

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

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Civil Writ Petition No.10275 of 2019

Date of Decision: April 22nd, 2019

Chhotu Ram and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sushil Kumar Verma, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 09.10.2018 (Annexure P-8) passed by the Financial Commissioner, Haryana, whereby the revision petition preferred by the petitioners challenging the order dated 19.07.2016 (Annexure P-7) passed by the Commissioner, Hisar Division, Hisar-respondent No.2, has been dismissed, order dated 31.01.2013 (Annexure P-6) passed by the District Revenue Officer, Sirsa, exercising the powers of Collector, Sirsa-respondent No.3, order dated 26.07.2012 (Annexure P-5) passed by the Assistant Collector Ist Grade, Nathusari Chopta, Tehsil Nathusari Chopta, District Sirsa-respondent No.4, whereby in the partition application, further amendments have been carried out to the mode of partition vide order dated 22.03.2012.

2. Briefly the facts of the case are that on an application, which was moved for partition initially, a mode of partition was decided on 05.08.2010 by the Assistant Collector Ist Grade, Nathusari Chopta. On an application submitted by some of the co-sharers, *ex parte* proceedings initiated against them, were set aside on 06.12.2011. In the said order, whereby the *ex parte* proceedings were initiated, only limited prayer was

accepted to the extent of filing objections to naksha bey vide order dated 07.10.2010, against which respondents 45 to 52 in the partition application, filed an appeal before the District Revenue Officer, Sirsa, on 10.11.2010, whereby the said appeal was allowed on 06.12.2011 directing the Assistant Collector Ist Grade, Nathusari Chopta, to decide the matter afresh by giving opportunity to both the parties to lead evidence. Thereafter the Assistant Collector 2nd Grade, Nathusari Chopta, issued amended mode of partition on 22.03.2012. On objections submitted by respondents 45 to 52 in the partition proceedings, Assistant Collector 2nd Grade, Nathusari Chopta, vide order dated 26.07.2012 further amended condition No.2 of the amended mode of partition, whereby it was incorporated that the earlier condition No.2, whereby the possession of the land has to be maintained of the co-sharers, now the quality of the land was also to be taken into consideration while finally partitioning the land. Aggrieved by the order dated 26.07.2012 regarding the amendment in condition No.2, the present petitioners and some other respondents i.e. 58 to 63 in the partition application, preferred an appeal before the District Revenue Officer-cum-Collector, Sirsa, which appeal was dismissed vide order dated 31.01.2013 resulting in filing of the revision petition before the Commissioner, Hisar Division, Hisar, which also has been dismissed on 19.07.2016 leading to the filing of the revision petition before the Financial Commissioner, Haryana, who had dismissed the same being devoid of merit vide order dated 09.10.2018. These are the orders which have been challenged by the petitioners starting from the order dated 22.03.2012 passed by the Assistant Collector 2nd Grade, Nathusari Chopta, followed by the subsequent orders passed by the

authorities.

3. It is the contention of learned counsel for the petitioners that on two occasions, the mode of partition has been amended initially and thereafter condition No.2 of the 2nd mode of partition has again been amended by incorporating the nature of the land and quality thereof which is contrary to the position with regard to the possession of the land to be maintained. With this condition, there is every likelihood of the possession being disturbed of the co-sharers and, therefore, once the mode of partition has been settled between the parties, amendment thereto cannot be permitted. His assertion is that the petitioners would be satisfied if the mode of partition is now decided afresh by carrying out the site inspection in the presence of the parties.

4. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the records of the case.

5. The facts, as have been narrated above, are not in dispute. No doubt, condition No.2 in the mode of partition which was amended, indicated that the possession of the parties would be maintained and it is on the grievance which has been highlighted and the objections submitted by respondents 45 to 52 in the amended mode of partition, that the condition with regard to the nature and quality of the land has been incorporated vide order dated 26.07.2012, which order has been approved by the Collector vide order dated 31.01.2013 (Annexures P-5 and P-6 respectively). Perusal of these orders would show that the possession obviously may have to be disturbed depending upon the good and bad quality of the land but in any case, each co-sharer has to be given equal share in the property to the

extent of there respective shares which includes not only the area but the quality of the land. The order dated 26.07.2012 (Annexure P-5) which has been passed by the Assistant Collector 2nd Grade, thus cannot be faulted with.

6. The plea of learned counsel for the petitioners that the order of amendment in the mode of partition could not have been passed without the approval of the Collector has rightly been observed to be a mere technicality on the part of the Financial Commissioner, Haryana, in the impugned order dated 09.10.2018 when the subsequent amended mode of partition, especially with regard to condition No.2 having been approved by the Collector himself vide order dated 31.01.2013 (Annexure P-6). This Court does not find any illegality in the orders which have been impugned by the petitioners in the present writ petition, which would call for remanding the case back to the Assistant Collector 2nd Grade for framing of fresh mode of partition.

7. The writ petition, therefore, stands dismissed.

April 22nd, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No