

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

Sr. No.201

CWP-26190-2014 (O&M)
Date of decision : 04.03.2022

M/s Fondant Propbuild Private Limited

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CWP-26142-2014 (O&M)

M/s Fondant Propbuild Private Limited and another

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sanjiv Sharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. R.S. Rai, Sr. Advocate with
Mr. Kunal Dawar, Advocate and
Mr. Aashish Chopra, Sr. Advocate with
Ms. Meher Nagpal, Advocate, for respondent No.5.

SUDHIR MITTAL, J.

This judgment shall decide both the aforementioned cases as
the same orders are under challenge in both cases.

Respondent No.5 filed two separate applications for partition of land comprised in khewat No.32 and that comprised in khewat No.33. The land comprised in khewat No.32 measures 48 kanals and that comprised in khewat No.33 measures 08 kanals. On 05.11.2012, statement of the authorized representative of the petitioner was recorded, whereby, he stated that both khewats belong to the same parties and thus, both the partition applications may be consolidated. Proposed mode of partition was received on the same date, i.e. 05.11.2012 and the petitioner submitted objections to the same. It was reiterated that the two separate partition applications be consolidated. Vide order dated 13.12.2012, the objections to the proposed mode of partition were rejected and the mode of partition was affirmed. While rejecting the objections, the Assistant Collector, First Grade held that owners of the two khewats being different, the applications cannot be consolidated. Thereafter, Naksha Bay was summoned for 18.12.2012. The petitioner filed objections on 10.01.2013 thereto. The objection was that the land given to it did not adjoin other land owned by it. The objections were rejected vide order dated 04.02.2013. Petitioner's appeal against the rejection of objections to Naksha Bay was dismissed on 08.04.2013. The appellate order was challenged by way of a revision before the Commissioner, but the same was also dismissed vide order dated 16.09.2013. Meanwhile, *sanad takseem* was issued on 17.04.2013. The *sanad* as well as order dated 04.02.2013 of the Assistant Collector, First Grade rejecting objections to Naksha Bay were challenged by way of second revision before the Financial Commissioner. The appellate and

revisional orders passed, meanwhile, were also subjected to challenge. However, the petitioner failed and the revision petition was dismissed by the Financial Commissioner vide order dated 19.02.2014. Review filed was also rejected vide order dated 23.07.2014 and thus, the present writ petition has been filed.

The land comprised in khewat No.33 was owned by three entities, namely, the petitioner, respondent No.5 and M/s Fori Propbuild Private Limited, whereas, the land comprised in khewat No.32 was owned only by the petitioner and respondent No.5. It is not disputed that M/s Fori Propbuild Private Limited as well as the petitioner are 100% subsidiary companies of Emaar-MGF Limited.

Learned senior counsel appearing for the petitioner has submitted that considering the fact that the petitioner and M/s Fori Propbuild Private Limited were 100% subsidiary companies of Emaar-MGF Limited, the Courts below were in error in rejecting the prayer for consolidating the two separate partition applications. The approved mode of partition has not been properly implemented in the Naksha Bay and thus, the objections thereto should have been allowed. The final partition has resulted in inequity as the land given to the petitioner is not contiguous with other land owned by him and which is in immediate vicinity of the land in dispute.

In response, learned senior counsel appearing for respondent No.5 have submitted that the petitioner cannot raise the issue of non-consolidation of the two partition applications as the request for consolidation was rejected vide order dated 13.12.2012, whereby, the

objections to the mode of partition were dismissed. Section 118 of the Punjab Land Revenue Act, 1887 (as applicable to Haryana) (hereinafter referred to as the Act) provides for an appeal against the order accepting the mode of partition within 15 days from the date of the order and the filing thereof operates as an automatic stay of proceedings before the Assistant Collector. No second appeal is provided against the appellate order. This remedy was not availed by the petitioner. Reliance has been placed upon **Lala Ram Vs. Financial Commissioner, Haryana, 1992 (1) R.R.R 231.** It is further submitted that clubbing was not permissible in any case as the parties in the two partition applications were not identical. In support of this argument, reliance has been placed upon **Fateh Ram and others Vs. State of Haryana and others, 2019 (2) Law Herald 1527.** There is no inequity in the partition. The petitioner and M/s Fori Propbuild Private Limited have been given a consolidated chunk in accordance with the principles of consolidation. Their possession has also been respected. The plea that the chunk given to them is not contiguous with other land, cannot be raised as no such plea was raised at the time of partition. The revenue authorities were not aware of the existence of other land of the petitioner in the immediate vicinity.

A lot of stress has been laid on the mode of partition and thus, I deem it appropriate to reproduce para No.2 thereof which is actually the bone of contention.

‘2. Partition may be conducted by maintaining possession. In case, the parties are having any other land, the same be also given along.’

The argument raised on behalf of the petitioner that the two partition applications should have been consolidated cannot be accepted as admittedly, no appeal has been preferred by the petitioner against order dated 13.12.2012, whereby, the objections to the proposed mode of partition filed by the petitioner were rejected. Section 118 of the Act states that a revenue official carrying out partition must frame a mode of partition after conducting enquiry as deemed fit and record an order stating his reasons for the same. Sub-Section 2 of Section 118 of the Act provides for a statutory appeal and filing thereof operates as an automatic stay of proceedings before the lower revenue official. Having not availed of this remedy, the petitioner is deemed to have waived any objections that he may have had to the proposed mode of partition. It has been so held by this Court in **Lala Ram (supra)**. In the said case, it has been held that partition ends on preparation of mode of partition and preparation of an instrument of partition is only an executory act. If, the order determining the mode of partition is not challenged in appeal then the subsequent orders cannot be challenged. Moreover, the petitioner and M/s Fori Propbuild Private Limited are distinct entities being separate bodies corporate. Thus, the two separate partition applications could not had been consolidated as it is settled law that partition applications, wherein, the parties are not identical cannot be consolidated. It has also

been held so in **Fateh Ram (supra)**. Merely because, the petitioner and M/s Fori Propbuild Private Limited are 100% subsidiary companies of Emaar-MGF Limited, it cannot be said that the parties are identical because everybody corporate is a separate entity. Emaar-MGF was not a party to the partition proceedings. Thus, the argument of non-consolidation is rejected being not maintainable at this stage as well as on merits.

The relevant clause of the mode of partition has been reproduced hereinabove. All it says that the parties having any other land must be given a consolidated chunk. Learned senior counsel appearing for the petitioner wants to read this as providing land in contiguity with the other land in the vicinity. I am not in agreement because only khewat Nos.32 and 33 were sought to be partitioned and the land in the vicinity was not the subject matter. The revenue authorities could not be expected to take notice of other land in the vicinity. The clause referred to only states that parties having other land should be given the same together and the other land would refer to the other partition application. A consolidated chunk has in fact been provided to the petitioner and thus, there is no violation of the mode of partition. A related argument regarding non-availability of access to the land given to the petitioner is also rejected. The site plan (Annexure P-18) [colly.] clearly shows that 24 meters wide road passes through the land in dispute and connects the same with other adjoining land belonging to the petitioner.

In view of above, the writ petition has no merit and is dismissed.

A photocopy of this judgment be placed on the file of the connected case.

(SUDHIR MITTAL)
JUDGE

04.03.2022
Ramandeep Singh

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