IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 29.05.2020

1. CWP No.696 of 2014

Mir Singh and another

...Petitioners

Vs.

State of Haryana and others ...Respondents

2. CWP No.18923 of 2014

Dharam Pal

...Petitioner

Vs.

State of Haryana and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Chopra, Advocate,
for the petitioner(s).

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Ashish Aggarwal, Senior Advocate,
with Mr. Kartik Gupta, Advocate,
for the respondents (in CWP-696-2014).

Mr. Puneet Bali, Senior Advocate,
with Mr. Satyam Aneja, Advocate,
for respondent No.8 (in CWP-696-2014)
and for respondent No.3 (in CWP No.18923 of 2014).

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Ritu Bahri, J.

This judgment shall dispose of CWP Nos.696 of 2014 and 18923 of 2014 together as common questions of law and facts are involved in both the petitions.

Petitioners in **CWP No.696 of 2014** are seeking quashing of the order dated 04.12.2013 (Annxure P-18) passed by the Financial

Commissioner, Haryana, dismissing their revision petition No.242/2013; order dated 19.10.2011 passed by the Assistant Collector, Ist Grade, Sohna during partition proceedings and the order dated 02.08.2012 (Annexure P-10 Collectively), whereby partition proceedings were concluded.

On 15.11.2006, Jaipal filed an application for partition of 08 Kanals of land against Mir Singh, Satpal, Mool Chand, Rattan. Another application dated 19.09.2007 (Annexure P-1) was filed by Bharta against Mir Singh, Rattan Singh and Jaipal for partition of land measuring 189 Kanals 18 Marlas. In this application, Bharta had admitted possession of Mir Singh over a parcel of land. To the above application, Mir Singh filed written statement dated 14.11.2007 (Annexure P-2) admitting possession as mentioned by Bharta. Rattan Singh and Jaipal filed a common written statement dated 12.12.2007 (Annexure P-3). In this written statement, they did not deny the possession of Mir Singh over the land mentioned therein. Later on, Bharta made a request for consolidating/clubbing the aforesaid partition applications. However, his request was rejected vide order dated 12.03.2008. *Naksha 'Ka'* was received by the Assistant Collector on 09.07.2008 and the matter was adjourned to 23.07.2008 for recording statements of the parties. Thereafter, the matter was kept on adjourning from time to time and on 08.06.2011, it was adjourned to 29.06.2011 for recording statement of the applicant. **At that stage, application (Annexure P-4) for clubbing both the applications for partition was made by Bharta.** On 29.06.2011, statement of Bharta was recorded. It was observed that several opportunities had already been afforded to the respondents and the matter was adjourned to 13.07.2011.

This order, as per petitioner(s), is a **fabricated order**. On

13.07.2011, statement of Mir Singh is shown to have been recorded. Thereafter, file was presented on 27.07.2011, on which date, the proposed mode of partition (Annexure P-12) was prepared and the matter was adjourned to 10.08.2011 for objections with regard to mode of partition. On 24.08.2011, objections were not filed. The Assistant Collector, Ist Grade, had observed that sufficient time had been given to the respondents for filing of objections. So, no further opportunity was shown to have been granted to Mir Singh and mode of partition was shown to have been accepted as it was. Copy of the same was ordered to be forwarded to Girdawar/Patwari Halqa to prepare *naksha 'Kha'*. The matter was adjourned to 07.09.2011 and thereafter, to 14.09.2011 and 05.10.2011 for the same purpose. *Naksha 'Kha'* is shown to have been received on 05.10.2011 and the matter was adjourned to 12.10.2012 for filing objection to the same. Order dated 12.10.2012 shows that Jaipal had not raised any objection to *naksha 'kha'* and said that it was prepared as per mode of partition. One opportunity was given to Mir Singh to file objections to *naksha 'Kha'*. On 19.10.2011, Jaipal did not raise any objection to *naksha 'Kha'*. It was observed in that order that Mir Singh had already been granted sufficient time for filing the objections. No further opportunity was granted to Mir Singh for filing objections. Accordingly, *naksha 'Kha*' was accepted as it was and the matter was adjourned to 23.11.2011 for calling *naksha 'Zeem'*.

On 02.11.2011, two appeals bearing case Nos.46 and 47 were filed by Jaipal against the order dated 27.02.2011 consolidating/clubbing applications that had been filed against the proposed mode of partition, which was said to have been prepared. On 23.11.2011, learned counsel for the parties appeared and intimation regarding stay of further proceedings had been given to the Assistant Collector, Ist Grade. Thereafter, matter was adjourned to 30.11.2011 for production of stay order. On 30.11.2011, Naksha '*Ka'* had been received on the file. Order passed by the Collector, Gurgaon staying further proceedings had been produced n the file. Accordingly, proceedings regarding partition were stayed till further order. On 01.02.2012, order of summoning the file is stated to have been received from the Court of Collector, Gurgaon. Accordingly, the file was ordered to be produced in the Court of Collector, Gurgaon on 27.03.2012.

Grievance of the petitioner(s) is that no proceedings had taken place on 19.10.2011, 23.11.2011, 30.11.2011 and 01.02.2012. However, it is not being disputed that on 04.07.2012, an agreement to sell was executed by M/s ROF Infratech and Housing Pvt. Ltd. with Jaipal and Bharta. On 27.07.2012, a civil suit for permanent injunction was filed by Mir Singh, wherein ad interim order of maintaining status quo regarding changing the nature of the suit property was passed. Thereafter, on 30.07.2012, Reader of the Collector had recorded that Mir Singh had put in appearance through counsel and Jaipal had wished to withdraw the appeal. On 01.08.2012, appeal was withdrawn on the statement of Jaipal and filed was ordered to be consigned to the Record Room. On 01.08.2012 itself, file was taken up by the Assistant Collector, Ist Grade stating that Naksha *'Ga'* had been received and the matter is shown to have been adjourned for 02.08.2012 for preparation of *'Sanad Takseem'*.

Mr. Ashish Chopra, learned counsel for the petitioner(s) stated that the petitioners are aggrieved by the manner, in which proceedings of partition of land measuring 189 Kanals 18 Marlas have been carried out in the application for partition dated 19.09.2007 filed by Bharta and another application filed by Jaipal son of Hari Singh against Mir Singh, Satpal, Mool Chand and Rattan. Learned counsel has argued that Bharta and Jaipal had entered into agreement with M/s ROF Infratech and Housing Pvt. Ltd. and had received the earnest money. Thereafter, appeals (Annexures P-6 and P-7) filed by Jaipal against the order dated 27.07.2011, whereby proceedings in both the partition applications had been consolidated, were withdrawn on 01.08.2012. After withdrawing the appeals, record was sent to the Assistant Collector, Ist Grade and land was partitioned on 02.08.2012. He further argued that all this exercise has been done to deny the benefit of fair partition of land to the petitioner(s) and the partition has been carried out against the mode of partition (Annexure P-3), whereby it was agreed that possession of all the co-sharers shall be protected. Petitioner(s) also filed a civil suit for permanent injunction on 27.07.2012 (Annexure P-11) along with application under Order 39 Rules 1 and 2. In that suit, Bharta and Jaipal were directed to maintain status quo regarding possession. During the pendency of suit, petitioners made application under Order 1 Rule 10 CPC seeking impleadment of the aforesaid company along with an application under Order 6 Rule 17 CPC seeking amendment of plaint. A prayer was made for grant of ad-interim injunction directing the respondents not to change the nature of land, which was dismissed by the Additional Civil Judge (Senior Division), Gurugram. On appeal against this order, the Additional District Judge, Gurugram, vide order dated 24.12.2012, restrained the respondents from changing nature of the land by raising constructions. This appeal was finally dismissed vide judgment dated 22.01.2013. Thereafter, Civil Revision No.1273 of 2017 was filed, which was fixed for 11.02.2014.

Learned counsel for the petitioner(s) further argued that the manner, in which Assistant Collector, Ist Grade had accepted *Naksha 'Kh'* on 19.10.2011, was not as per the Land Revenue Act. All the proceedings of partition/*Sanadh Takseem* are manipulated. He has argued that the partition has not been carried out as per the proposed 'mode of partition' dated 27.07.2011 (Annexure P-12). The tubewell installed by Mir Singh in the land has not been given to him in the said partition, as is evident from Annexure P-13. He further argued that appeal filed against the order dated 19.10.2011, whereby Assistant Collector has accepted *Naksha 'Kh',* has been wrongly dismissed. Further, the Financial Commissioner has dismissed the revision vide order dated 04.12.2013. The Revenue Authorities have not followed the mode of partition (Annexure P-12) while accepting the *Naksha 'Kh'*. He has referred to the judgment passed in ***Darshan Kaur and others Vs. Financial Commissioner Cooperation and others,*** 2013 SCC OnLine (P&H) 12967, to contend that once, mode of partition mandates possession to be kept intact, then no co-sharer can be given entire land in his possession. He further referred to the judgment passed by this Court in ***Raghu Nath and others vs. Commissioner, Rohtak Division, Rohtak and others,*** 2013 (2) RCR (Civil) 459 to contend that under Section 118 (1) of the Punjab Land Revenue Act, 1887, if there is glaring violation of mode of partition, orders finalizing partition proceedings are illegal, perverse and have to be set aside and co-sharers should not face any difficulty in cultivating the land after partition. He further referred to the judgment passed by Division Bench of this Court in ***Girwar vs. Financial Commissioner, Haryana,*** 1997 (2) RCR (Civil) 114 on the proposition that under Section 13 of the Punjab Land Revenue Act, even if a party has failed to file objection to the preparation of *Naksha 'Be'*, this will not be a ground to the landowner to justify departure from sanctioned mode of partition. The Financial Commissioner has wide powers to call, examine and revise the proceedings of the Revenue Officer. The Financial Commissioner, under Section 16 of the Act can go into the question of fact and form his opinion of facts approved. He further referred to a judgment passed by this Court in ***Brigadier Satwant Singh vs. Assistant Collector, Ist Grade, Moga and others*****,** CWP No.482 of 2014 (decided on 19.01.2015) on the proposition that once a mode of partition has been sanctioned, then it has to be followed in the partition proceedings and if, it has to be disturbed, then mode of partition has to be first amended. Mr. Chopra has argued that the proposed mode of partition (Annexure P-12) has never been amended and order of partition of land in respect of all the co-sharer is against the mode of partition and is liable to be set aside. Finally, he argued that statement of Mir Singh was actually given on 12.10.2011 and no proceedings took place on 27.07.2011 when mode of partition was stayed. He further argued that no order has been passed on 30.11.2011. Statement of Mir Singh was actually, recorded on 12.10.2011, but it was proposed to have been recorded on 30.07.2011 and no proceedings took place on 27.07.2011. No opportunity was granted to Mir Singh to file objections to the mode of partition. He further argued that no proceedings took place on 12.10.2011 when *Naksha 'Kh'* is stated to have been prepared as per mode of partition. No proceedings took place on 19.10.2011, where statement of Jaipal was recorded to the effect that he has no objection to *Naksha 'Kh'* and no further opportunity was granted to Mir Singh to file his objection to *Naksha 'Kh'*. Proceedings on 30.11.2011 and 01.02.2012 are also being disputed.

Mr. Ashish Aggarwal, learned senior counsel for the respondents (in CWP-696-2014), has argued that even though, mode of partition prescribs that possession should be kept intact as far as possible, but possession cannot be retained at the cost of equitable distribution of most valuable land. Reference has been made to the judgments passed by the Financial Commissioner, Punjab in ***Nachhatar Singh and others vs. Nand Singh and others,*** 2001 (2) PLJ 70 and ***Gajjan Singh vs. Sadhu Singh and others,*** 1999 (1) PLJ 369 on the proposition that possession is not to be literally construed. He has further referred to the judgment passed by the Division Bench of this Court in ***Hardeva and another vs. State of Haryana and others,*** 2013 (2) RCR (Civil) 897 on the proposition that in a partition proceedings under the Punjab Land Revenue Act, 1887, a party cannot be given entire land on the road, if the land on the road is more valuable. The land on the road has to be equally divided among the co-sharers and value of the land has to be taken into account while effecting the partition. Further reference has been made to the judgment passed by Division Bench of this Court in ***Jaskaranjit Singh vs. Financial Commissioner, Punjab,*** 1998 (1) RCR (Civil) 647, to contend that even if there is exparte partition against a minor, unless it is shown that some prejudice has been caused to the minor, partition which has already become final and operative under Section 121 of the Punjab Land Revenue Act, 1887, cannot be set aside for fresh proceedings. In that case, father and minor were party to the partition proceedings and they did not challenge the order of partition. Moreover, no other co-sharer challenged the same. It was held that once, the partition has attained finality, no revision or appeal could be filed against exparte proceedings of the partition. The Division Bench, while holding that no prejudice has been caused to the minor and hence, had refused to interfere in the final partition, which took place on 31.07.1987 (therein). Mr. Aggarwal referred to another judgment passed by this Court in ***Ashok Kumar vs. Financial Commissioner, Haryana, Chandigarh and others,*** 2019 (2) Law Herald 1534, to contend that even if, partition has been carried out as per *naksha 'Bey'* and no prejudice has been caused to any of the parties to the partition proceedings, then no case for setting aside the exparte partion is made made out.

Mr. Aggarwal has further argued that in the application dated 19.09.2007 (Annexure P-1) filed by Bharta against Mir Singh, Rattan Singh and Jaipal for partition of land measuring 189 Kanals 18 Marlas, he had admitted the possession of Mir Singh over a parcel of land and during the pendency of this application, statement of Bharta was recorded. Thereafter, on 12.10.2011, *Naksha 'Kha'* is stated to have been prepared as per mode of partition. Before 12.10.2011, Mir Singh had never raised any objection to the mode of partition and in this order, Mir Singh was shown to have been given last opportunity to file objections. Even on 19.10.2011, Mir Singh had not filed any objections and thereafter, matter was adjourned to 23.11.2011 for calling *Naksha 'Kha*'.

Learned counsel further argued that on 01.08.2012, when *Naksha 'Zeem*' was sanctioned, all the proceedings for executing the partition had been carried out right from sanction of *Naksha 'Kha'* to *Naksha 'Zeem'* and Mir Singh had never raised any objection. The partition proceedings have attained finality on 01.08.2012. Even if, an agreement to sell was executed by Bharta & Jaipal with M/s ROF Infratech and Housing Pvt. Ltd. on 14.07.2012, it has not caused any prejudice to Mir Singh, as he has been given land on the main road while executing the partition. Learned counsel further argued that even during the proceedings of this petition, all attempts were made to exchange the land, especially where *samadh* of his wife and tubewell were installed. But, Mir Singh has refused to accept the offer of exchanging the land. Hence, the intention of Mir Singh is not to effect the partition in the correct manner.

Mr. Puneet Bali, learned senior counsel for respondent No.8 (in CWP-696-2014) has argued that out of total land measuring 189 Kanals, divided in eight (08) chaks, Jaipal was owner of 35.5 Kanals, Bharta was owner of 63 Kanals (divided in five chaks), Rattan was owner of 27.05 and Mir Singh was owner of 63 Kanals (divided in three chaks). Petitioner-Rattan Singh accepted Rs.50 lakhs from respondent No.8-M/s ROF Infratech and Husing Private Limited as full and final settlement for his entire dispute. This fact has been referred to in the order dated 28.05.2019. He has further argued that Rattan Singh has been given 4.25 acres of land along Sohna-Gurugram Highway and has been allotted land where he has constructed his house in village abadi, shown in green colour in the map. Mr. Bali has referred to the offer made by respondent No.8 to Mir Singh. This offer was made to exchange the land of Mir Singh, where *smadh* of his wife was existing. At the same time, another offer was made to purchase the land at the rate of Rs.3.5 crore per acre and subsequently, at the revised rate of 4.5 crore per acre. However, Mir Singh has refused to accept any of the offers. He has further argued that Mir Singh has not stated that he had sought time to file objection. Jaipal has also not raised any objection to *Naksha 'Kha'*. Hence, *Naksha 'Kha'* had been rightly prepared by the Girdawar/Patwari Halqa according to the mode of partition. As per law, possession can be disturbed in order to give chaks of land, which is more valuable, to all the co-sharers.

Mr. Bali has further argued that in the civil suit for permanent injunction, filed by Mir Singh, an interim order of maintaining *status quo* with regard to possession and changing nature of the suit land, was passed on 31.07.2012. In this suit, Assistant Collector, Ist Grade, was also arrayed as defendant No.3. The agreement to sell was executed by respondent No.8-M/s ROF Infratech and Housing Private Limited with Jaipal and Bharta on 14.07.2012 and the interim stay was granted on 31.07.2012. On 01.08.2012, appeal filed by Jaipal against the interim order was withdrawn on the statement made by Jaipal and file of the civil suit was returned back to the Civil Judge, Gurguram and it is on the same day, his appeal was withdrawn by Jaipal on 01.08.2012. On the same day, file was received back by the Assistant Collector, Ist Grade and *Naksha 'Ga'* was made. Thereafter, on 02.08.2012, Assistant Collector, Ist Grade got prepared the *sanadh takseem* and the partition proceedings attained finality. The petitioner(s) filed revision before the Commissioner and finally, even the revision was dismissed on 04.12.2013 (Annexure P-18). Learned counsel states that in all the proceedings i.e. partition proceedings and the civil suit, Mir Singh was a party and he was aware about the agreement to sell dated 04.07.2012. Hence, the Financial Commissioner had rightly dismissed the revision filed by Mir Singh vide order dated 04.12.2013 (Annexure P-18) by observing that the Assistant Colector has passed orders by following various procedures as enunciated in the Punjab Land Revenue Act. It was further observed that no grave error of law has been committed while carrying out partition and sanctioning *sanadh takseem.* Learned counsel further argued that even during the pendency of this petition, in order to achieve the object of maintaining possession, as argued by learned counsel for the petitioner (s), all efforts were made by respondent No.8 to exchange the land, so that the petitioner could be given back the land, on which, his wife's *samadh* is situated. At the same time, another offer was made to purchase the land at the rate of Rs.4.5 crore per acre, so that no hardship would cause to the landowner. However, petitioner has refused to accept the offers made by respondent No.8. Hence, no case is made out to send the matter back for preparation of mode of partition again.

Heard, learned counsel for the parties.

At the outset, one has to understand the procdure to be adopted on an application made for partition of agricultural land under the Punjab Land Revenue Act, 1887. First, an application has to be made for partition and the revenue officer, after notice, if it comes to the notice that there is no dispute of the title, he would ask the Patwari to prepare map of land, sought to be partitioned, popularly known as *naksha alf* (Ka). In the present case, *naksha alf (Ka)* was received by the Assistant Collector on 09.07.2008 and the matter was adjourned for 23.07.2008 for recording the statement of parties. On 29.06.2011, statement of Bharta was recorded and after giving several opportunities to Mir Singh, his statement was recorded on 13.07.2011. On 27.07.2011 (Annxure P-12), mode of partition was prepared. Mode of partition could have been challenged by filing an appeal under Section 118 (2) of the Punjab Land Revenue Act, 1887. Mir Singh did not file any appeal against the mode of partition dated 22.07.2011 (Annexure P-12). Thereafter, objections were invited for mode of partition. No objections were made by Mir Singh and mode of partition was accepted.

No appeal has ben filed by Mir Singh against the mode of partition and hence, it attaind finality. Thereafter, mode of partition was forwarded to the Girdawar/Patwari Halqa for preparing *naksha 'kha'*. After receiving *naksha 'kha'* on 05.10.2011, the matter was adjourned to 12.10.2012 for filing objections. Mir Singh was granted sufficient opportunities. Thereafter, *naksha 'Kha'* was accepted and the matter was adjourned for 23.11.2011 for calling *naksha 'Zeem'*. After this order was passed, Mir Singh filed a civil suit on 27.07.2012 seeking relief of permanent injunction, whereby ad-interim injunction order for maintaining status quo regarding change of the nature of suit property was passed. Thereafter, on 30.07.2012, Jaipal appeared and withdrew his two appeals bearing Nos. 46 and 47, which were filed against the order dated 27.02.2011 consolidating/clubbing of two applications for partition. On 01.08.2012, the appeal was withdrawn. Once, Jaipal had withdrawn his appeal before the Court of Collector on 01.08.2012, the Assistant Collector, Ist Grade passed an order that *naksha 'Ga'* had been received and the matter was adjourned for 02.08.2012 for preparation of 'S*anad Takseem'*.

In the present case, as far as proceedings under the Punjab Land Revenue Act, 1887 are concerned, they had attained finality when after withdrawing of the appeal by Jaipal before the Civil Court, the Assistant Collector, Ist Grade, partitioned the land and sanctioned *Sanad Takseem/Naksha Zeem* on 02.08.2012.

In the suit filed by Mir Singh, consequent upon filing of application under Order 39 Rules 1 and 2 CPC, Bharta and Jaipal were directed to maintain status quo. During the pendency of that suit, two applications under Order 1 Rule 10 CPC for impleading M/s ROF Infratech-respondent No.8 as party and under Order 6 Rule 17 CPC for amendment of plaint were filed. Prayer for grant of ad-interim injunction directing the respondents not to change the nature of suit land was dismissed by the Additional Civil Judge (Senior Division), Gurugram. On appeal, the Additional District Judge, Gurugram, vide order dated 24.12.2012, restrained the respondents from changing the nature of land by raising constructions. The said appeal was finally dismissed vide judgment dated 22.01.2013. Hence, in the suit filed by Mir Singh, there was no interim direction to maintain status quo as on 22.01.2013. However, proceedings under the Punjab Land Revenue Act with regard to sanction of *Sanad Takseem* had attained finality on 02.08.2012.

Against the order dated 19.10.2011 (**whereby *Naksha 'Kha'* is shown to have been accepted**) passed by the Assistant Collect, Ist Grade, petitioner Mir Singh filed appeal No.15/Appeal/SDOG11 of 2012 before the Collector. Thereafter, he filed a revision (Annexure P-14) before the Financial Commissioner. The Financial Commissioner, while issuing notice of the said revision petition, stayed the dispossession of petitioners vide order dated 08.05.2013 (Annexure P-15). The respondents filed their respective replies (Annexure P-17) to the revision petition. The revision petition was dismissed by the Financial Commissioner, Haryana, vide order dated 04.12.2013 (Annexure P-18). This order is subject matter of challenge before this Court.

Short question for consideration in the present petition would be, what is the scope of this Court to examine the order dated 04.12.2013 (Annexure P-18) passed by the Financial Commissioner, Haryana in a revision petition.

The Financial Commissioner has passed the impugned order while exercising powers under Section 16 of the Punjab Land Revenue Act, 1887, as applicable to the State of Haryana. For reference, Section 16 of the Act is reproduced as under:-

> "16. ***Power to call for, examine and revise proceedings of Revenue Officer.-*** (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed by any Revenue Officer subordinate to him.
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> (2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by any Revenue Officer under his control.
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> (3) If in any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner whose decision shall be final.
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> (4) The Financial Commissioner under sub-section (1) or Commissioner under sub-section (2), in any case called for by himself, may pass such orders as he thinks fit:
>
> Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard:
>
> Provided further that the revisional cases pending before the commencement of the Punjab Land Revenue (Haryana Amendment) Act, 1996, shall be decided by him as hereto before."

While examining the powers of Financial Commissioner on revision under Section 16 of the Act, this Court in ***Joginder Singh vs. Financial Commissioner, Revenue, Punjab***, 2003 (2) RCR (Civil) 461, held that the scope of powers of Financial Commissioner is wide under Section 16 of the Punjab Land Revenue Act. The Financial Commissioner can go into the question of fact as well as law. It was further observed that the power of the Financial Commissioner is wider than the revisional power of the High Court under Section 115 of the Civil Procedure Code. The Financial Commissioner can exercise these powers suo moto as well.

In the present case, the Financial Commissioner, while exercising the powers under Section 16 of the Act, has passed the impugned order dated 04.12.2013 (Annexure P-18). After examining the evidence and the order passed by the Assistant Collector, IInd Grade, the Financial Commissioner could remand the case back for fresh partition, if it was specified that the mode of partition had not been carried out correctly while sanctioning *Naksha 'Kha'* on 19.10.2011. In the revision petition (Annexure P-14), petitioners-Mir Singh had taken all the grounds that fraud had been committed upon him and the partition had been sanctioned by giving undue benefit to M/s ROF Infratech and Housing Pvt. Ltd., who purchased the land during pendency of the partition proceedings. It was further pleaded that undue benefit has been granted while finalizing the partition proceedings in favour of Bharta and Jaipal. The Financial Commissioner was aware about all the grounds taken in the revision petition (Annexure P-14). While deciding the revision, Financial Commissioner had examined all the issues, which are reproduced as under:-

> "1. Whether more than one khewat can be combined for partition in a single application?
> 2. Whether there is any infirmity in various orders passed by Assistant Collector, 2nd Grade, Gurgaon?
> 3. Whether case can be re-opened at Financial Commissioner Court after issuance of 'Sanad Taqseem' or not and whether case falls in the category to call for the same before this Court?

With respect to the first question, the Financial Commissioner has observed that two khewats can be combined in a given situation, where share-holders in both the khewats are same, irrespective of the quantum of their shares in different khewats. There was no proof on the file that two khewats were having common share holders. Hence, the first issue was decided accordingly.

With respect to the second issue, the Financial Commissioner has observed that various orders were passed by the Assistant Collector by following the procedure as enunciated in Haryana Land Records Manual. With regard to the allegation of committing fraud, keeping in view the fact that cutting and overwriting was done, it was held that it could be done due to error of judgment and not intentional. If, there was any criminal intention behind such overwriting and cutting, the petitioners were well within their jurisdiction to take appropriate steps in accordance with law and hence, this issue was decided accordingly.

With respect to the last issue, the Financial Commissioner has observed that there was no grave error of law, which was committed by the Assistant Collector, 2nd Grade, Gurgaon, while sanctioning the 'sanad taqseem'. Hence, it could not be set aside in any way. It was further observed that there were no circumstances, which required calling for the entire proceedings to be done again. The said order was passed on 04.12.2013 and till date, after even seven (07) years, the petitioners have not initiated any criminal proceedings with respect to the fraud committed by cutting and overwriting. The Financial Commissioner had abundant powers under Section 16 of the aforesaid Act to remand the matter again for partition of the land afresh, but this exercise has not been done by the Financial Commissioner. Rather, the Financial Commissioner, after going through the entire orders, declined to interfere in the final order of partition i.e. *Sanad Taqseem* on the ground that there was no irregularity committed while finalizing the partition proceedings right from the mode of partition.

With regard to power of the Financial Commissioner under Section 15 of the Act, reference can be made to a judgment passed by the Division Bench of this Court in ***Girwar vs. Financial Commissioner, Haryana,*** 1997 (2) RCR (Civil) 114. In that petition, challenge was to the order dated 24.05.1994, whereby the Financial Commissioner, Haryana, had set aside the order dated 13.12.1991 passed by the Commissioner, Hisar Division, Hisar and restored the order dated 29.11.1990 of the Collector, Dadri, remanding the case to the Assistant Collector, II Grade for drawing up *Naksha-Be* afresh. The said petition was dismissed by referring to the judgment passed in ***Hari Singh vs. Financial Commissioner, Revenue, Haryana and others,*** 1986 RRR 446 (P&H), whereby this Court had held that Section 16 of the 1887 Act confers plenary powers on the Financial Commissioner and while exercising such powers the Financial Commissioner is competent to go into the question of fact and form his opinion on facts. Once, he had taken a decision to remand the case to the Assistant Collector for a fresh decision, there was no ground available to interfere in the order passed by the Financial Commissioner. While dismissing the writ petition, it was further observed as under:-

> "5. As regards the contention of counsel for the petitioner that the Financial Commissioner was not justified in interfering with the order of the Collector in revisional jurisdiction, suffice it to say the powers of the Financial Commissioner to call for, examine and revise the proceedings of Revenue Officers under Section 16 of 1887 Act are very wide. The judgment in Dhaunkal's case (supra) cited by petitioner's counsel is with regard to the revisional powers of the Financial Commissioner under the Punjab Tenancy Act, wherein the powers given to the Financial Commissioner are limited and akin to the powers of the High Court under Section 115 of the Civil Procedure Code. However, there is no such constraint in exercise of revisional powers of the Financial Commissioner provided for under Section 16 of the 1887 Act. In ***Hari Singh v. Financial Commissioner, Revenue, Haryana and others, 1986***

> ***RRR 446 (P&H)***, a learned Judge of this Court has held that Section 16 of the 1887 Act confers plenary powers on the Financial Commissioner and while exercising such powers the Financial Commissioner is competent to go into question of fact and form his opinion on facts. Thus, this contention is devoid of any merit.
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> 6. Before concluding, we would observe that in the present case, orders passed in appeal by the Collector and in revision by the Financial Commissioner are one of remand of the case to the Assistant Collector, II Grade, for fresh decision and therefore, by no stretch of imagination, it can be said to be a case where it would cause any harm to either of the parties. Since the Collector has directed that *Naqsha-Be* be got prepared again in accordance with the mode of partition, the parties shall be entitled to raise objections in case they find that *Naqsha-Be* is not according to it."

In the facts of the present case, as per aforesaid judgment, the Financial Commissioner had absolute powers to examine the entire record of the Assistant Collector, who had sanctioned *Naksha Zeem* as well as the grievance of petitioner-Mir Singh that he had not been given land as per mode of partition and the revenue authorities had given undue favour to respondent No.8-M/s ROF Infratech and Housing Pvt. Ltd. Respondent No.8- M/s ROF Infratech and Housing Pvt. Ltd. had entered into an agreement to sell dated 04.07.2012 with Jaipal and Bharta. On 19.10.2011, *Naksha 'Kha'* had been accepted and the matter was adjourned to 23.11.2011 for calling *Naksha 'Zeem'*. Pursuant to mode of partition dated 27.07.2011 (Annexure P-12), *Naksha 'Kha'* had been prepared on 19.10.2011. It is after preparation of *Naksha 'Kha'*, respondent No.8-M/s ROF Infratech and Housing Pvt. Ltd. had entered into the agreement to sell on 04.07.2012. Appeal against the said order was dismissed. This appeal was decided while accepting *Naksha 'Kha'* and sanctioning *Sanad Taqseem*. After availing the remedy of appeal, petitioner(s) filed a revision before the Financial Commissioner, Haryana and took all the pleas of fraud, cutting and overwriting done before sanctioning the final proceedings of partition.

Keeping in view that the agreement to sll was executed on 04.07.2012 and before this date, i.e. on 19.10.2011, *Naksha 'Kha'* had been presented and no objection was raised by Jaipal and Mir Singh, the parties were very well aware, in which manner, the partition was to be carried out. After 19.10.2011, the matter was simply adjourned for 23.11.2011 for sanctioning *Naksha 'Zeem'*, which has to be done on stamp papers and fixing of time for final partition.

Before this Court, leanred counsel for the petitioner-Mir Singh had raised an argument that there was one piece of land, where *smaadh* of the wife of Mir Singh was situated and he had a right to retain that piece of land. Immediately on this request, learned counsel for the respondents had made an offer to exchange that land, so that the petitioner could be given back the land, on which *smaadh* of his wife was there, but this offer was refused by the petitioner. Even the land on which, tubewell was installed, was being given back to petitioner-Mir Singh. However, this offer was also refused. Further, an offer was made to purchase the land at the rate of Rs.4.5 crore per acre, so that no hardship is caused to the landowner. However, petitioner had refused to accept any of the offers given by M/s ROF Infratech and Housing Pvt. Ltd. The object of adjourning the case and giving time to petitioner-Mir Singh was that if, there is any piece of land, with with he was emotionally attached, it could be given back to him. However, after going through the maps, produced by both the parties, it is evident that there has been equal distribution of land on the main road, on the path as well as away from the main road i.e. agricultural land. Petitioners were well aware about the mode of partition since the preparation of *Naksha 'Kha'* on 12.10.2011 and they never raised any objection to this mode of partition. Despiting given number of opportunities, petitioner-Mir Singh did not file any objection. Non filing of objections, did not debar the petitioners of their right to file revision under Section 16 of the Act, which they have exercised. The object of examining the objections was that no hardship could be caused to the petitioners while finalizing the partition proceedings. In the present case, once petitioner-Mir Singh refused to accept the land, on which *smaadh* of his wife was there, the obvious conclusion can be drawn that the main intention of the petitioners was to prolong the partition proceedings. The respondents had offered to exchange the land in order to accommodate the petitioners, but they refused to accept the same. Reference, at this stage, can be made to a judgment passed by Division Bench of this Court in ***Hardeva and another vs. State of Haryana and others,*** 2013 (2) RCR (Civil) 897, wherein it has ben held that in a partition proceedings, possession cannot be protected to deprive the land-owners of their right of land on road, which has more value. The land on road, which has equal value has to be divided equally among the co-sharers. In the present case, land on the main road has been equally divided among all the co-sharers. With regard to an offer being made to petitioner-Mir Singh, reference can be made to a judgment passed in ***Nachhatar Singh and others vs. Nand Singh and others,*** 2001 (2) PLJ 70, wherein, the Financial Commissioner, while exercising revisional power under Section 16 of the Punjab Land Revenue Act, was examining an order dated 15.04.1996 passed by the Collector, Sardoolgarh and order dated 07.08.1995 passed by the Assistant Collector, Ist Grade, Sardoolgarh, in the matter of partiiton proceedings. The matter was initiated in the year 1993 and till 2000, it was still pending when the Financial Commissioner examined the issue. During the proceedings, an offer was given to a party to re-allocate some land by way of exchange. But, the petitioners (in that case) refused to accept the offer. While declining the reference of the Commissioner, Faridkot Division, Faridkot, in para no.8 of the judgment, it was observed as under:-

> "8. I have given careful consideration to the recommendations made by the Commissioner in his reference dated 26.02.1998 and to the arguments addressed by the learned counsel on behalf of both parties and perused the record. Respondent No.1 had filed an application for partition in June 1993 and the matter is still under litigation. As per the *Naqsha "Bey"* land has been given to the parties as per their respective shares including in the land abutting the Sirsa Road, which was more valuable and the deficiency of land of 36 K 19 M of Nand Singh, respondent No.1 had also been made up in the *Naqsha "Bey*". An offer had even been made to the petitioners that since the share allocated to the petitioners and respondent No.1 were equal in every manner, they could exchange their taks in toto if they felt that was any discrimination but the petitioners' counsel had refused to accept the offer. This clearly showed that the intention of the petitioners was to delay the proceedings on one pretext or the other to stay in possession of land in excess of their entitlement. The possession is required to be respected but not at the cost of equitable distribution of the most valuable land. Denying a proportionate share of the valuable road front to the parties on the pretext of maintaining possession would be an injustice since the mode of partition does not say that possession should be respected at all costs. The record of the A.C. Ist Grade reveals that *Naqsha "Zeem"* has ben approved on 13.06.1996 and instrument of parties (*Sanad Taqseem)* had also ben prepared by the A.C. Ist Grade on 30.07.1996. This, partition proceedings had become final and only the possession of shares remained to be delivered."

This Court in ***Ashok Kumar vs. Financial Commissioner, Haryana, Chandigarh and others,*** 2019 (2) Law Herald 1534 was examining a case of exparte partition proceeding, which was being challenged after *Sanad Taqseem* had taken place. While dismissing the writ petition, it was observed as under:-

"7. On the basis of the same, the parties have been heard and a Site Plan has also been produced in Court today by the counsel for the petitioner, which has not been disputed by the counsel for the respondents. A perusal of the same would show that the partition, which has been carried out as per Naksha 'Bey', is fair and just by taking into consideration the respective claims of the share holders. Three different taks have been formed, one each for the applicants or the successors therein and the other two for the respondents. The nature and quality of the land has also been taken care of. No prejudice, as such, has been caused to any of the parties to the partition proceedings and, therefore, this Court does not find any justification for disturbing the partition proceedings which have been concluded on 29.05.2009.

8. In the light of the above, the writ petition is allowed and the impugned orders dated 18.12.2009 (Annexure P-6) passed by the Collector, Sub-Division, Narnaul, and the order dated 12.09.2012 (Annexure P-8) passed by the Financial Commissioner, Haryana, are, hereby, set aside by upholding the order passed by the Assistant Collector, Ist Grade, Narnaul dated 21.04.2009 (Annexure P-4).

In the present case, after sanctioning of the mode of partition, the petitioners had fild appeal, which was dismissed while sanctining the *Sanad Takseem.* Thereafter, they filed a revision before the Financial Commissioner, Haryana, taking the pleas of fraud as well as cutting and overwriting in the proceedings of partition before the Assistant Collector, Ist Grade. The said revision petition has also been dismissed vide order dated 04.12.2013 (Annexure P-18).

After examining the entire record and hearing learned counsel for the parties at length, this Court comes to the conclusion that an offer was made to petitioner-Mir Singh to get the land, where his wife's *samaadh* was existing and to exchange some other land, but he refused to accept the same. In this view of the matter, the conclusion is that he is not interested in getting back the land, qua which, he was aggrieved during the partition proceedings. His intention is only to delay the partition proceedings. Moreover, the partition has been effected after following the due procedure as prescribed in the Punjab Land Revenue Act, 1887. In these circumstances, no ground is made out to interfere in the impugned order.

Resultantly, finding no merits, present petitions are dismissed.

(RITU BAHRI)
JUDGE

29.05.2020
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No