of partition including Akas Sazra showing specific allocated areas to the parties along with field book. It is pertinent to submit that plan (Arra) was not filed as per prescribed format though Akas Sazra was filed.”

Learned counsel for respondent nos. 5 to 7 has pointed out that they were also aggrieved against clause 3 of mode of partition where it has been mentioned that partition shall be made after disturbing the possession.

I have considered the contention raised by learned counsel for the parties and perused the mode of partition (Annexure P/2).

Clause 3 of the mode of partition (Annexure P/2) reads as under:

“Partition would be done after disturbing the possession.”

To allay the apprehension of respondent nos. 5 to 7, this Court deems it fit and proper to explain regarding the aforesaid clause. Disturbing the possession certainly means that in order to give proportionate share to the parties according to the value of the land keeping its nearness to passage, road, abadi etc. it may be necessary to disturb the possession, which, however, should be to the minimum extent as far as possible in the given circumstances of a case. It shall not be

taken as a wholesale disturbing possession of the respective parties. It should be taken care that disturbing of possession should be to the minimum extent that too as per quality of land.

In view of affidavit dated 10.09.2014 of Tehsildar, Amritsar-II, impugned orders are set aside. The Assistant Collector Ist Grade, Amritsar-II is directed to call Naksha *Bay* afresh and thereafter, afford opportunity to file objections to the parties and pass appropriate orders in accordance with law. It is made clear that Assistant Collector Ist Grade shall not adjourn the matter unnecessarily.

All the three aforementioned writ petitions are disposed of in the above terms.

February 16, 2015
vkd

[Paramjeet Singh]
Judge