

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

CWP No. 10748 of 2016
Date of decision: 27.05.2016

Inderjit Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Amit Kohar, Advocate,
for the petitioner.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant writ petition under Articles 226/227 has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 15.12.2015 (Annexure P-11) passed by respondent No. 1- Financial Commissioner, Haryana, order dated 08.08.2014 (Annexure P-10) passed by respondent No. 2- Commissioner, Ambala Division, Ambala, order dated 18.04.2012 (Annexure P-9) passed by respondent No. 3- Collector, Guhla.

The brief facts of the case are that Balkar Singh-respondent no. 6 filed an application for partition of land measuring 213 kanals and 4 marlas situated in the revenue limits of village Cheeka. The mode of partition (Annexure P-5) was approved by AC Ist Grade on 26.02.2010. After the approval of mode of partition *naksha bey* was called for from the revenue officials and objection to *naksha bey* were also invited. Some of the parties including respondent No. 5 filed objections to the *naksha bey*. Thereafter AC 1st

Grade vide order dated 14.10.2011 (Annexure P-8) dismissed the objection raised by respondent No.5 and approved the *naksha bey* with slight modification. Against that Jasmer Singh-respondent No.5 one of the co-sharer in the application for partition (Annexure P-4) filed an appeal before the Collector. The Collector, Guhla vide order dated 18.04.2012 (Annexure P-9) set aside the order dated 14.10.2011 passed by the AC 1st Grade and directed AC 1st Grade, Guhla to divide the land as per the mode of partition keeping in view the most valuable land, less valuable land, good land and less good land and also keeping in view the location of the land in question, and thereafter, partition the land according to the share of the respondents. The said order was affirmed by the Commissioner vide order dated 08.08.2014 (Annexure P-10) and the Financial Commissioner vide order dated 15.12.2015 (Annexure P-11). Hence this writ petition.

I have heard learned Senior counsel for the petitioner and perused the record.

Learned senior counsel for the petitioner vehemently contends that order of the AC 1st Grade has been wrongly set-aside by the revenue authorities. There is no specific finding recorded in the order by the Collector as to which part of the land is more valuable and which part is less valuable. Learned senior counsel further contends that Jasmer Singh-respondent No.5 cannot raise the objection as he has sold the specific *khassra* number in view of the decree of the civil Court. The value of both the lands is same and they

are situated at a distance of about 500 feet only and both touch the road.

I have considered the contention raised by learned senior counsel for the petitioner and perused the record.

Admittedly, the total land to be partitioned is 213 kanals and 4 marlas. The petitioner is a purchaser from three persons namely, Balkar Singh, Naib Singh and Jasmer Singh-respondent No.5. Total land purchased from Balkar Singh-respondent No.6 and Naib Singh is 3 kanals and 15 marlas and from Jasmer Singh-respondent No.5 is 1 kanal and 5 marlas i.e. out of Rect. No. 53 Killa No. 8/1 and 13/2. The purchase is although of a specific killa number but in view of settled principle of law in ***Bhartu vs. Ram Sarup, 1981 PLJ 204***, the sale of specific killa number shall be deemed as sale of share out of joint land. These three persons from whom the petitioner is a purchaser of specific number are not the only shareholders, there is another share holder namely, Dev Raj-respondent No.7. Be that as it may, the fact remains that the petitioner can only step into the shoes of vendors just to consolidate his *tak* of only 5 kanals out of 213 kanals and 4 marlas. The petitioner can be given a consolidated *tak* at one place. If he has to be given *tak*, as per the settled law, he will step into the shoes of his vendors and he will have to take land where ever vendors are having it, rather this will create more problem for the petitioner as his holding is very small i.e 5 kanals only. As far as the issue with regard to the fact that he is entitled to land out of Rect No. 53 killa No. 8/1 and 13/2 is

concerned, same is not possible. The entire land is required to be partitioned as per the shares of the parties. Once the partition starts then the entire land is taken as joint land and the partition is then conducted in accordance with law. In view of this, contention raised by learned senior counsel is not acceptable and is devoid of merit, hence, rejected.

So far as the second contention that the land is located at a distance of 500 feet from the land of Jasmer Singh-respondent No. 5 is concerned, the same cannot be accepted for the reason that the share of the petitioner is very less. Petitioner cannot claim the land as assigned to him by AC 1st Grade as a matter of right. Authority is required to look into the share and the situation although it may be at lesser distance but the fact remains if the land is just near to the *abadi* or otherwise near to commercial area the authority would take into this material. On the basis of mere distance this cannot be determined the land is of equal value. The land touching the main road and nearer to already developed area is always valuable.

Learned counsel further states that principle of estoppel will apply. This Court is of the view that instead of the principle of estoppel, principle of joint land will apply in this case because the said land is joint. It has been observed by this Court in earlier part of the judgment that the sale of specific *khasra* number will be deemed to be sale of share. So far as respective possession is concerned, possession is to be protected as far as possible and is to be disturbed keeping in view the nature of the land. If there exists different kinds

of land i.e. valuable, less valuable and more valuable land, then possession is bound to be disturbed. Mere possession does not give right to a person to retain most valuable piece of land. As far as the fact, that the mode of partition specifically says that so far as the possession is concerned that shall be kept intact, is concerned, it does not mean that it should affect right of other shareholder in land available near to commercial area or more valuable.

So far as the contention of the learned senior counsel that the petitioner has paid more charges for purchasing the land at a particular place is concerned, the same cannot be accepted. It is settled principle of law that even if the purchase is made of more valuable land and specific khasra numbers, still it will be treated as sale of share.

Dismissed in limine.

27.05.2016

PA

(Paramjeet Singh Dhaliwal)
Judge