

CWP No. 482-2014

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

CWP No. 482-2014

Date of Decision: 19.01.2015

Brigadier Satwant Singh

... Petitioner(s)

Versus

Assistant Collector Ist Grade, Moga and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Argued by: Mr. M.K.Garg, Advocate,
for the petitioner.

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

Mr. Navkiran Singh, Advocate,
for respondents no.2 to 4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 13.12.2013 (Annexure P-6) passed by Assistant Collector-Ist Grade, Moga, District Moga whereby mode of partition already prepared vide order dated 11.04.2013 (Annexure P-4) and finalized/sanctioned vide order dated 11.07.2013 (Annexure P-5) passed by the Assistant Collector Ist Grade, Bagha Purana, has been amended without obtaining necessary sanction

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from the competent authority as per provisions of the Punjab Land Revenue Act, 1887 (in short, 'the 1887 Act').

In short, brief facts of the case are to the effect that respondent no.2 filed an application for partition of land measuring 307 kanals situated in village Smalsar-II, Tehsil Bagha Purana, District Moga, as per jamabandi for the year 2002-03. The parties appeared and filed their respective replies. It is further averred that Sardar Kartar Singh was Head Master in Govt. High School Teg Bahadur, Rode who served the area for 35 years and in his memory Smt. Gurdial Kaur with the help of petitioner and other respondents started a school in the name of her husband "Headmaster Kartar Singh Model School Society Village Smalsar. These facts are not relevant for the purpose of deciding the present petition. It is one of the averments in the petition that land was partitioned in the year 2001 and it was reduced to writing on 07.08.2002 which bears the signatures of all the legal heirs of said Kartar Singh. It is further averred that lease deeds dated 22.10.2001 and 02.01.2007 were executed for a period of 99 years with regard to certain khasra numbers of the land subject to partition. There are other issues with regard to sanction of mutations and execution of transfer deed. It is further averred that school has been constructed in eight acres of land including school building, residential premises and school grounds. After appearance of parties and filing of respective replies, the Assistant Collector Ist Grade ordered continuation of partition proceedings and

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thereafter *Naksha 'Ura'* was called for and ultimately finalized. It needs to be mentioned here that a civil suit was filed as a result of which partition proceedings were adjourned *sine die*. Thereafter, respondent no.2 preferred an appeal before the Collector which was dismissed vide order dated 27.01.2011 (Annexure P-2). Respondent no.2 preferred revision before the Commissioner who vide order dated 20.09.2012 (Annexure P-3) set aside the orders passed by the Assistant Collector-Ist Grade and Collector and remanded the case to the Assistant Collector-Ist Grade for fresh decision. Thereafter, partition proceedings commenced and mode of partition was prepared vide order dated 11.04.2013 (Annexure P-4). Against that, objections were filed by respondents no.2 to 4 which were rejected by the Assistant Collector-Ist Grade vide order dated 11.07.2013 (Annexure P-5). Thereafter, *Naksha 'Ara'* was called. In the meantime, upon an application, the case was transferred. The Assistant Collector Ist Grade instead of finalizing *Naksha 'Ara'* and proceeding further, amended mode of partition vide impugned order dated 13.12.2013 (Annexure P-6). Hence, this writ petition.

Upon notice, respondent no.1 and respondents no.2 to 4 filed their separate replies with the averments that partition is being done as per jamabandi for the year 2002-03. Keeping in view the nature of the land as shown in jamabandi for the relevant year at the time of filing the application for partition, partition should be finalized.

I have heard learned counsel for the parties and perused the

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record.

Learned counsel for the petitioner vehemently contended that impugned order dated 13.12.2013 (Annexure P-6) has been passed illegally and arbitrarily. The amended mode of partition has been prepared without seeking sanction from the competent authority. The Assistant Collector Ist Grade cannot amend/modify the mode of partition which was approved vide order dated 11.04.2013 (Annexure P-4). The objections filed by respondents no.2 to 4 against mode of partition were dismissed vide order dated 11.07.2013 (Annexure P-5). As such, the order dated 11.04.2013 (Annexure P-4) has become final.

Per contra, learned State counsel and learned counsel for respondents no.2 to 4 vehemently contended that impugned order (Annexure P-6) is legal and valid. Otherwise also, mode of partition (Annexure P-4) clearly indicates that partition can be carried out keeping in view the nature of land. A specific reference was made to Clauses 1 to 7 of the mode of partition prepared on 11.04.2013 (Annexure P-4). Learned counsel further contended that as per the mode of partition, the land is required to be partitioned keeping in view its value.

I have considered the rival contentions of learned counsel for the parties.

Section 116 of the 1887 Act provides procedure on admission of application for partition. It lays down that if the revenue officer does not refuse the application under the provisions of the 1887

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Act, he shall ascertain the question as to the title in the property of which partition is sought and question as to the property to be divided or the mode of making the partition in accordance with law. Admittedly, no question of title is alleged to have been raised in the present case and mode of partition was prepared vide order dated 11.04.2013 (Annexure P-4). Against that, respondents no.2 to 4 filed objections which were rejected vide order dated 11.07.2013 (Annexure P-5). Thereafter, on the application of respondents, the case was transferred to another Assistant Collector-Ist Grade who modified/amended the mode of partition without getting any sanction from the competent authority.

The mode of partition is the bone of partition. It must contain clause that partition will be carried out after taking into consideration the possession and any improvement made by a co-sharer after filing of the application for partition is to be ignored. The mode of partition once sanctioned should be followed in the partition proceedings but if in the circumstances of the case the mode of partition is to be departed, mode of partition should be first amended after getting the approval of the officer under whose control the revenue officer is immediately subject to. In the present case, the Assistant Collector Ist Grade did not get any approval from the competent authority before reviewing/modifying the mode of partition (Annexure P-4) as approved and vide order dated 11.07.2013 (Annexure P-5) objections of the respondents no.2 to 4 against the mode of partition had been rejected.

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The impugned order (Annexure P-6) is not sustainable in the eyes of law as sanction under Section 15 of the 1887 Act was not obtained from the revenue officer to whose control he is immediately subject to. Hence, the impugned order dated 13.12.2013 (Annexure P-6) is set aside.

It would be apposite to mention here that if revenue officer finds that mode of partition is unrealistic, inequitable and is hindrance for affecting actual partition at the spot and is required to be departed from, then permission is required to be sought to review/modify the mode of partition from the revenue officer to whose control he is immediately subject. There is no bar under the provisions of the 1887 Act for modifying/amending mode of partition if it is unrealistic and against the settled principles of law. The Assistant Collector Ist Grade can recommend for the review of such an order to the officer immediately under whose control he is subject to. In the present case, the Assistant Collector Ist Grade should have referred the matter to the Collector for review of the orders in view of Section 15 of the 1887 Act. If the Assistant Collector Ist Grade finds that there is a difficulty in the partition of land or the parties are asserting with regard to subsequent construction or improvement etc., the Assistant Collector Ist Grade is competent to recommend for the review of mode of partition to his immediate superior and thereafter may proceed in accordance with law.

In view of above, instant petition is allowed and impugned order dated 13.12.2013 (Annexure P-6) is set aside.

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It is made clear that it would be open to the Assistant Collector Ist Grade to seek review of mode of partition in accordance with law and if possible, partition shall be carried out preferably within one year from the date of receipt of certified copy of this order. It will be subject to the rights of the parties regarding appeal or revision arising from various orders.

In view of peculiar facts and circumstances of the case, no order as to costs.

19.01.2015

parveen kumar

**[Paramjeet Singh]
Judge**