IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: March , 2017

1. C.W.P.28624 of 2013

Raj Kiran Pvt.Ltd., Firdous Farm, Village Bam Dauli, New Delhi & others

...Petitioners

Versus

The Financial Commissioner, Haryana & others

...Respondents

1. C.W.P.28636 of 2013

Panna Lal

...Petitioner

Versus

The Financial Commissioner, Haryana & others

...Respondents

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

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr.Ankit Chowdhri, Advocate,
for the petitioners in both the petitions.

Mr.Sandeep Singh Mann, Sr.DAG, Haryana,
for the State.

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AMIT RAWAL, J.

Petitioners, three in number, have approached this Court by invoking Article 226 of the Constitution of India seeking quashing of the impugned orders dated 1.5.2013 (Annexure P-20) and 20.11.2013 (Annexure P-22) passed by the Financial Commissioner-respondent No.1

being illegal, ultra-vires on the premise that in the year 2007, an application (Annexure P-1) on behalf of the petitioners was moved before the Assistant Collector Ist Grade, Gurgaon for partition of land measuring 43 kanals 18 marlas situated in Village Babupur in District Gurgaon, wherein the private respondent Nos.2 to 4, i.e., Raj Kumar @ Rajender, Surender and M/s K.N. Infracon Pv.Ltd. submitted written statement (Annexure P-2) stating therein that they are in cultivating possession of the respective share of Rect.No.22, Killa No.21 Min (1-12), 24 (6-16), Rect.No.17, Killa No.13 (6-18), 12/2 (2-0). They further stated that they have no concern with the land of the petitioners, much less no objection with regard to the partition as per their share and possession of the land. In this regard, Mr.Ashish Aggarwal, learned Senior Counsel assisted by Mr.Ankit Chowdhri, representing the petitioners, has drawn the attention of this Court to Paras 2 and 2 (wrongly written as 2 instead of 3), which read thus:-

> "2. *That para No.2 of the application is a matter of record. The respondent Nos.1 and 2 are in cultivating possession as per their share of Rect.No.22, Killa No.21 Min (1-12), 24 (6-16), Rect.No.17, Killa No.13 (6-8), 12/2 (2-0). Respondent Nos.1 and 2 have planted the fruit bearing plants in the above mentioned numbers since long and their tubewell has also been installed in the above mentioned land and respondent Nos.1 and 2 have their names entered in the column of Cultivator in Khasra Girdawari and the same numbers have been entered in the Jamabandi in favour of respondent Nos.1 and 2.*
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> *2. That para No.2 of the application is wrong. The respondent Nos.1 and 2 are owners in possession of their share and they have no concern with the land of the applicants. The respondents have no objections in partition as per their share and possession of the land."*

However, during the pendency of the partition proceedings, certain land was purchased by M/s K.N.Infracon (respondent No.6) and Panna Lal (respondent No.5). Even amended title was also filed before the Assistant Collector IInd Grade vide independent application Annexure P-4. Naksha Alaf (Annexure P-5) was prepared on 20.8.2007 and as per the same, the co-sharers in three khewats are as under:-

Sr.No.	*Khewat No.9*	*Khewat No.10*	*Khewat No.11*
1	Shri Krishan	Shri Krishan	Shri Krishan
2	Surinder Kumar	Surinder Kumar	Surinder Kumar
3	Raj Kumar @ Rajinder	Raj Kumar @ Rajinder	Raj Kumar @ Rajinder
4	M/s Alfa Fyto Chemicals	M/s Alfa Fyto Chemicals	M/s Alfa Fyto Chemicals
5	M/s Raj Kiran	M/s Raj Kiran	Panna Lal
6	Ashok Kumar	Ashok Kumar	Ashok Kumar
7	M/s K.N.Infracon		

He further submitted that only in khewat Nos.9 and 11, Panna Lal and M/s K.N.Infracon had become transferees, whereas in khewat No.10, there was no exchange of land. However, respondent Nos.2 to 4 suffered a statement dated 27.8.2007 before the Assistant Collector IInd Grade of having no objection if separate kurrahs of theirs are carved out. Copy of one of the statement is Annexure P-6. Amended mode of partition was accordingly passed on 4.9.2007 with no objection of the counsel for the petitioners, respondent Nos.1 to 3 and much less respondent No.4 in the amended memo of partition before the Assistant Collector Ist Grade. As a consequence thereof, Naksha `Be' was prepared on 10.9.2007, which fact is evidence from Annexure P-8, whereby all the co-sharers, including the subsequent ones, had accepted the same by giving no objection through their counsel. Even a separate statement of the counsel in this regard was also recorded, which is reflected from Annexure P-9. However, private respondent Nos.2 to 4 submitted objections (Annexure P-10) to the mode of partition. The same was contested by filing reply (Annexure P-11).

However, Naksha `Zeem', in the meantime, was prepared and Sanad Takseem, i.e., the final partition was also prepared on 19.3. 2008 (Annexure P-12).

He further submitted that against the order of dismissal of the objections against Naksha `Be', private respondents filed an appeal before the Collector, which was dismissed vide order dated 13.3.2008 (Annexure P-16). The matter was taken up before the Commissioner, who also dismissed the revision vide order dated 13.1.2009 (Annexure P-18). Thereafter, the matter was referred to the Financial Commissioner by filing a revision petition. Copy of one of the revision petition has been annexed as Annexure P-19. The Financial Commissioner erroneously, vide impugned order dated 1.5.2013 (Annexure P-20), accepted the revision petition and set-aside the order. Even an application for review under Section 15 of the Punjab Land Revenue Act, 1887 (Annexure P-21) was filed, but the same also resulted into dismissal vide order Annexure P-22. Thus, submitted that the orders under challenge are not sustainable in the eyes of law on the premise that respondent No.1 only preferred a revision petition against the orders of the Assistant Collector Ist Grade, Collector and Commissioner dated 25.9.2007, 13.3.2008 and 13.1.2009 (Annexures P-14, P-16 and P-18 respectively), by which the objections of the private respondents against Naksha `Be' have been dismissed. There was no challenge to the Sanad Takseem dated 19.3.2008, for, in view of the settled law in **Amar Khan and others Versus State of Punjab and others, 2009 (1) R.C.R. (Civil) 741** as and when the Sanad Takseem is prepared or passed, it is assailable under Section 16(1) of the Land Revenue Act by filing revision before the Financial Commissioner. Thus, according to Mr.Aggarwal, filing of the appeal and revision would pale into insignificance. The Financial Commissioner has erroneously, without challenge to the Sanad Takseem, set-aside the same and an opportunity of hearing was required to be given.

On the perusal of Naksha `Be', it is apparent that the land in question is situated in one Hadbast No.60 of Village Babupur, Tehsil and District Gurgaon and, therefore, in view of the law laid down in **Kulwant Singh and others Versus The Assistant Collector Second Grade Nathusari Chopta and others, 2002 (1) PLJ 113 (DB),** one application for all the khewats is permissible. In fact, once respondent No.2 had not objected to preparation of Naksha `Be', Naksha `Zeem', much less Sanad Takseem, no occasion arose for challenging the same, but it was an act of aggrandize or browbeat the petitioners with a motive of deriving some premium. He further submitted that all the co-sharers in three khewats are common and have no objection to the partition proceedings, except khewat Nos. 9 and 11, in which Panna Lal and M/s K.N.Infracon came to be added as co-sharers. Even the aforementioned party did not have any objection. Suo-motu powers cannot be invoked under Section 16 of the Punjab Land Revenue Act by the Financial Commissioner. Thus, prays for setting-aside of the impugned orders.

Respondent Nos.2 to 4 were represented by Ms.Sharmila Sharma Advocate as is reflected from various orders, but on the last date, i.e., 26.9.2016, there was no appearance. Even today, when the matter was taken up for hearing, no body had put in appearance on behalf of respondent Nos.2 to 4. Even the written statement has also not been filed. Accordingly, I decide to proceed with the matter.

I have heard the learned Senior Counsel for the petitioners and the learned State counsel, gone through the record and of the view that there is some force in the argument of Mr.Aggarwal, particularly on the point of having common Hadbast number.

As per the ratio decidendi culled out in **Kulwant Singh's case (supra),** this aspect has not been taken into consideration by the Financial Commissioner either in review or in the revision petition, whereas the revision petitions preferred by the private respondents have been accepted on the ground that as per Chapter 18 of the Haryana Land Record Manual, three separate applications are required to be filed for different khewats, in essence no common application is permissible, though law on this point is also laid down. Para 4 of the decision in **Kulwant Singh (supra)** read thus:-

> "*The aforesaid finding has thereafter been affirmed by respondent No.4-Financial Commissioner also. A perusal of both these orders clearly indicates that in view of the facts and circumstances of the case, may not be as a general rule, one application to partition the land situated in two different villages is competent. Since respondent No.5 is a co-sharer in both these Khewats, a joint application was moved for partition and thereafter one Hadbast (revenue estate) was bifurcated and split up into two separate Hadbasts (revenue estates) and in view of that joint application has rightly been ordered to be entertained by respondents No.3 and 4 in the present case. Counsel for the petitioners has failed to indicate any loss which is going to be caused to the petitioners in case the application for partition is taken up and decided by the Tehsildar, Sirsa, as has been ordered by the Commissioner by passing the order Annexure P-3. This clearly indicates that an attempt is being made to delay the partition proceedings merely relying upon the technicalities.*"

In view of the findings extracted in **Kulwant Singh's case**

(supra), I am of the view that even if two khewats are the part and parcel of one Hadbast, single application seeking partition of the aforementioned khewats would be maintainable.

There is another aspect of the matter. Before all the authorities, the parties to the lis did not object to the mode of partition, much less Naksha `Be' and this aspect is evident from the written statement (Annexure P-2), extracted paragraphs. There is no objection to the amended memo of partition (Annexure P-7) and statements of the counsel (Annexure P-9), therefore, there was no occasion for moving objections (Annexure P-10) qua the mode of partition. Even otherwise, in the revision petition, there is no challenge to the Sanad Takseem dated 19.3.2008 (Annexure P-12). Thus, the Financial Commissioner did not have the power to set-aside the Sanad Takseem in revision petition filed for assailing the orders of the authorities below, though it could have been done had Sanad Takseem been challenged under Section 16 of the Land Revenue Act straightway. Thus, the petitioners have been deprived of a notice or opportunity regarding the setting-aside of the Sanad Takseem.

The written statement is also silent with regard to the specific ground having been noticed regarding addressing of the arguments on the aspect of other matters except setting-aside of the Sanad Takseem. Naksha `Be' proved on record reveals that there is one Hadbast No.60 of Village Babupur, Tehsil and District Gurgaon. Even if the land is situated in three khewats, it will be inconsequential in view of the findings in **Kulwant Singh's case (supra),** particularly when the co-sharers in all the khewats are common and have no objection to the partition proceedings. Even additional co-sharers in Khewat Nos.9 and 11, i.e., Panna Lal (petitioner No.5) and

M/s K.N.Infracon (petitioner No.6) have also no objection and they were also impleaded before the Financial Commissioner, thus, there was no occasion for the Financial Commissioner in misdirecting itself if an opportunity of hearing had to be afforded to the private respondents. The entire process of filing the objections is on the premise that the petitioners have developed the land and obtained the licence for development of the land and construction on the site is in progress.

Resultantly, the orders under challenge are set-aside. Writ petition stands allowed.

March 21st, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**