

CWP-926-2019

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

CWP-926-2019

Date of Decision: 12th April, 2019

Parhalad

...Petitioner

Versus

Financial Commissioner, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. N.D. Achint, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 13.12.2018 (Annexure P-7) passed by the Financial Commissioner, Haryana, whereby, the case has been remanded back to the Assistant Collector 1st Grade, Gurugram, for fresh preparation of Naksha 'B' and for other partition processes, as per mode of partition, which has been finalized between the parties.

2. It is the contention of the learned counsel for the petitioner that respondents No.5 and 6 had purchased specific khasra bearing No.12/1 and are in possession thereof. An application for partition was submitted by the petitioner and on the basis of the said application and other aspects, the mode of partition has been finalized between the parties on 04.06.2007 (Annexure P-11). His submission is that in pursuance to the mode of partition, Naksha 'B' was prepared by the Assistant Collector 1st Grade, copy whereof has been placed on record as Annexure P-8, parties have been

given their respective shares and the land which has been specifically purchased by respondents No.5 and 6, which is in their possession has been kept intact and therefore, they should not have any grievance with regard to the mode of partition as they have chosen to purchase the said land in the year 1992. He contends that the objection and the challenge to Naksha 'B' by these private respondents is without any basis and therefore, the impugned order dated 13.12.2018 (Annexure P-7) passed by the Financial Commissioner, Haryana, cannot sustain.

3. I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the records of the case including the mode of partition as well as Naksha 'B'.

4. The contention of the learned counsel for the petitioner on facts may be correct to the extent that respondents No.5 and 6 had purchased specific khasra number in the year 1992 and are in possession of the said land but as per the principle, each co-sharer becomes owner in possession of each and every inch of the land. It is also a settled preposition of law and principle of revenue that when partition is to be carried out, the mode of partition, which has been finalized between the parties, is sacrosanct and has to be adhered to without any violation thereof as far as possible unless on challenge by any of the parties set aside/modified etc.

5. In the present case, the mode of partition dated 04.06.2007 (Annexure P-11) reads as follows:-

“1. That the total land measuring 156 kanal and 8 marla situated in village Bhangrola, Tehsil and District

Gurgaon is jointly owned by the parties.

2. That there shall be 8 Khewats to be carved out in the partition. First Khewat shall relate to Pehlad etc. applicant, second shall relate to Chandgi applicant. The third khewat shall relate to applicant Babu Lal, fourth khewat shall relate to applicant No.1, Amit Kumar. Fifth khewat shall relate to applicant No.12 Satbir and Gobind. Sixth khewat shall relate to Blarja etc. Seventh Khewat shall relate to Rajeev etc. applicants and eighth khewat shall relate to passage.

3. That the partition shall take place after disturbing the possession.

4. That in case of any land adjoining the road, the party shall have a right with the road by allowing him the front side of the road.

5. That nature and value of the land shall be taken into consideration, so that party may get the area according to their share.

6. That at the time of partition, if need be the passage shall also be given and the land of passage shall be deducted from the total land.

7. That in the land to be partitioned some land is nearer to village Abadi and situated on the main road and part of firny. The said land is more valuable. The applicant

shall be given their share in the valuable land and the land, which is away from the road, all co-sharers shall get their share in the said land.

8. That the trees and ponds existing in the land shall be appropriately retained as per the desire.

9. That in the land under partition, if any tubewell or house is situated, the said land shall be given to its owner in the share.

10. That the partition is simple and the Halqa Patwari under the supervision of Girdwar shall inspect the spot, whose fee is access Rs.500/- which shall equally be paid by both the parties.

-sd-

Asstt. Collector Ist Grade,
Gurgaon / 04.06.2007”

6. It is clearly mentioned therein that the possession would be disturbed. It has further been stated in clause No.4 that each party would get land on the road. Similar is the position with regard to the land on the phirni. Each applicant and the share holder would be entitled to the land as per the value. All these aspects when looked into and taken into consideration vis-a-vis partition and finalization of Naksha 'B' would show that the same has not been adhered to as no land has been given to respondents No.5 and 6 on the road nor they have been given land on the phirni.

7. Counsel for the petitioner has, however, asserted that as per

clause 2 of the mode of partition, 8 khewats were to be carved out in the partition and if this mode is resorted to, clause 2 would be violative. This contention of the learned counsel for the petitioner cannot be accepted in the light of the fact that the land which is to be partitioned is in four separate parcels and therefore, each share holder will have to be given or can be given in each parcel of the land as far as possible.

8. The order dated 13.12.2018 (Annxure P-7) as passed by the Financial Commissioner, Haryana, being in consonance with the factual position and especially in the light of the fact that mode of partition has been violated, the said order cannot be faulted with.

9. In view of the above, the present writ petition being devoid of merit, stands dismissed.

12th April, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No