

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

116

LPA No.556 of 2022 (O&M)

Date of Decision: July 11th, 2022

Tejpal

....Appellant

Versus

Financial Commissioner, Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ajay Jain, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.1244-LPA of 2022

Prayer in this application is for condonation of delay of 57 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 57 days in filing the appeal stands condoned.

LPA No.556 of 2022 (O&M)

This intra-Court appeal has been preferred by the appellant-petitioner challenging the judgment dated 08.04.2022 passed by the learned Single Judge vide which writ petition preferred by him challenging the order dated 28.09.2021 (Annexure P-14) passed by the Financial Commissioner, Haryana, dismissing his revision petition where he had prayed for setting aside the order dated 24.09.2013 passed by the Assistant Collector 1st Grade, Bawal, and order dated 04.12.2019 passed by the Commissioner, Gurugram Division, Gurugram, wherein the objections raised by the petitioner to *naksha bey* as prepared on 09.04.2007 were rejected, has

been dismissed.

2. It is the contention of learned counsel for the appellant that the authorities below have failed to appreciate that the mode of partition which has been prescribed, especially conditions No.2 and 3 thereof have been violated. Because of the violation of these two conditions, the *naksha bey* prepared by the Halqa Girdawar and approved by the Assistant Collector 1st Grade, Bawal, cannot sustain. He contends that condition No.2 of the mode of partition which pertains to partition to be done within minimum parts and condition No.3 i.e. partition to be done after taking into consideration the possession, cultivation and valuation of the land have been violated. His submission is that vide order dated 11.09.2008, Commissioner, Gurugram Division, Gurugram, had remanded the case to the Assistant Collector 1st Grade, Bawal, with a direction that he will inspect the spot and land will be partitioned after taking into consideration conditions No.2 and 3 of the mode of partition. This condition has been violated by the Assistant Collector 1st Grade, Bawal, as he had not inspected the spot nor has the Halqa Girdawar before sanctioning *naksha bey*. The order having not been complied with thus cannot sustain. Learned Single Judge has also not taken the said aspect into consideration and has proceeded to dismiss the writ petition. Prayer has thus been made that the judgment passed by the learned Single Judge as also the impugned orders in the writ petition be set aside and the case remanded to the Assistant Collector 1st Grade, Bawal, for fresh preparation of the fresh *naksha bey* after inspecting the spot and the land and taking into consideration conditions No.2 and 3 of the mode of partition.

3. We have considered the submissions made by the counsel for the appellant but do not find any merit in the same.

4. Perusal of the order passed by the learned Single Judge as also the order dated 28.09.2021 passed by the Financial Commissioner, Haryana, clearly show dealing with regard to the arguments as have been raised by the counsel for the appellant before us. On perusal of the records, the Financial Commissioner had come to a conclusion that in compliance with the order dated 11.09.2008, vide which the case was remanded back to the Assistant Collector 1st Grade, Bawal, the said authority had got the spot inspection report from Halqa Girdawar, who inspected the spot of the disputed land in presence of both the parties. None of the parties at that stage had objected to the said inspection report. It is thereafter and taking into consideration the statements which were made by the parties that the Assistant Collector 1st Grade, Bawal, proceeded to order amendment of *naksha bey* as proposed vide order dated 24.09.2013. Thereafter *aks shajra* was sanctioned on 27.09.2013 by partitioning the land among both the parties as per their share in all chunks. It was also taken note of that *gairmumkin* tubewell and pump set on the land i.e. *Mustatil* No.16//27/1 (0-7) was kept un-partitioned i.e. joint. This report has been upheld by the Commissioner, Gurugram Division, Gurugram, vide order dated 04.12.2019 (Annexure P-13) which has been upheld by the Financial Commissioner. Learned Single Judge while passing the judgment dated 08.04.2022 has also stated in the order that certain amount of adjustment had to be made with regard to the change of possession when the land has to be partitioned.

5. There has been no violation of the conditions of mode of partition in our considered view, *nakshay bey* as has been placed on record

is in accordance with the mode of partition and, therefore, the same do not call for any interference by this Court in this appeal.

6. Finding no merit, the present appeal stands dismissed.

7. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1245-LPA of 2022 also stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

July 11th, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No