

CWP No. 21343 of 2013

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

**CWP No. 21343 of 2013.
Date of Decision : 25.08.2015.**

Manoj Kumar and others

...Petitioners

Versus

Narain Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. R.S. Budhwar, Advocate for the petitioners.

Mr. V.K. Jindal, Senior Advocate with
Mr. Maninder Singh Punia, Advocate
for respondents No. 1 to 3.

Mr. Rajneesh Chadwal, Deputy Advocate General, Haryana.

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing of order dated 20.05.2013 (Annexure P-18) passed by Financial Commissioner, Haryana, order dated 22.06.2012 (Annexure P-16) passed by Commissioner Rohtak Division, Rohtak, order dated 04.06.2010 (Annexure P-14) passed by Collector Karnal and order dated 13.01.2010 (Annexure P-13) passed by Assistant Collector 2nd Grade, Karnal.

Brief facts of the case are that an application dated

08.11.2002 was filed by respondents No. 1 and 2 under Section 111 of the Punjab Land Revenue Act, for partition of land measuring 248 kanals situated in Village Kunjpura, District Karnal before Assistant Collector 2nd Grade, Karnal. After completing the other proceedings, ultimately, mode of partition was sanctioned vide order dated 19.12.2005 by the Assistant Collector 2nd Grade, Karnal, which has become final. Thereafter Naksha-Bey was finalized vide order dated 30.03.2006 by the Assistant Collector 2nd Grade, Karnal after hearing the objections of the parties. However, two appeals were preferred against the said Naksha-Bey before the Sub Divisional Officer (Civil)-cum-Collector, Karnal, who remanded the case back to the Assistant Collector 2nd Grade, Karnal vide its order dated 29.05.2006 with the direction to prepare the Naksha-Bey keeping in view the mode of partition and decree of Civil Court. The appeal against the order dated 29.05.2006 (Annexure P-10) and order dated 30.03.2006 was filed before the Commissioner, Rohtak Division Rohtak and the same was allowed vide order dated 21.06.2007. The Commissioner modified the order of the Collector and directed that partition be conducted only as per sanctioned mode of partition. Aggrieved against the order of the Commissioner, a revision petition was filed before the Financial Commissioner, who vide its order dated 21.10.2009 directed the Assistant Collector 2nd Grade to prepare Naksha-Bey keeping in view all the objections including the Civil Court decree of 2000. In pursuance of that fresh Naksha-Bey was required to be called

and objections were to be invited, which were subsequently dismissed. The petitioners feeling aggrieved against the order, have come to this Court. At the time of notice of motion, following order was passed by a Co-ordinate Bench of this Court on 12.11.2013 :

“Counsel for the petitioners, inter alia, contends that after the mode of partition was suggested, objections were filed. Naksha-Be was prepared but it was objected to by one Atam Parkash-respondent No. 3 alleging that while providing rastas to all the kurras, decree dated 11.09.2000 passed by the Civil Judge (Jr. Divn.) was to be kept in mind. The Financial Commissioner, vide his order dated 20.10.2009, remanded the case back to the Assistant Collector 2nd Grade for preparing Naksha-Be keeping in view the objections raised by Atam Parkash. However, the Assistant Collector 2nd Grade, vide his order dated 13.01.2010, rejected the objections of Atam Parkash and directed the Halqa Kanoongo to prepare Naksha-Be.

Counsel for the petitioner submits that against that order, Atam Parkash did not file any appeal, rather that matter was taken up by two others, who were satisfied with Naksha-Be prepared earlier on the basis of mode of partition. It is, thus, submitted that on their appeal, no adverse order could have been passed by the higher Courts.

Notice of motion for 11.12.2013.”

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

Learned counsel for the petitioners, vehemently, argued that the Naksha-Bey (Annexure P-22) has rightly been prepared by the

authorities and the same is in accordance with the decree as well as mode of partition. So, the question of calling fresh Naksha-Bey does not arise.

On the other hand, learned counsel for the respondents has, vehemently, contended that the order has been passed by the Financial Commissioner specifically saying that fresh Naksha-Bey may be called keeping in view all the objections including the Civil Court decree of 2000. The order of the Financial Commissioner is dated 20.10.2009 and the Naksha-Bey, which has been placed on record as Annexure P-22 is dated 18.01.2006. Certainly in view of the Financial Commissioner's remand order, Naksha-Bey was required to be called and opportunity to file objection should have been afforded.

The petitioners cannot say that the earlier Naksha-Bey, which was prepared on 18.01.2006 (Annexure P-6), should be kept intact. In fact, that Naksha-Bey was approved vide order dated 02.05.2006. That order has been set-aside by the Financial Commissioner. Once the earlier order has been set-aside and the case has been remanded back to the Assistant Collector 2nd Grade for preparation of the fresh Naksha-Bey then the other parties have also right to file objections. Thus the only option remained with the Assistant Collector 2nd Grade was to call for Naksha-Bey afresh, which has been subsequently called and, to which, the objections were filed only by Atam Parkash, respondent No. 3 and the same have been rejected. The petitioners cannot time and again raise the issue that Naksha-Bey, which

was approved on 02.05.2006, be accepted. Once the matter earlier came up to Financial Commissioner and case was remanded back to prepare fresh Naksha-Bey, the present petition is rather frivolous. The petitioners only want that Naksha-Bey, which was prepared on 18.01.2006 and approved on 02.05.2006, should be accepted for all intents and purposes.

If the fresh Naksha-Bey would not have been prepared in view of the remand order passed by the Financial Commissioner then the petitioners could have raised objection that the Naksha-Bey that was prepared on 18.01.2006 has to be accepted.

In view of this, the present petition is dismissed with no order as to costs.

August 25, 2015.
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(PARAMJEET SINGH)
JUDGE