

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

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Civil Writ Petition No.22194 of 2019
Date of Decision: August 22nd, 2019

Smt. Phoola Devi alias Phuli Devi and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ram Pal Verma, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 28.06.2019 (Annexure P-9) passed by the Financial Commissioner, Revenue-respondent No.2, whereby the revision petition filed by the petitioners has been dismissed, in which the challenge was to the order dated 01.09.2014 (Annexure P-8) passed by the Commissioner, Rohtak Division, Rohtak-respondent No.3 and order dated 28.09.2012 (Annexure P-6) passed by the District Revenue Officer-cum-Collector, Jhajjar and order dated 06.07.2012 (Annexure P-3) passed by the Assistant Collector 1st Grade, Matanhail, District Jhajjar, whereby the appeals as well as the objections to *naksha bey* filed by the petitioners have been dismissed. All these orders passed by the revenue authorities have been challenged by the petitioners.

2. It is the contention of learned counsel for the petitioners that the mode of partition was finalised on 05.12.2008 (Annexure P-2). Conditions No.2 and 3 of the said mode of partition were as follows:-

*“2. The partition would be effected by keeping the possession intact. If there is some less land than (**sic.-then**) it would be completed from adjoining land. If there is need than (**sic.-then**)possession can be broken.*

3.The area situated near road and Abadi deh would be given to every co-sharer as per their share.”

3. *Naksha bey* was thereafter finalized on 05.12.2008 (Annexure P-3) to which objections were filed by the petitioners. Copy whereof has been appended as Annexure P-4. The said objections were rejected by the Assistant Collector Ist Grade on 06.07.2012. The objections, which have been raised, were with regard to violation of conditions No.2 and 3 of the mode of partition as finalised on 05.12.2008. The appeal was dismissed by the District Revenue Officer-cum-Collector, Jhajjar, on 28.09.2012 (Annexure P-6) leading to filing further executive revision before the Commissioner, Rohtak Division, Rohtak, which was also dismissed vide order dated 01.09.2014 (Annexure P-8) leading to the filing of the revision petition before the Financial Commissioner, Haryana, which has also been dismissed on 28.06.2019 (Annexure P-9).

4. Counsel for the petitioners states that the authorities below have failed to appreciate that the possession of the properties at the hands of the respective co-sharers had to be kept intact, which has not been done, thus, violating the mode of partition. It is further contended that value and kind of the land has not been considered by the Assistant Collector while deciding the partition application as the land abutting the *abadi* was not given to them, which is more valuable and can be used for residential and commercial purposes, which has been given to the respondents. Another plea which has been raised by the counsel for the petitioners is that the land of the co-sharers fall in two revenue estates i.e. Kachhrauli and Mankawas and the same cannot be partitioned in a common partition application. He on this basis contends that the mode of partition having

falls in two revenue estates. He on this basis contends that the impugned orders cannot sustain and deserve to be set aside.

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

6. The two conditions of mode of partition, which are alleged to have been violated, have been reproduced above. Perusal of condition No.2 would show that the possession of the concerned co-sharers on a particular piece of land would be kept intact, however, if there is any party which is either in more or less possession of the land, the same would be completed from adjoining land and if need be, the possession can be changed. Condition No.3 was that the area situated near the road and the *abadi deh* would be given to each co-sharer as per his share, meaning thereby that keeping the possession intact was not sacrosanct but for equitable distribution of the land situated near the road and *abadi deh*, possession could change hands as per the respective shares of the co-sharers.

7. The learned Financial Commissioner in his order dated 28.06.2019 has dealt with this aspect in the right perspective and has come to the conclusion that the partition has been carried out in a fair and legal manner keeping in view the mode of partition as well as the value of the land. For further clarification, the relevant portion of the order is reproduced hereinbelow:-

“I have duly considered the arguments advanced by both the counsels, perused the relevant record of the case and have also examined the impugned orders. The partition application was filed by the respondents before the Assistant Collector and in the mode of the partition it has been specifically provided that the partition among the co-sharer

will be effected considering the value and quality of the land. The possession can be disturbed if necessitated. The main grievance of the petitioner is that the value and kind of land has not been considered by the Assistant Collector while deciding the partition application. The land abutting the abadi was not given to the petitioners as the land near the abadi is more valuable and can be used for residential and commercial purposes. The valuable land has been given to the respondents in the partition proceedings. The petitioner in his arguments has stated that the Assistant Collector has not taken care of the value of land during the partition proceedings as provided in the mode of partition. The plea of the petitioner with regard to not considering the quality of land is not correct as the petitioner have been given land in Mustil No. 21 Kila No. 11/2 and 208/1 total measuring 5 Kanal 12 Marla which falls on the Kachhrauli – Patuwass road which is a State Highway and is very valuable and the same is more than his share to be given on the road. The petitioner is the owner of $\frac{1}{4}$ share of the total land whereas the respondents are the owner of $\frac{3}{4}$ land. All plots cannot be partitioned in this ratio as it will reduced the viability due to fragmentation. The respondents have the possession over Khasra No. 31//6/1 and 138//11/1/ and they have laid down pipeline in the same by investing lot of money and have constructed a boundary wall in Kila No. 138//1/1 and Samadhi of Smt. Shanti Devi has been constructed which proves the old possession and the same has also been substantiated by site inspection report.”

8. As regards the contention of counsel for the petitioners which he has raised for the first time before the Financial Commissioner in the revision petition that the land in question falls in two revenue estates i.e. Kachhrauli and Mankawas and, therefore, the same cannot be partitioned in one common partition application, the same will not carry much weight keeping in view the fact that there is no *abadi* in Village Mankawas and the

Thus, the partition of the land holdings in two revenue estates can be effected by a common partition application as the residents of Village Kachhrauli were the owners of the land in Village Mankawas.

9. It would not be out of place to mention here that the plea which is being sought to be raised for the first time before the revisional authority is not permissible, however, in the light of the above, there is no merit in this contention so raised.

10. Perusal of the site plan, which has been placed on record, would show that no prejudice has been caused to the petitioners, which would call for any interference by this Court in exercise of its writ jurisdiction.

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

August 22nd, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No