

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

CWP No.5013 of 2015(O&M)

Date of Decision:-June 30th , 2015

Prithviraj Singh Oberoi etc.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ashok Aggarwal, Senior Advocate assisted by
Mr. Gaurav Chopra and Mr. Anurag Chopra, Advocates
for the Petitioners.

JASWANT SINGH, J.

Challenge in the present petition is to the orders dated 20.06.2014 (P-5), 02.07.2014 (P-6), 28.07.2014 (P-8) and 13.08.2014 (P-9) passed by respondent no.2, whereby on an application for partition moved by respondent no.3 under Section 111 of the Punjab Land Revenue Act, 1887, the land has been partitioned and the final instrument of partition i.e. *Sanad Taksim* has been prepared.

Admittedly, respondent no.3 along with the petitioners are co-sharers in a land which is recorded as *Gair Mumkin Pahar* in Khewat No.18, Khatauni No.19, Village Mohammedpur Gujran, Tehsil Sohna, District Gurgaon total measuring 1539 Kanal and 4 Marlas. The grievance of the petitioners as argued by Ld. Senior Counsel, in the present petition is to the effect that the land in question being *Gair Mumkin Pahar* cannot be

partitioned because it is a non agricultural land and, therefore, does not come under the definition of land as envisaged in Section 4(1) of the Punjab Tenancy Act, 1887. Reliance has been placed on the judgments passed by this Court in **Ujjagar Singh & Ors. Vs. Malkiat Singh & Ors. 2014 (4) RCR (Civil) 308** and **Jai Singh Vs. Smt. Bhanti 2002(3) RCR (Civil) 435**.

Another argument of the petitioners is to the effect that A.C. Ist Grade, Sohna, in its impugned order has mentioned that at the first instance, no objections were filed when Map "A" was being prepared. However, the said fact is factually incorrect because objections were indeed filed. The sum and substance of the objections filed by the petitioner before the authority below is that the land cannot be partitioned because it is *Gair Mumkin Pahar* and thus, the Revenue Court has no jurisdiction in deciding the partition application and the only remedy available was to file a civil suit under the Partition Act. The second objection which emanates is that there is no reference to *Sharat Wajib Ul Arz* by respondent no.3 at the time of filing the application for partition and the significance of the said *Sharat Wajib Ul Arz* is that 'the rocks and stones would belong to Gram Panchayat'. Thus the Senior Counsel appearing for the petitioner has argued that in view of the submissions made by him, present petition deserves to be allowed.

After hearing learned Counsel for the petitioners and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

Before advertng to the arguments raised by the Senior Counsel appearing for the petitioners, it would be apposite to refer to Section 4(1) of the Punjab Tenancy Act to see what is the meaning of land:-

4(1) "Land" means land which is not occupied as the site of any building in a town or village and is occupied or

has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures of such land:”

A perusal of the definition of land as reproduced herein-above would show that there is no mention about *Gair Mumkin Pahar*, not being covered under the definition of “Land” which would be subject to partition under Section 111 of the Punjab Land Revenue Act, 1887. The judgments that have been relied upon by the learned Counsel for the petitioners have not discussed the effect of definition of “Land” as given under Section 4(1) of the Punjab Tenancy Act, 1887 and whether *Gair Mumkin Pahar* would be covered in the said definition or not. Thus, this Court is of the definite opinion that “*Gair Mumkin Pahar*” would be subject to partition under the provisions of Punjab Land Revenue Act, 1887 because as per Section 4(1) of the Act, 1887 such nature of land has not been excluded. Consequently, the contention of the Senior Counsel appearing for the petitioners to the effect that a civil suit under the Partition Act would be maintainable, is completely devoid of any merit and thus the said argument is rejected.

As far as the second argument raised by learned Counsel for the petitioners to the effect that the orders passed by the learned Assistant Collector, Ist Grade, Sohna, Gurgaon suffers from perversity because it has been incorrectly observed by it that no objections were filed appears to be prima facie correct. Even if it is taken for a moment that the objections were filed by the petitioners, even in that situation they will not come to the aid of the petitioners in the present case. As observed above, the sum and substance of the objections raised by the petitioners are (i) *Jurisdiction & (ii) Omission to make reference to Sharat Wajib Ul Arz* which, as per the counsel, is of great significance because as per the said *Sharat Wajib Ul Arz*

rocks and stones would belong to Gram Panchayat. The said *Sharat Wajib Ul Arz* has been placed on record as Annexures P-12 to P-15.

This Court has perused the *Sharat Wajib Ul Arz* as well the objections raised by the petitioner and has come to the conclusion that the said objections also do not, in any manner, advance their case because (i) as held earlier, the revenue court has not acted beyond its jurisdiction while ordering partition of land & (ii) the relevancy of *Sharat Wajib Ul Arz* in the present case would not be of any significance for the petitioners, because admittedly the said *Sharat Wajib Ul Arz* only says that the rocks and stones would belong to *Shamlat*. The legislature, in its wisdom, has already framed a statute for governing the illegal mining of any Rocks, Minerals or anything related to mines (which comes under the definition of mines and minerals) by enacting The Mines and Minerals (Development and Regulation) Act 1957, which criminalizes the Act of mining the rocks/minerals without the permission of the government. Here, the case is of a partition of land in which admittedly the respondent no.3 is a co-sharer. Thus, it is not a case of grant or declining of licence to the respondent no.3 for the purposes of mining. Therefore, although the observation of the learned Collector in its impugned order that objections were not filed seems to be factually incorrect still, the said objections are decided by this Court and it is found that they are misconceived and are devoid of any merit.

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

(JASWANT SINGH)
JUDGE

June 30th , 2015
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