

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

CWP No.5425 of 2017 (O&M)

Date of Decision.18.04.2017

Anoop Tiwari and others

.....Petitioners

Vs

The Financial Commissioner, Punjab and others

.....Respondents

Present: Mr. Lalit Sharma, Advocate and
Mr. B.D. Sharma, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.5274 of 2017

Application is allowed.

Naksha A and Naksha BE are taken on record as Annexures P-8 and P-9.

CWP No.5425 of 2017

The grievance of the petitioner in the present writ petition is by challenging the order dated 25.07.2016 (Annexure P-7) passed by the Financial Commissioner, Punjab, order dated 05.02.2015 (Annexure P-6) passed by the Divisional Commissioner, Patiala and orders dated 06.07.2011, 18.01.2012 and 07.03.2012 (Annexure P-1 to P-3) passed by the Assistant Collector 1st Grade, Munak in respect of the partition proceedings initiated at the instance of Vinay Tiwari, in essence, possession of the petitioners, being legal representatives of Ranjit Singh, respondent No.3 in the aforementioned application, has been disturbed.

On the previous date of hearing, this Court called upon Mr.

Sharma to place on record the documents to establish the grounds for

challenging the impugned orders as the main contention of the counsel for the petitioners is that during the pendency of proceedings, Ranjit Singh died and the petitioners were impleaded as legal representatives but they have not been given any chance to file objections qua mode of partition. Resultantly, their possession has been disturbed.

It is settled law that if the parties are in possession and having equal shares, possession has to be maintained and the sanad takseem came to be passed on 07.03.2012. After acquiring knowledge of the aforementioned fact, they presented an appeal before the Collector on 06.07.2012. All the authorities below have not taken into consideration the above-mentioned points.

Preparation of *naksha bey* is also not in accordance with the memorandum of partition. He has also drawn attention of the Court to the site plans (Annexures P-8) to show the disturbance of possession, in essence, the area shown in green colour vide first site plan is given to the petitioners and area shown in yellow colour vide second site plan is given to the applicants before the Assistant Collector 1st Grade (respondents herein).

This Court called upon Mr. Sharma as to what possible objection would have been taken by them to the *naksha bey*, being legal representatives of Ranjit Singh, as memorandum of partition has not been placed on record but the orders of the authorities reveal the fact that it has been passed in accordance of memorandum of partition. The answer was that the land which was in their possession and had been cultivating since long has been disturbed. In this aspect of the matter, the aforementioned orders have been challenged, much less, the sanad takseem.

I have heard learned counsel for the petitioners and appraised the paper book. On examination of the site plans (Annexure P-8), the area shown in green and yellow colour reflects a fairest/equal division of the property in favour of both the co-sharers as the area shown in green colour is also being attached to the main road, much less, the area in shown in yellow. The potentiality and quality of land has to be taken care of while distributing the land and in case, the possession has to be disturbed, it becomes inevitable. This is for what the partition proceedings are meant for. Had the potentiality and superior quality of land not an issue, obviously there would have been force in the submissions of Mr. Sharma but the site plans attached with the misc. application as Annexure P-8 do not support the aforementioned argument.

Resultantly, I am of the view that the sanad taskeem came to be passed is totally in consonance with the mode of partition. The orders under challenge are perfectly legal and justified, much less, cannot be said to be passed arbitrarily, without application of mind and without jurisdiction. No ground for interference is made out. The writ petition is dismissed.

(AMIT RAWAL)
JUDGE

April 18, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No