

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

CWP No.5549 of 2014
Date of decision : 10.03.2017

Raja Ram and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ajay Jain, Advocate for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Sailender Singh, Advocate for respondent No.18.

AMIT RAWAL, J. (Oral)

CM No.3500-CWP of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Annexures P-10 to P-12 are taken on record, subject to all just exceptions.

Main Case

The petitioners are aggrieved of the impugned order dated 18.10.2011 (Annexure P-1) of the Assistant Collector, whereby the appeal filed against the dismissal of the objections qua preparation of mode of partition without providing the passage to the land of the petitioner bearing Killa Nos.19 and 22, has been dismissed on the premise that *Sanad*

Takseem had been passed, as the petitioners were advised to challenge the order of *Sanad Takseem* by filing the revision petition before the Financial Commissioner.

Mr. Ajay Jain, learned counsel appearing on behalf of petitioners submits that in pursuance to the application filed seeking partition of the land, the mode of partition was suggested and *naksha bey* was prepared. As per the *naksha bey*, there was no passage to the land of killa Nos.19 and 22 which is adjacent to the baandh. This fact is reflected from site plan Annexure P-7 at page No.43 of the paper book. Objections in this regard were filed, which were dismissed and appeal was preferred before the Collector who had vide interim order dated 06.12.2011 extracted at page No.8 of the paper book had stayed the further proceedings yet Assistant Collector proceeded with the matter and ordered for *Sanad Takseem* i.e. final partition. Resultantly, appeal was dismissed on 30.10.2012 whereas *Sanad Takseem* was passed on 13.12.2011. The authorities below should have noticed the fact that once the matter was subjudiced, it could not have relegated to the party to avail remedy of revision. It is just like a case where appeal against the judgment and decree before the lower Appellate Court is pending without any stay, though there was stay.

He has drawn the attention of this Court to the order dated 17.01.2017 passed by this Court, whereby direction was issued to the State Counsel to bring on record the records of the Assistant Collector, Collector and the Financial Commissioner, thus, order under challenge do not stand on touchstone of reasonability, much less, cannot be sustained and liable to

be set aside as the petitioner do not have any access to the land in the absence of any passage. Findings given in the aforementioned orders with regard to providing of passage is neither here and there but there is figment of imagination.

Mr. Sailender Singh, learned counsels appearing on behalf of respondent No.18 and Mr. Sandeep Singh Mann, learned counsel appearing on behalf of State submit that mode of partition was done in the presence of the petitioners, much less, preparation of *naksha bey* and, therefore, the petitioners cannot have any grouse to agitate the mode of partition, much less, preparation of *naksha bey*. The order of interim stay granted by the Collector never resulting into order of final partition and thus urges this Court for dismissal of the present writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Jain, Advocate, for, record produced by Mr. Sandeep Singh Mann, Sr. DAG, Haryana reveals that report of Collector, Rewari dated 16.08.2012 though mentions that there is provision of 10 feet passage towards the Killa Nos.19 and 22 but however site plan prepared and enclosed does not provide any passage, in essence, the passage is non-existent. It is strange that Officers at the helm of the affairs are passing the orders by not keeping in view the report of Patwari which was submitted before Collector. Such a lackadaisical approach is not appreciated. The authorities below ought not to have non-suited the petitioners in the pending appeal filed against the order of dismissal of the objection qua mode of partition owing to the passing of the final partition order as matter was already subjudiced. All the

parties to the lis are to be given equal distribution of the land, much less, potential and passage but not in the manner and mode as indicated above.

In my view, the authorities below have not appreciated this practical aspect of the matter.

Resultantly, impugned orders are not sustainable and are hereby set aside.

With the aforementioned observations, present writ petition is allowed.

Matter is remitted back to the Assistant Collector to prepare fresh *naksha bey* after taking into consideration the record particularly at page 79 of the same i.e. report of Patwari dated 16.08.2012, where there is no provision of rasta and ensure that rasta be provided to the petitioners by partition in the land by metes and bounds.

Sanad Takseem would not come in the way of the petitioners as it has been passed without taking into consideration the fact that *naksha bey* was not prepared according to the actual spot.

10.03.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No