

CWP-18050-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18050-2019

Date of Decision: 8th July, 2019

Bahadur Singh & another

...Petitioners

Versus

The Financial Commissioner (Revenue), Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 30.07.2010 (Annexure P-1) passed by the Assistant Collector 1st Grade, Nawanshahr; order dated 18.07.2011 (Annexure P-2) passed by the Collector, Nawanshahr on remand, order dated 01.04.2016 (Annexure P-3) passed by the Commissioner, Roopnagar Division, Roopnagar and the order dated 02.02.2017 (Annexure P-4) passed by the Financial Commissioner (Revenue), Punjab.

2. It is the contention of the learned counsel for the petitioners that the mode of partition was finalized vide order dated 18.12.2008 (Annexure P-9). He contends that the impugned order dated 30.07.2010 (Annexure P-1) passed by the Assistant Collector 1st Grade, Nawanshahr, is violative of the mode of partition, which has been finalized. His contention

is that the petitioners had objected to the proposed partition and after rejection of the objections of the petitioners, an appeal was filed before the Collector, Nawanshahr, which was accepted and the case was remanded back for fresh decision as it was found that there were certain cuttings in the records. In pursuance thereto, fresh partition was carried out, which was challenged by the petitioners by filing an appeal before the Commissioner, Roopnagar Division, Roopnagar, which was dismissed vide order dated 01.04.2016 (Annexure P-3). Faced with this situation, petitioners had preferred a revision petition before the Financial Commissioner, Punjab, challenging the order passed by the Assistant Collector 1st Grade, Nawanshahr, followed by the dismissal of the appeal by the Collector, Nawanshahr and the revision by the Commissioner, Roopnagar Division, Roopnagar, which has also been dismissed vide order dated 02.02.2017 (Annexure P-4) by the Financial Commissioner, Punjab. He contends that the factum of the mode of partition, which is the primary document to be taken into consideration for finalization of the partition, has been ignored as a separate block was to be carved out for the predecessor-in-interest of the petitioners i.e. Swaran Singh but the said aspect i.e. clause 3 of the mode of partition has been violated as the land has been given in different blocks, two blocks to the petitioners and two blocks to the widow of the brother of the petitioners because of the death of Swaran Singh, predecessor-in-interest of the petitioners. He contends, apart from that, the condition with regard to clauses 1 and 4 has also not been followed in totality as the Abadi and the land in possession had to be kept in mind and the same has been disturbed.

He, thus, contends that the impugned orders cannot sustain and deserve to be set aside. To substantiate his contentions, he has placed reliance upon the site plans (Annexure P-11 colly).

3. I have considered the submissions made by the learned counsel for the petitioners and with his able assistance have gone through the records of the case and the impugned orders.

4. The mode of partition which has been finalized by the Assistant Collector 1st Grade, Nawanshahr, dated 18.12.2008 (Annexure P-9) provides for partition of the land, which reads as follows:-

“1. The partition shall be effected by disturbing the possession and each party be adjusted adjacent to the road as per his share. However, the Motor and Abadi be kept in mind.

2. A separate block be carved out for the first party.

3. A separate block be carved out for the second party.

4. The tubewell and trees be kept as it is.

5. Water channel and passage be provided to every block from the nearest boundary as per requirement.

6. In case any party has sold, mortgaged, gifted, exchanged or alienated any area, the same be deducted from his share.

7. *Dhal-Bachh* be prepared separately.

8. The patwari Halqa is directed to prepare the partition papers under the supervision of Girdawar halqa.”

5. Perusal of the above mode of partition, which has been finalized between the partition and has attained finality, would indicate that the partition shall be effected by disturbing the possession of each party by adjusting adjacent to the road as per its share. Rider to it was only that the motor and abadi will be kept in mind wherever, is is possible, the same shall be kept with the possession of the person concerned. It is rightly asserted as two blocks had to be carved out, one separate block for the first party and one separate block for the second party i.e. Swaran Singh, of which, petitioners are the successors along with respondent No.5 – Mohinder Kaur. Thus, it cannot be said that any condition of the mode of partition has been violated in the light of the fact that the mode of partition specifically states that the partition can be effected by disturbing the possession of each party and will be adjusted adjacent to the road as per his share.

6. Perusal of the site plan would indicate that the parties have been adjusted on the path and almost equivalent share has been given to the parties so far as the face on the road is concerned. Obviously to give such effect to the partition, possession had to be disturbed, which has rightly been resorted to by finalizing the partition and issuing of *sanad taksim*. The assertion of the counsel for the petitioners that a separate block was to be carved out for Swaran Singh, whereas, successors have been given a land in separate blocks, the said aspect does not make much of difference and the same will not detain the Court long on this aspect as respondent No.5, the other party to the suit, has no grievance with regard to the same except for the petitioners although it is not in dispute that the area of the land which

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has been inherited by the petitioners is as per their share, there is no illegality in doing so.

7. Perusal of the site plan would further indicate that the partition which has been carried out is equitable and justified, which does not call for any interference by this Court in exercise of its extraordinary writ jurisdiction especially keeping in view that all the four authorities have come to an identical conclusion which has been found to be justified and in accordance with law by this Court as well.

8. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

8th July, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No