

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

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**CWP-6199 of 2018 (O&M)
Date of Decision:25.03.2022**

RAM SINGH AND OTHERS

...Petitioners

VS

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. A. K. Verma, Advocate,
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for respondent No.4.

SUDHIR MITTAL, J. (Oral)

An application for partition of 152 kanal and 1 marla land was filed by respondent No.4 whereupon mode of partition was accepted vide order dated 25.10.2013. The petitioners objected thereto on the ground that houses exist on 1 ½ acres of land and that the said land should be excluded. However, the objections were rejected vide order dated 22.01.2014. Appeal and revision also failed and sanad was issued on 21.11.2014. ROR against the revisional order was pending adjudication when sanad was issued vide order dated 21.11.2014 and the same was amended to include a challenge thereto. Ultimately, the said ROR was allowed vide order dated 01.09.2015 and the matter was remanded for a fresh decision. After remand, the Assistant Collector Ist Grade has maintained the earlier order vide his order dated 25.01.2017. Sanad has been issued on 01.03.2017 which was challenged before the Financial Commissioner. The Financial Commissioner has dismissed the revision vide order dated 30.01.2018 leading to the filing of this writ petition.

Learned counsel for the petitioners has argued that the Assistant Collector did not allow his objections to the mode of partition even after remand. Once the sanad had been set aside, partition had to start afresh from the stage of framing a proposed mode of partition, inviting objections thereto and then passing an order accepting the mode of partition. Further, the Assistant Collector has again not excluded the area on which houses were constructed and reliance is placed upon **Surjit Singh Vs. Financial Commissioner Appeals-II, Punjab and others, 2012(5) R.C.R.(Civil) 683** to submit that land on which houses exist cannot be the subject matter of partition. On these grounds it has been submitted that the writ petition is entitled to be allowed.

In response learned Senior counsel for the private respondents submits that clause-4 of the mode of partition provides that wherever any construction exists, the same shall be given to the party to whom the land has been given. If such a course is followed then there is no illegality in the order of partition. In support of his submission, he places reliance upon **Amar Khan and others Vs. State of Punjab and others, 2009(1) RCR(Civil) 741**. It is accordingly submitted that once the constructed houses have been given to the co-sharer who has constructed the same along with the land in the vicinity no prejudice has been caused to anybody.

In view of the arguments raised, the only question which arises for determination is whether the partition proceedings are vitiated on account of the inclusion of land on which construction existed?

In Surjit Singh (supra) the party who had filed the partition application had himself converted the land into plots and had further sold the same. The third parties had constructed their houses thereupon and thus, the non-applicants had raised an objection that partition was not possible. These objections were rejected

Collector allowed the appeal and the appellate order was upheld by the Commissioner. Further revision carried before the Financial Commissioner also failed. Under the circumstances, a Division Bench held that land whose nature had been changed by carving out plots and by selling the same further, could not be partitioned. Such is not the situation in this case and thus, Surjit Singh (supra) is distinguishable. In Amar Khan (supra), a similar situation existed as in the present case and the argument that revenue authorities have no jurisdiction to partition houses was rejected on the ground that houses had in fact not been partitioned. They had been allotted to the co-sharers who constructed them and thus, there was no error in the partition.

It is not in dispute that constructed houses have been allotted to the co-sharer who has constructed the same along with the land allotted to him. No prejudice has been caused by such an action to either of the parties and thus, the argument that the entire partition proceedings are bad cannot be accepted.

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

(SUDHIR MITTAL)
JUDGE

25.03.2022

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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No