

CM-13559-CWP-2022 in/and
CWP-17193-2022
Date of Decision: 07.09.2022

Aman Singh and others

....Petitioners

VS

Commissioner, Faridabad Division and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Kul Bhushan Sharma, Advocate for the petitioners
Mr. Sanjeev Gupta, Advocate for the Caveator

SUDHIR MITTAL, J. (Oral)

CM-13559-CWP-2022

This application has been filed for placing on record Annexures P-18 to P-21.

For the reasons stated therein, application is allowed and Annexures aforementioned are taken on record.

CWP No. 17193 of 2022

The petitioners are aggrieved because a revision petition filed by them challenging *sanad* dated 07.10.2013 has been dismissed.

Partition proceedings were initiated by respondent No. 3 and as stated hereinabove *sanad* dated 07.10.2013 was issued. Prior to issuance thereof, civil suit dated 11.09.2013 was filed challenging the ongoing partition proceedings. The suit was ultimately dismissed vide judgment and decree dated 24.04.2018 by returning a finding that the civil Court had no jurisdiction in matters relating to partition. Appeal against the said judgment and decree was dismissed vide judgment dated 17.02.2022. It is only thereafter that revision petition aforementioned was filed.

A perusal of the revisional order shows that mutation has been entered

records that partition was done with the consent of both parties as no objection was given by either of them. The dismissal has also been based upon delay in filing the revision petition which has been found to be intentional.

Learned counsel for the petitioners has submitted that the *sanad* is without jurisdiction as the revenue Court has no power to partition land on which construction existed. It has also been submitted that the finding that partition was done amicably and with the consent of both parties is incorrect. Objections were infact raised against *Naksha Kha* where after amended *Naksha Kha* was sought. However, the amended *Naksha Kha* received did not incorporate the objections raised by the petitioners but was still approved. Delay was not intentional. Civil suit was filed on the basis of legal advise and, thus, the revisional authority should not have held the same against the petitioners.

From the facts aforementioned, it is evident that a civil suit was filed challenging the ongoing partition. The suit was dismissed vide judgment and decree dated 24.04.2018 and a categoric finding was recorded that in matters of partition civil Court had no jurisdiction. Yet, the sand dated 07.10.2013 was not challenged in the appropriate forum. On the contrary, an appeal was filed which carried on for another four years. Thus, the submission that delay was unintentional and was only on account of legal advise can not be accepted. Partition proceedings were concluded way back in the year 2013 and mutation based thereon has also been sanctioned. *Dakhal* proceedings have also been concluded and, thus, the impugned order does not call for any interference.

The writ petition has no merit and is dismissed.

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07.09.2022
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No