

CWP No.20934 of 2017

[1]

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

**CWP No.20934 of 2017
Date of decision:14.09.2017**

Santa @ Satta

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Shilak Ram Hooda, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

Respondents no.5 and 6 filed an application for partition of agricultural land measuring 171 Kanal 17 Marla comprised in Khewat No.261/254 and Khatauni No.275, situated in the revenue estate of village Butana Kundu, Tehsil Gohana, District Sonapat. Revised mode of partition was accepted on 28.04.2010 and the Assistant Collector 1st Grade passed the following order, as translated by the petitioner, on 05.08.2011:-

“Missal presented. Counsels for the parties are present. The arguments of both the counsels have been heard. Both the counsels have expressed their consent on Naksha Kha. Naksha Kha hereby sanctioned. Now case file be presented on 07.09.2011.”

Thereafter, the petitioner filed objection to *Naksha Kha*, on which the following order was passed by the Assistant Collector 1st Grade, Gohana, on 07.09.2011, as translated by the petitioner:-

“Missal presented. Counsels for the parties are present. Naksha Ga is received, which is correct as per Naksha Kha. Naksha Ga is hereby accepted and partition is confirmed. Now by preparing certificate of partition on judicial stamp paper, same be

produced within one month. Missal be consigned in the record room after compliance.”

Thereafter, the certificate of partition/*Sanad Taqsim* was prepared. However, the petitioner challenged the orders dated 05.08.2011 and 07.09.2011 in appeal before the Collector, which was allowed on 09.04.2012. The said order of the Collector was challenged in appeal by the private respondents before the Divisional Commissioner. The Divisional Commissioner allowed the appeal of the private respondents on 23.06.2017 with the following observations:-

“I have heard the arguments advanced by both the learned counsel and have perused and evaluated the file of the case meticulously. The mode of partition was sanctioned in this case on 03.09.2010 after expressing no objection by both the parties. The respondent did not file appeal against this and it has become final. The Naksha Baa had been sanctioned on 05.08.2011 after raising no objection by the counsel for the parties. The respondent did not file appeal against this order in time and it has become confirmed. Naksha-zim was sanctioned on 07.09.2011 and thereafter the certificate of partition was prepared and was issued on 20.09.2011 and the respondent challenged the same before the Court of learned Collector after one year and one month delay and the learned Collector has not enumerated any solid reason for re-hearing this case and, thereafter, the certificate of partition was prepared and was issued on 20.09.2011 and the respondent challenged the same before the Court of learned Collector after one year and one month delay and the learned Collector has not enumerated any solid reason for re-hearing this case whereas after issuance of certificate of partition, learned Collector has no jurisdiction to entertain the

appeal and no solid reason has been mentioned by learned Collector in his order for condoning the delay. Therefore, the order of the learned Collector for preparing Naksha-Baa again in the partition case has been passed beyond his jurisdiction, therefore, same is hereby set aside. Finding merits the appeal of the appellant is hereby accepted and the orders of the learned Assistant Collector are upheld. After compliance the file be consigned in the record room.”

Counsel for the petitioner has argued that it was provided in the mode of partition that the partition would be done by keeping the old possession intact and every chunk/kurra of land would be connected with path and watercourse and the deficiency would be made good from the land abutting the kurra of such co-sharer whose deficiency is to be completed. He has submitted that after filing the partition application, the petitioner has constructed a hotel in some portion of Killa Nos.154//4, 5/1/2, 7/1 and 7/2, therefore, the said land should have been given to the petitioner.

After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that the mode of partition was sanctioned on 28.04.2010 and on the basis thereof, *Naksha Kha* was prepared, which was also sanctioned on 05.08.2011. This order was not challenged by the petitioner till the order dated 07.09.2011 was passed of accepting *Naksha Ga*, i.e. the final Naksha for the purpose of preparation of partition.

The petitioner had basically challenged the *Sanad Taqsim* before the Collector, without challenging the preparation of *Naksha Kha*, which is the heart and soul of the partition proceedings because *Naksha Kha* is to be prepared in terms of the proposed mode of partition and in case it is not so

prepared, then the affected parties could raise an issue before the competent Court of law and once it is accepted, without raising any objection, preparation of *Naksha Ga* is only a formality to find out as to whether the *Sanad Taqsim* has been prepared in terms of the *Naksha Kha*.

Thus, in my considered opinion, the orders passed by the Divisional Commissioner dated 23.06.2017 do not call for any interference and consequently, the present petition is hereby dismissed, being denuded of any merit, though without any order as to costs.

September 14, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No