

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

Civil Writ Petition Nos.20114 & 20145 of 2018

Reserved on: 24.09.2018

Pronounced on : 17.10.2018

Manohar Lal and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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

G.S. Sandhawalia, J.

This order shall dispose of two writ petitions i.e. CWP Nos.20114 and 20145 of 2018, since the parties are common and arise out of same set of proceedings. The only difference in CWP No.20145 of 2018 is *Naksha Kha* dated 29.03.2012 (Annexure P-12) is also subject matter of challenge. The facts are being taken from CWP No.20114 of 2018.

The petitioners were arrayed as respondents in the partition proceedings initiated by private respondent Nos.5-Dharambir & others for land measuring 449 kanals 1 marla situated with revenue estate of village Anandpur Tehsil Kharkhoda. As per Mode of Partition prepared on 16.04.2003 (Annexure P-2) 5 khewats were to be prepared of the parties concerned and as per Clause-3, partition was to be done by maintaining old possession of the parties and the value and kind of the land was to be kept into consideration. The tube-well and kothas were to

be allotted to whom the same belonged and trees and gardens would be kept joint as per Clause-6 also.

Randhir Singh predecessor-in-interest of petitioners No.4 to 6 filed objections against the Mode of Partition which was dismissed on 23.06.2003 (Annexure P-3). Resultantly, appeal was filed before the Collector, who conducted inspection of the land in question on 19.10.2004 and vide order dated 25.10.2004 (Annexure P-4) amended the Mode of Partition to the extent that the garden be allotted to the same party who had planted it and front of the land falling on the road be allotted to all the co-sharers in consonance with their respective shares. It was also to be done by including the area of the garden. Resultantly, *Naksha Kha* was to be called. It was noticed that the petitioners wanted to prolonged the partition proceedings, because the appellants were cultivating the share of Bhim Singh.

The matter was taken, thereafter, to the Commissioner, who vide order dated 08.09.2006 (Annexure P-5) upheld the order of the Collector by noticing that since the possession of Bhim Singh/co-sharer was being enjoyed at the cost of other co-sharers, the petitioners were trying to delay the proceedings. Being not satisfied the matter was further carried to the Financial Commissioner which met the same fate on 07.12.2007 (Annexure P-6). Thereafter, matter was brought to this Court unsuccessfully by filing CWP No.7021 of 2008, the order of which case dated 29.04.2008 was taken on record as Annexure P-20 on 24.09.2018. During the pendency of proceedings, Jatinder etc. had filed application

for impleadment. On account of purchase of same land and partition proceedings pending, they were not allowed to join the proceedings. Their claim of Khewat was denied by the Assistant Collector.

Eventually, keeping in view the observations made by the Collector, Sonapat vide order dated 25.10.2004 (Annexure P-4) Mode of Partition was amended to the extent that the road front would be given to all co-sharers including the area of Orchard as per their respective shares and three segments vide order dated 09.05.2008. (Annexure P-7). Jatinder, thereafter, filed appeal before the Collector which was allowed on the ground that *Naksha Kha* had not been received and the provisions of carving out separate Khewat be made, vide order dated 31.03.2009 (Annexure P-9). The private respondents and the other co-sharers who are the first party had initiated the proceedings including daughters of Bhim Singh, filed an appeal before the Commissioner, who vide order dated 28.04.2011 (Annexure P-11) set aside the order of the Collector to make provisions for carving out a separate Khewat. Resultantly, *Naksha Kha* was prepared on 29.03.2012 (Annexure P-12). Jatinder had preferred ROR No.702 of 2011-12 before the Financial Commissioner who dismissed the said revision on 08.05.2014 (Annexure P-13).

Accordingly, the Assistant Collector prepared *Naksha Ga* on 27.05.2015 and dismissed the objections of the petitioners which led to the filing of the appeal before the Collector, who observed that the same had been prepared in accordance with the order dated 25.10.2004 and there was no illegality or deficiency found and also noticed efforts of the

appellants to prolong the case, vide order dated 28.07.2016 (Annexuure P-14). Resultantly, the instrument of partition *Sanad Takseem* was prepared and it was directed that the implementation of the *Sanad Takseem* be done and possession of the land partitioned be done after harvesting the Kharif Crop of 2016.

Thereafter, the revision came to be filed on 30.01.2017 by the petitioner before the Commissioner leading to the passing of the order dated 12.04.2018 (Annexure P-19). The Divisional Commissioner noticed that the said facts and also the aspect that Jatinder had also filed CWP No.17007 of 2015 which had been dismissed on 20.10.2015 with the directions that he be allowed to join the proceedings from the stage of *Naksha Kha*. It was noticed that the argument which have been raised that the possession should be kept intact, is not acceptable, specially keeping in view that terms and clause of the mode of partition that the value and kind of land was to be kept into consideration. On an earlier occasion also the parties themselves had filed an appeal against the said mode of partition that the old possession be disturbed and their appeal had been accepted on 25.10.2004 (Annexure P-4) and mode of partition had been amended. It was in such circumstances the revision was also dismissed.

Mr. Hooda has tried to impress upon this Court by submitting that the instrument of partition is not fair and the petitioners have been prejudiced as such and challenge has been raised to the *Naksha Kha*. Neither any site plan has been placed on record to depict

as to how the petitioners have been prejudiced and how they were being dispossessed and land had not been allotted to them. Even though the said site plans of the proceedings as such are part of the vernacular portions of the annexures which have not been brought as main annexures. Neither they were referred as such to show the discrimination which has resulted in prejudice which had caused to the petitioners.

The contradiction as such had already been noticed by the Commissioner that on an earlier occasion the Mode of Partition had been objected to. Accordingly, directions were issued that the garden be allotted to the same party, who had planted it and also benefits are to be given to all co-sharers regarding the frontage on road, as per their respective shares. The Collector had made personal efforts to inspect the land in question on 19.10.2004 and noticed that the land was situated in different segments and the land falling on the road had to be allocated as per share and the same had been kept in mind. The factum of spot inspection, thereafter, has not been challenged at any subsequent stage also.

It is also to be noticed that the matter had been unsuccessfully carried to this Court on an earlier occasion, whereby no success had come at the hands of the petitioners in CWP No.7021 of 2008 on 29.04.2008 (Annexure P-20). The matter had further been prolonged on account of purchase of land by Jatinder who had sought to derail the apple cart, but his claim of separate Khewat as such had been repelled by the Commissioner on 28.04.2011 which had been upheld by

the order of the Financial Commissioner dated 08.05.2014 which has further prolonged the litigation as such. He also lost litigation in CWP No.17707 of 2015 and was only granted relief to the limited extent of joining the proceedings. It is pertinent to notice that another writ petition had been filed in the same set of proceedings, on account of petitioners under threat of being dispossessed, which was dismissed as infructuous on 24.09.2018.

The above said cumulative facts would go on to show that the petitioners have been successful keeping the possession of the land for the last more than 16 years, since the partition proceedings were initiated and are in possession of more land than their share since they are cultivating the land of Bhim Singh. The orders passed under challenge herein are well reasoned and thus, do not warrant any interference in the extra-ordinary jurisdiction under Article 226/227 of the Constitution of India by this Court, in the facts and circumstances of the case discussed above and, accordingly, the writ petitions are dismissed in limine.

OCTOBER 17th, 2018
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>