

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.206

CWP-20606-2011 (O&M)

Date of decision : 4.3.2020

Bhag Singh

..... Petitioner

VERSUS

Financial Commissioner, Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. P.R. Yadav, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Sanjay Vij, Advocate, for respondent No.5.

SUDHIR MITTAL, J. (Oral)

The question involved in this writ petition is whether the land in dispute has been partitioned in accordance with the approved mode of partition ?

Respondent No.5 moved an application dated 10.7.1997 for partition of joint land measuring 640 kanals and 11 marlas. Mode of partition was approved on 7.10.1998. This was amended on 9.11.1998 only with respect to the number of khewats to be carved out. Thereafter, naksha bey was called for 3.12.1998, upon receipt of which, the petitioner filed objections dated 16.3.1999. Spot inspection was conducted on 19.4.1999 and objections were dismissed vide order dated 24.3.1999. Thereafter, naksha zeem was called for and approved and sanad takseem dated 19.4.1999 was issued. The petitioner challenged the sanad takseem in appeal filed before the learned Collector, which was, however, dismissed vide order dated 29.11.2001. Further, revision filed before the learned Commissioner was dismissed vide order dated 1.5.2003. Thereafter, a civil

withdrawn vide order dated 28.9.2005. Liberty was granted to challenge the partition proceedings by way of a writ petition. Consequently, CWP-5510-2006 was filed and the same was disposed of vide order dated 21.4.2010 granting liberty to the petitioner to approach the learned Financial Commissioner. Two grievances were raised before the learned Financial Commissioner; (a) less land than the share of the petitioner had been given to him and (b) the partition was contrary to the approved mode of partition. Regarding grant of less land, the learned Financial Commissioner directed constitution of a committee to determine the issue and this part of the order is not under challenge. The issue regarding the sanad being contrary to the mode of partition has been decided against the petitioner, compelling him to file the present writ petition.

Learned counsel for the petitioner has argued that the mode of partition provides that all parties would get frontage on the main road in accordance with their share and partition would be effected keeping in view the quality and value of the land. Thus, the petitioner was entitled to proportionate share in land having more value. The land abutting the national highway is more valuable than land abutting the road leading to the national highway and accordingly, the petitioner was entitled to proportionate frontage on the national highway also. Reference has been made to site plan, annexure P-16, in this regard.

Learned counsel for respondent No.5 submits that the petitioner never objected to the proposed mode of partition and thus, he is estopped from challenging the said mode of partition, at this stage. Further, the approved mode of partition also provided that land on which tubewell has

them and accordingly, the petitioner has been given the land on which he had sunk his tubewell etc. The 'Tak' of the petitioner abuts the road leading to the national highway and thus, it is incorrect to say that the petitioner has not been given land abutting the road. Other co-sharers also have been given land abutting the national highway as they were in possession thereof, but only respondent No.5 has been targeted by the petitioner. The action of the petitioner is motivated and thus, he is not entitled to any relief. The site plan, annexure P-16, has however, not been denied.

The approved mode of partition is on record as annexure P-2 and the relevant terms thereof are reproduced hereinbelow:-

'2. The land under partitioned would be partitioned keeping in view possession and type of land and in order to meet out the deficiency or additional possession can be disturbed.

4. That while partitioning the land special care would be taken that in case some main road adjoins the land under partition then every co-sharer would be given share on it as per his share. Nobody would be given more than his share.

7. In case any of the party has tubewell, house etc. then the same would be kept in his share.'

The aforementioned clauses of the approved mode of partition show that partition is to be effected keeping in view possession and type of land. Special care is to be taken to ensure that all co-sharers are given land adjoining the main road in accordance with their share. Land on which tubewell, house etc. exist i.e. some construction has been raised by

co-sharer should be given to the said co-sharer. These three clauses read together convey that land on which any construction has been raised by any party should, as far as possible, be allotted to said party and possession must be respected. However, all co-sharers are entitled to land of equal value keeping in view their respective shares. Accordingly, proportionate frontage on the roads passing through the land must be determined.

The site plan, annexure P-16, has not been denied by learned counsel for respondent No.5. The said site plan shows that the petitioner has been allotted land on both sides of a road leading to the national highway, whereas, respondent No.5 has been allotted land on both sides of the national highway. Towards the rear, the said respondent also has frontage on the road connected to the national highway. It may also be noted that respondent No.5 has accepted that land abutting the national highway is more valuable.

Every co-sharer in joint land, is owner of every inch thereof in proportion to his share, until and unless, the same is partitioned. In view of this principle, each co-sharer is entitled to a proportionate share, keeping in view the overall quality and value of the land. This is a basic principle of partition and the same can never be deviated from. Thus, the petitioner, too was entitled to proportionate frontage on the national highway. The possession was required to be respected but alongwith the same, value and quality of the land also had to be kept in mind. All terms of the approved mode of partition have to be kept in mind while issuing the sanad and one particular clause thereof cannot take precedence. The authorities below have erred in losing sight of this basic principle. Thus, the orders under challenge

Learned counsel for respondent No.5 has also submitted that pursuant to issuance of sanad, possession has been transferred and mutations on its basis, have also been sanctioned. This fact, however, cannot persuade me to permit an illegal partition.

The writ petition is accordingly, allowed and the orders impugned therein are set aside. Learned Assistant Collector, First Grade shall initiate proceedings afresh after issuing notice to the respective parties. The parties, shall appear before the learned Assistant Collector, First Grade on 3.4.2020

(SUDHIR MITTAL)
JUDGE

4.3.2020
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No