

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

219

**CWP NO.16564 OF 2017
Date of Decision:24.02.2020**

Tek Chand & Ors.

.....Petitioners

Vs.

Commissioner, Gurugram Division, Gurugram & Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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

Mr. Manish Dadwal, AAG Haryana
for the State.

Mr. Ashish Yadav, Advocate
for respondent No.4.

Mr. V.K. Jindal, Advocate
and Mr. Lokesh Sinhal, Advocate
for respondent No.5.

SUDHIR MITTAL, J. (ORAL)

Written statement on behalf of respondents 1 to 3 has been filed. The same is taken on record. A copy thereof has been supplied to learned counsel for the petitioner.

Respondent No.4 had filed an application for partition on 11.11.2011 whereupon mode of partition was approved on 08.05.2013. Thereafter, *Naksha Bay* was sanctioned on 19.11.2014. The petitioners filed an appeal against *Naksha Bay* but the same was dismissed vide order dated 07.08.2015. Revision met with the same fate. Thus, the *Sanand Takseem* dated 21.06.2017 was prepared and the same is under challenge in this writ petition.

Learned counsel for the petitioner has submitted that the petitioners were the respondents in the partition application filed before the Assistant Collector. They were being represented through their brother-Om Prakash who passed away on 10.05.2014. His LRs were not impleaded by the applicant i.e. respondent No.4 and thus, the petitioners could not file objections to the *Naksha Bay*. This ground was taken before the Collector but the learned Collector confused the facts of this case with some other case and dismissed the appeal. The learned Commissioner also failed to take this aspect into consideration. Moreover, the partition has been done contrary to the mode of partition and thus, even on merits, the Sanad cannot sustain.

Learned counsel for respondents No.4 and 5 submits that a perusal of the zimni orders of the learned Assistant Collector shows that the *Naksha Bay* was received on 10.07.2013 and thereafter, a number of opportunities were given to the parties to file their objections. Thus, *Naksha Bay* was received during the lifetime of Om Prakash. The matter was adjourned for filing objections at least on five different occasions prior to his death yet, no objections were filed. Thus, the petitioners cannot raise the argument that they were deprived of the opportunity of filing objections. Moreover, Om Prakash was none else than the brother of the petitioners No.1 to 3 and thus, they should have been vigilant enough to take

care of their interests. Even on merits, the partition has been carried out most equitably as is evident from Site Plan Annexure R5/1. Parties have been given adequate frontage on the *rasta/firni* in accordance with their respective shares and thus, the petitioners cannot have any grievance.

A perusal of the zimni orders of the Assistant Collector shows that *Naksha Bay* was received on 10.07.2013. The case was adjourned to 07.08.2013 to file objections. On 07.08.2013 again, it was adjourned to 04.09.2013 to file objections. On three dates thereafter, the Presiding Officer was on leave and the case was next called on 13.11.2013. Again, it was adjourned to 27.11.2013 for filing objections. On the said date also, the matter was adjourned for filing objections. Thereafter, the Presiding Officer was on leave for seven dates and it appears that Om Prakash passed away meanwhile. However, it is clear that during his lifetime, Om Prakash had enough opportunity to file objections to *Naksha Bay*. Moreover, learned counsel representing Om Prakash as well as the petitioners No.1 to 3 appeared on every date and thus, lack of knowledge of the stage of the proceedings cannot be pleaded. It is true that the learned Collector as well as learned Commissioner have failed to consider the contention of the petitioners that they were deprived of an opportunity to file objections, but, in view of the fact that no benefit can be granted to them on this count, the illegality committed by

learned Collector and Commissioner cannot come to the aid of the petitioners.

I have examined the partition carried out with the help of Annexure R5/1 and even on merits, the contention that the partition has been carried out contrary to the mode of partition cannot be accepted. The land has been divided into three different tucks and the parties have been given equal frontage on the paths in accordance with their respective shares.

The writ petition has no merits and is dismissed.

February 24, 2020
NainaRajput

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No