

214/2

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

DATE OF DECISION: 14.9.2015.

(1) CWP No. 24471 of 2013

Krishan and others

....Petitioners.

vs.

F.C. Haryana and others

.....Respondents.

(2) CWP No. 24470 of 2013

Dinesh

....Petitioner.

vs.

F.C. Haryana and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: - Mr. Narender Yadav, Advocate for the petitioners

Mr. Rajesh Kumar Sheoran, Addl. AG, Haryana

Mr. Gunjan Mehta, Advocate for respondents
No. 5, 6, 20 and 21.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two writ petitions bearing CWP No. 24471 of 2013 and CWP No. 24470 of 2013. However, the facts are being extracted from the first petition as the issue involved in both the petitions is the same.

In short, respondent No. 5-M/s Acme Builders Pvt. Ltd., initiated partition proceedings under Section 111 of the Punjab Revenue

Act 1887 (for short 'the Act'), by filing an application before the Assistant Collector, Ist Grade, Gurgaon, alleging themselves to be the owners of land comprising in Mustil No. 59, Killa No. 8, 13, 14/1, 18/2 and Mustil No. 58, Killa No. 3/1,8/3, 13/1. The application was contested by the petitioners. The order recorded on 27.3.2008 read as under: -

“Case has been called. Both the counsel for the parties appeared. Statements of both the parties are recorded. Counsel for the applicant has filed an application for impleading, which is accepted. Counsel for the applicant has produced the amended title. Now, the file be produced for recording the statement of the applicant on 3.4.2008. Naksha Be has already been received.”

Thereafter on 3.4. 2008, the following order was passed: -

“Case has been called. Both the counsel for the parties have come present. Statements of respondents No. 3, 4, 5 and 6 are recorded and the mode of partition is proposed. Now the file be produced for objection to the proposed mode of partition on 7.4.2008.”

It is further submitted that on 7.4.2008, the petitioners requested for an adjournment in order to file objections as the time granted by the Court was too short. On the said date, the following order

was passed: -

“Case has been called. Both the counsel for the parties come present. Counsel for the applicant has not raised any objection to the mode of partition whereas the counsel for respondent has requested for time to file objection to the mode of partition on which the counsel for the applicant raised objection and stated that the counsel for respondent is trying to delay the case deliberately and is asking for adjournment for that reason only, therefore they may not be given any more adjournment. Thus, I have heard both the learned counsel for the parties and mode of partition is accepted as it is. A copy of this be sent to the Girdawar/Halqa Patwari who should prepare the documents of partition and send it to the Court on 10.4.2008.

On 10.4.2008, the following order was passed: -

“Case has been called. Both the counsel for the parties are present. Naksha Be has been received. Now file be produced and the case be listed for objection to Naksha Be. Adjourned to 17.4.2008.”

On the adjourned date, the following order was passed: -

“Case was called. Counsel for the parties were present. Counsel for respondents prays for time to raise objection to Naksha Be. Now the case is adjourned to 25.4.2008 in order to file objections.”

It is submitted that on 7.4.2008, objections to Naksha Be were not filed by the petitioners. They had filed an appeal against the order dated 7.4.2008 before the Collector, Gurgaon. The said appeal was dismissed on 11.9.2008 (Annexure P-8), in which it was observed that the petitioners have been given ample opportunities by the Court to file objections which they did not avail. Thereafter, the petitioners filed a revision before the Financial Commissioner, which too was dismissed on 12.4.2013. Hence, the present petition has been filed.

Learned counsel for the petitioners has submitted that the order has been passed by the Assistant Collector Ist Grade in an unholy haste as they have not been given sufficient time to object the mode of partition. The revenue authorities prepares Naksha Be in terms of the mode of partition and it is followed by Naksha Jeem. The entire base is the mode of partition and thereafter, it is only the procedure to be adopted by the revenue authorities to carry out the wishes of the parties to partition, which is reflected in the mode of partition.

Learned counsel for respondents, however, submits that no doubt, the dates have been given but it is only on the statement made by the petitioners. If the time was short, the petitioner could have atleast filed

some objections on the adjourned date i.e. 7.4.2008. It is also submitted that the order passed in ROR No. 290/11-12 Sanjay Vs. Commissioner, Gurgaon Division, Gurgaon has not been challenged.

I have heard learned counsel for the parties and perused the record. It is well known that justice should not only be done but it should be seen to have been done. Thus, in this case, the sequence of events would suggest that sufficient opportunities were not granted to the petitioners by the Assistant Collector Ist grade, Gurgaon to file objections. The mode of partition was proposed on 3.4.2008 and the case was adjourned to 7.4.2008 for filing the objections.

I have checked up from the Calender of 2008 that only 4.4.2008 was the working day and 5.4.2008 and 6.4.2008 were holidays being Saturday and Sunday. Accordingly, the case was adjourned to 7.4.2008 and on that day, there was a request made by the petitioner to the Assistant Collector, Ist Grade, Gurgaon for giving some more time to file objections. But on the protest made by respondents, the Assistant Collector, Ist Grade, Gurgaon did not grant any more time except for giving the date from 3.4.2008 to 7.4.2008 and in the absence of any objections, which could have been filed by the petitioners, sanctioned the mode of partition and adjourned the case again for 10.4.2008 i.e. after three days and called for the Naksha Be. Thereafter, the case was adjourned to 17.4.2008 for filing the objections to Naksha Be. It is surprising that after accepting the proposed mode of partition, only three days time was given even to the Halqa Patwari to prepare the Naksha Be

i.e. a map in accordance with the mode of partition which definitely requires some time for the revenue authorities to prepare.

There is an error in the approach of the Courts below in observing that the petitioners have been given ample opportunities. I could have understood that the petitioners had been granted an adjournment on 7.4.2008 when the petitioners asked for a short adjournment to file objections but the prayer was declined by the Assistant Collector Ist Grade, Gurgaon, only on the objection raised by respondents that the petitioners are trying to prolong the matter, whereas the matter had started on 23.3.2008 itself and the mode of partition was prepared on 3.4.2008 and it was sanctioned on 7.4.2008, thereafter Naksha Be was prepared on 10.4.2008. All these proceedings were carried out by the Assistant Collector Ist Grade, Gurgaon, do not justify the principals of natural justice of providing just and fair opportunity of hearing much less to file objections in the partition proceedings. Once, the mode of partition is accepted and the Naksha Be is prepared, no objection would succeed if Naksha Be is prepared in accordance with the mode of partition.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the proceedings carried out by the Assistant Collector Ist Grade, Gurgaon, were in an unholy haste, without giving due opportunities to the petitioners to file their objections. Accordingly, the impugned orders are hereby set aside and the case is remanded back to the Assistant Collector Ist Grade, Gurgaon, to allow the petitioners to file their objections to the mode of partition.

Parties are directed to appear before the Assistant Collector Ist Grade, Gurgaon on 5.10.2015 who is further directed to expedite the partition proceedings.

Allowed as above.

(RAKESH KUMAR JAIN)
JUDGE

14.9.2015
preeti