

CWP No.23302 of 2013

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

CWP No.23302 of 2013

DATE OF DECISION: February 25, 2020

RAJPAL

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gopal Sharma, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. S.K. Bawa, Advocate, for respondents No.3 & 4.

SUDHIR MITTAL, J. (ORAL)

In this writ petition, challenge has been laid to order dated 22.04.2013 (Annexure P-7) whereby sanad taksim was issued as well as to the partition proceedings.

2. Respondents No.3 & 4 sought partition of the land in dispute vide application dated 16.08.2012 (Annexure P-3). During the pendency thereof, an application dated 07.02.2013 (Annexure P-4) was filed for consolidation of applications filed for partition of different khewats. The said application was allowed on the same day. Thereafter, mode of partition was approved on 28.02.2013. Naksha 'Bey' was received on the same day and was also passed without inviting objections from the co-sharers. Naksha zeem was called for 18.04.2013 and approved on the same day. Thereafter, sanad taksim was issued vide order dated 22.04.2013 (Annexure P-7). Aggrieved, the petitioner has filed the present writ petition.

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3. The argument of learned counsel for the petitioner is that the petitioner was appearing in person. He could not appear either on 28.02.2013 or on 18.04.2013 and thus, he was deprived of his right of filing objections against naksha bey as well as naksha zeem. The consequential order of sanad taksim is thus illegal and deserves to be set aside.

4. Learned counsel for respondents No.3 & 4 controverts the aforementioned submissions.

5. Zimni orders dated 28.02.2013 and 18.04.2013 are on record. A perusal thereof shows that the said orders were passed in the presence of the counsel for the parties.

6. The petitioner has argued that he had not engaged a counsel and was appearing in person. However, this is not substantiated even by the pleadings in the writ petition. The relevant pleadings are contained in paragraphs 8 & 9 of the writ petition and they are reproduced below:

“8. That after the preparing of mode of partition dated 07.02.2013, the respondent No.2 in haste and wrong manner approved the Naksha Bey without giving any opportunity to the petitioner to file any objection on the Naksha Bey. The Naksha Bey has been approved on 28.02.2013, as apparent from the Zimni order dated 28.02.2013. It is relevant to mention here that the perusal of the certified copy of the zimni order clearly showing that the Naksha Bey has been approved by making manipulation in the zimni order dated 28.02.2013. The copy of the Mode of partition is attached as Annexure P-5.

9. That the respondent No.2 in connivance with respondents No.3 and 4 without giving opportunity to file objection on

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Naksha Bey, again in haste manner approved the Naksha Zeem on 18.04.2013 and thereafter in wrong and illegal manner issued Sanad Takshim on 22.04.2013. The copies of all Zimni orders are attached as Annexure P-6 (colly). The copy of the impugned order dated 22.04.2013 whereby Sanad Takshim has been issued is attached as Annexure P-7.”

7. Thus, there is nothing on record to indicate that the petitioner was appearing in person. The zimni orders record presence of counsel and therefore, the contention of counsel for the petitioner that the order was passed behind his back, cannot be accepted.

8. Learned counsel for the petitioner has next argued that a perusal of the naksha bey shows that the petitioner has been given land at the rear of the 'tak'. He has not been given any land on the road. Thus, the partition has not been effected in an equitable manner.

9. The argument has been noticed only to be rejected. Admittedly, the share of the petitioner in the total land measuring 68K-2M is 5K-11M. Keeping in view the principle of consolidation, contiguous land had to be given to the parties. The learned Assistant Collector, Ist Grade, in his wisdom, has given an appropriate piece of land to the petitioner and I don't find any error in the same. Partition cannot be done in a mathematical manner and there is no perfect solution. That apart, as noticed here-in-above, the petitioner did not file any objections either to the naksha bey or the naksha zeem despite opportunities and thus, the issue on merits cannot be raised.

10. Learned counsel for the petitioner has also relied upon judgments of this Court in *Swaran Singh vs. Punjab State and others*,

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2014(5) R.C.R. (Civil) 3; Krishan and others vs. F.C. Haryana and others, 2015(4) R.C.R. (Civil) 989 and Hardeva and another vs. State of Haryana and others, 2013 (2) R.C.R. (Civil) 897. In *Swaran Singh (supra)*, the procedure of partition has been referred to by interpreting the statutory provisions. An observation has been made that at every stage opportunity has to be given to the parties to file objections. There is no quarrel with this proposition of law. Opportunity is required to be given to file objections but where no objection has been raised, grant of opportunity would be futile. In *Krishan (supra)*, the petitioners therein had sought an adjournment to file objections but the same was denied and in that context this Court had held that the partition proceedings were done in undue haste. That is not the situation in the present case. *In Hardeva (supra)*, the land abutting the road had been divided equally amongst the co-sharers although the petitioners were in exclusive possession thereof. The principle emerging from this judgment is that the parties should be given equivalent frontage on a road keeping in view the principle that land of equal value should be given to the parties. Again, there can be no quarrel with the aforementioned proposition. The petitioner cannot take benefit of the said judgment as he never objected to either the naksha bey or the naksha zeem. All the judgments relied upon by the learned counsel for the petitioner are thus inapplicable to the present case.

11. The writ petition has no merit and is dismissed.

February 25, 2020

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No