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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6631-2017

Date of decision : 17.05.2017

Bahadur Singh Khatana and others

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Mehta, Advocate
for the petitioners.

Mr. Amit Jain, Advocate
for the respondent(s)/Caveator(s).

AMIT RAWAL, J. (ORAL)

The petitioners, who were the respondent(s) in the application seeking partition of the property, have approached this Court for quashing of the order dated 06.02.2017 (Annexure P-11) passed by the Financial Commissioner/respondent No.1, whereby the order dated 05.11.2014 (Annexure P-10) passed by the Commissioner has been set aside.

Mr. Amrit Mehta, learned counsel appearing on behalf of the petitioners submits that the application for partition in respect of the land measuring 145 kanals 3 marals, was moved by the private respondent Nos.2 to 5, on the premise that vide sale deed bearing Vasika No.719 dated 16.05.2013, they purchased the whole share of seller Saroj w/o Ram Kumar d/o Kishori Lal and the Seller delivered the physical possession of various khasra numbers indicated in the application (Annexure P-1). The petitioners

objected to the aforementioned partition. However, while considering the aforementioned objections, the mode of partition (Annexure P-3) was approved and in this regard, a reliance has been laid to paragraph 5 of the mode of partition, which reads as under:-

"If any party has house/tubewell in the land, the same will be put in his share."

to contend that if any party had raised any house or tube-well in the land, the same shall be put to his share. However, in partition, the possession of the petitioner has been disturbed as the tube-well installed by the petitioner being run by the Diesel Engine, has fallen to the share of the private respondent(s). Thereafter, *Naksha Be/kha* was prepared and submitted to the Assistant Collector, which was objected to on the ground that they are in possession of land comprising in Mustil No.26 Killa No.4, 5, 6, 7, 15 and Mustil No.30, Killa No.1/1, 10/2, 11/1, from the date of purchase and therefore, it was bounded by trees, much less, tube-well. However, *Naksha Be/Kha* had not been prepared by visiting the spot. The objections were filed by the petitioner vide Annexure P-4 and the Assistant Collector, vide order dated 12.02.2014, rejected the objections. The aforementioned order was assailed by filing the appeal before the Collector for amending of the *Naksha*, much less, keeping in view the possession. However, the Collector vide order dated 17.04.2014 (Annexure P-9) dismissed the appeal. The Commissioner, before whom the matter was taken, vide order dated 05.11.2014 (Annexure P-10) remanded back the matter to the Assistant Collector. The private respondent(s) challenged the order of remand, before the Financial Commissioner, which set aside the

order of the Commissioner, thus, submits that the order of the Commissioner was most innocuous and could not have been interfered by the Financial Commissioner. In the mode of partition, the possession has to be kept intact as far as possible, much less, construction of the tube-well. Spot inspection was not done. All these factors should have been pondered upon by the Financial Commissioner for the purpose of entertaining the revision petition against the order of the Commissioner remanding the matter back, thus, urges this Court for setting aside the impugned order, under challenge.

I have heard the learned counsel for the petitioner and appraised the paper book and during the course of hearing, I called upon Mr. Amit Mehta, learned counsel representing the petitioner, to apprise with regard to the expenses incurred for the purpose of erecting the tube-well, much less, its date and the answer was that it was installed in the year 2003, whereas the application for partition was filed in 2013. Almost 10 years had elapsed and after taking into consideration depreciation aspect, the value of the tube-well had considerably reduced. It is not a case of the petitioner that possession of land given to him, no tube-well can be dug. The petitioner is well within his rights to dig the tube-well for the purpose of irrigation of the land. *Naksha Be* was prepared after spot inspection done by the kanungo, which has been reiterated by the authorities. All these factors weighed in the mind of the authorities. In my view, the order of remand of the Commissioner was a farcical exercise, much less, would have delayed the adjudication of the partition application.

Keeping in view the aforementioned facts, the order of the

Financial Commissioner, in my view, is perfectly legal and justified and cannot be said to be vitiated in law, much less, misconceived.

No ground for interference is made out.

Dismissed, accordingly.

17.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No