

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

128

Civil Writ Petition No.3104 of 2019
Date of Decision: February 4th, 2019

Sat Narain

...Petitioner

Versus

The Commissioner, Rohtak Division, Rohtak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Tapan Kumar Yadav, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the orders dated 23.10.2017 and 24.10.2017 (Annexure P-2 Colly.) passed by the Assistant Collector 2nd Grade, Badli, rejecting the objections of the petitioner against *naksha bey* and sanctioned *naksha jeem* and the order dated 28.11.2017 (Annexure P-3) passed by the Collector, Jhajjar, in the appeal preferred by the petitioner, which has been dismissed, order dated 02.07.2018 (Annexure P-5) passed by the Commissioner, Rohtak Division, Rohtak, whereby the revision petition of the petitioner has been dismissed.

2. It is the contention of learned counsel for the petitioner that the mode of partition dated 10.07.2017 (Annexure P-1), especially clause 4 thereof has been violated, according to which if a party had a house or tubewell etc., then the same was to be given to him with the trees on the said land. If there is a old well which is common, then the same was to be given to the parties by agreement otherwise kept common. He contends that Killa No.19/26 admittedly has a non-running well because of the fact that the land is being irrigated now through canal but it cannot be said that it is a

dried well and cannot be used for the purpose of irrigation. He further

contends that the said portion of the land has been given to Gopi Ram-respondent No.4 as per the order dated 23.10.2017 (Annexure P-2) passed by the Assistant Collector 2nd Grade, Badli. He contends that the said well was to be kept as a common property for all the co-sharers. Therefore, the said rejection of the said objection is not sustainable. His further contention is that the petitioner is ready to give 2½ acres of land and take 2 acres of land of other co-sharers as the land, which has been allotted to him does not have adequate irrigation water from canal. He, therefore, contends that the stand of the petitioner should have been properly appreciated by the authorities below while passing the impugned order. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the impugned orders as well as the record available with the writ petition.

4. As regards the first contention of learned counsel for the petitioner, as per the order dated 23.10.2017 (Annexure P-2) passed by the Assistant Collector 2nd Grade, Badli, it is an admitted position that there is a *gair mumkin* well in Killa No.19/26. At the spot the land is in possession and cultivation of Gopi Ram-respondent No.4. The well is non-running and at the most is of 10 square yards. Keeping in view the fact that the land is being irrigated through canal water, making the well a common property for all the co-sharers, would require common *rasta* to be given to all the co-sharers, which according to the Assistant Collector 2nd Grade, Badli, would consume 1 acre 10 marlas, which means around 900 square yards. That would be not only a loss to all the parties but would also mean that the valuable land, which would be used for production of grain and other food

articles, cannot be used for cultivation, which ultimately be a national loss, especially when the said well is not in use for long time. Merely because a term has been specified in the terms of partition when seen in the interest of parties as also the proper utilization of the land, the said plea has rightly been rejected by the authorities.

5. As regards the assertion of the counsel for the petitioner that the petitioner is ready to give 2½ acres of land in exchange of 2 acres of land is concerned, the same also has not been found to be favourable with the authorities below, who on the basis of the records and the relevant papers, have come to the conclusion that the said objection would not be acceptable. This Court does not find any justification to interfere in the orders passed by the authorities below.

6. In view of the above, the writ petition, therefore, stands dismissed.

February 4th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No