

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

Civil Writ Petition No.5970 of 2012
Date of Decision: January 30th, 2017

Baldev Singh & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vikram Singh, Advocate,
for the petitioners.

Mr.Sandeep Singh Mann, Senior Deputy Advocate General,
Haryana for respondent Nos.1 to 4.

Mr.C.B.Kaushik, Advocate,
for respondent No.5.

AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the impugned orders dated 10.7.2000 (Annexure P-4), 12.9.2001 (Annexure P-5) and 13.5.2011 (Annexure P-9).

Mr.Vikram Singh, learned counsel representing the petitioners submits that Gram Panchayat Sultania, through its Sarpanch, filed an application under Section 111 of the Punjab Land Revenue Act seeking partition of the land. An objection was taken that the land, sought to be partitioned, is Gau Charand, which is unpartitionable, much less shamlat deh. The aforementioned objection was accepted by the Assistant Collector 1st Grade, vide order dated 23.7.1997 (Annexure P-2). The Gram Panchayat preferred an appeal against the aforementioned order before the Collector.

The Collector, vide order dated 3.11.1998 (Annexure P-3), set-aside the order dated 23.7.1997 and remanded the matter to the Assistant Collector 1st Grade to determine the question whether the land, sought to be partitioned, can be partitioned or not.

He further submits that without adjudication of the aforementioned direction in letter and spirit, the Assistant Collector 1st Grade, vide order dated 10.7.2000 (Annexure P-4), ordered for partition, much less ordered for preparation of Naksha Bey. The aforementioned orders were assailed before the Collector by filing an appeal, which was dismissed on 12.9.2001 (Annexure P-5). Thereafter the petitioners filed revision petition against the said order before the Commissioner, which was also dismissed vide order dated 17.5.2005, against which an ROR was filed before the Financial Commissioner (Revenue) and the same was dismissed in default vide order dated 13.5.2011, but was restored. He submits that an opportunity of hearing should have been given. A specific objection in the grounds of appeal/revision was taken.

He submits that his clients are not adverse in case an opportunity of hearing is granted subject on any terms and conditions which this Court may deem appropriate.

Mr.C.B.Kaushik, learned counsel representing respondent No.5-Gram Panchayat submits that the conduct of the petitioners in delaying the matter is writ large, which is evident from the order of the Financial Commissioner (Revenue). On following dates, i.e., 24.7.2006, 30.11.2006, 28.2.2008, 18.12.2008 and 11.12.2009, the proceedings were not attended by the petitioners. However, the same were dismissed in default and the ROR was restored on 26.2.2010. However, on the date of

hearing, i.e., 13.5.2011, the petitioners did not appear. No doubt, the respondents were also absent, but the Financial Commissioner (Revenue) passed the order by taking into consideration the orders under challenge, much less the facts. No explanation has come forth for not appearing before the Financial Commissioner. He further submits that the land measuring 1554 kanals 7 marlas out of 8389 kanals 18 marlas has been left for common purposes and the partition has been sought of the balance land, thus, the writ petition should be dismissed with exemplary costs.

I have heard the learned counsel for the parties and appraised the paper book.

Vide Annexure P-3, the Collector, while remanding the matter back to the Assistant Collector 1st Grade, passed the following order:-

“The arguments has been heard of the counsel for the parties. The counsel for the appellant said while arguing that 1554 K 7 marlas and out of the disputed land is reserved for common purpose. Total land is 8389 kanal 18 marlas out of which the share of the Panchyat is 5662 K 14 Marlas. As per joint statement dated 5.12.88 no objection has been raised regarding partition. They stated while giving the reference of section 115 of P.L.R.Act that as per this section, when the application for partition has to be filed then the Assistant Collector Ist Grade, Guhla has to be seen that this application can be proceed or not when the court satisfied them issue the notice for hearing u/s 116. If the applicant is not in position to proceed then it can be rejected u/s 115. So when the lower court found the application to proceed then the lower court summon the other party and entire proceeding have been done. The Mode of Partition has been prepared and accepted. The Naksha “Be” has been called and the argument has been heard and they have been heard. The objection raised by the respondent after 10 years is illegal that the application for

partition could not proceed. After separating land 1554 K 7 M for common purpose for the share of Panchayat remaining land partitioned. The counsel for the appellant said in the end while arguing that their appeal be accepted and order of lower court be set aside. The counsel for the respondent said while opposing the arguments of the counsel for the appellant that the land 1554 K 7 M of the Panchayat is for the common purpose, that will not be fragmented. They said while giving the reference of PLJ 1984 Page 518 and PLJ 1985 Page 155 that as per sheet-e-wazid-ul-Ang the land 1554 K 7 M which is for common purpose. That will not be fragmented. Nor it will be partitioned. In last he stated that the appeal of the appellant can not be continued and be dismissed.

The argument of counsel for the parties has been heard and after perusal of the record on file carefully I come to the conclusion that while accepting the appeal set aside the order of Lower Court and remands with this direction that the application is liable to proceed or not after deciding about this proceed further as per rule. The parties have been directed to appear before the Lower Court on 23.11.98.”

There was a specific direction for the Assistant Collector 1st Grade, but the impugned order (Annexure P-4) has been passed, which does not reflect the adjudication of the aforementioned observation/direction.

The order reads thus:-

“Today this file taken up, the counsels for the parties are present. On 11.11.99 the amended Naksha “Be” had received from the Halqa Girdawar and the counsel for the applicant had closed his objections. Thereafter sufficient opportunities have been provided to submit objections on Amended Naksha “Be” to the counsel for the respondent but no objection has been submitted on Naksha “B” by the counsel for the respondent. On 18.02.99 while submitted one application through counsel for the respondent prayed that the partition be

done after making separate Kurra of the area of Gau Charand Johar and passages. On this ground alone the amended Naksha 'Be' was called and as per the request of the counsel for the respondent the Naksha 'Be' has been prepared.

So I came to the conclusion that counsel for the applicant has no objections to the amended Naksha 'Be' and as per the request of the counsel for the respondent Naksha 'Be' has been prepared by Halqa Kanungo on spot in village. The counsel for the respondent is taking unnecessary opportunities for delaying the case from 8 months although the Amended Naksha 'Be' has been prepared as per his request. So I sanction Amended Naksha 'Be'. Now the file be put up on 24.8.2000 for Naksha 'Zeem' after expiry of limitation of appeal."

Aforementioned order, Annexure P-4, has been upheld vide orders Annexures P-5 and P-9. No doubt, the petitioners have not appeared before the Financial Commissioner in the ROR and resultantly the same was dismissed in default, though restored. There can be an element of adjudication of the dilatory tactics, but in the interest of justice, the petitioners should be given an opportunity to put across their case, particularly when specific grounds in this regard have been taken.

The order of the Financial Commissioner (Revenue) does not reflect the presence of the counsel for the petitioners, much less that of the Gram Panchayat. The issue regarding maintainability of the partition proceedings has, thus, not been pondered upon. I deem it appropriate to grant one opportunity to the petitioners to address the arguments on the grounds, including maintainability before the Financial Commissioner (Revenue) by setting-aside the order, subject to payment of Rs.25,000/- as costs for delaying the matter pending before the Financial Commissioner (Revenue). The Financial Commissioner (Revenue) shall fix date of hearing

on appearance of the parties or the counsel and thereafter within three months decide the controversy. In case, it is found that either of the party is adopting the delaying tactics, it shall pass the order in accordance with law.

The parties, through their counsel, are directed to appear before the Financial Commissioner (Revenue) on 15.2.2017, in essence the ROR No.319/2004-05 is ordered to be restored subject to the aforementioned costs, which shall be condition precedent.

I would be refraining myself from expressing opinion on the issue on merits as it would seriously prejudice the rights of the petitioners.

Writ petition stands allowed.

January 30th, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No