

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

111

LPA No.878 of 2022 (O&M)
Date of Decision: October 10th, 2022

Pokar (since deceased) through his LRs

...Appellants

Versus

The State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Mahavir Singh, Advocate
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-2112-LPA-2022

Prayer in this application is for condonation of delay of 47 days in filing the present appeal.

For the reasons mentioned in the application which is supported by the affidavit of the applicant, we accept the prayer made in this application and condone the delay of 47 days in filing the appeal.

LPA No.878 of 2022

Challenge in this appeal is to the order dated 12.07.2022 passed by the learned Single Judge, whereby the writ petition preferred by the appellants challenging the orders passed by the revenue authorities, whereby the *sanad taksim* on remand has been again carried out leading to the said *sanad taksim* being upheld up to the Financial Commissioner, has been dismissed.

2. It is the contention of learned counsel for the appellants that initially the mode of partition was carried out vide order dated 30.08.2011 (Annexure P-4) which was as per the agreement entered into between the parties. His contention is that the said *sanad taksim* being with the consent of the parties, the same could not

have been assailed by the private respondents. He, however, could not dispute the fact that the revision petition preferred by the private respondent against the order dated 06.06.2013 has been accepted by the Commissioner, Hisar Division, vide order dated 08.09.2016 (Annexure P-9) remanding the case back to the Assistant Collector for fresh decision. In pursuance to the said order, a revision was preferred by the appellants which has been dismissed and finally the Financial Commissioner also did not agree with the appellants. Resultantly the said order of remand has attained finality. The *sanad taksim* has again been issued by the Collector vide order dated 17.09.2021 (Annexure P-10), wherein the possession of the respective parties has been disturbed which the counsel contends is not sustainable in the light of the fact that the appellants and the respective private respondent have been in possession of the said piece of land since almost four decades. His contention is that firstly the order whereby the first *sanad taksim* has been issued was with the consent of the parties and, therefore, could not have been disturbed and secondly challenging the possession at this belated stage is not permissible. Assertion has also been made that the impugned orders have ignored this aspect and, therefore, deserve to be set aside.

3. We have considered the submissions made by the counsel for the appellants and with his assistance, have gone through the pleadings as well as the impugned orders as also the judgment of the learned Single Judge but find ourselves not in a position to agree with what has been asserted by the counsel for the appellants.

4. The order of remand as passed by the Commissioner has been upheld by the Financial Commissioner, therefore, at this stage the said order having attained finality, cannot be assailed in the present appeal. The said order not only has been acted upon by the competent authority but the competent

authority i.e. the Collector has proceeded to issue a fresh *sanad* dated 17.09.2021 (Annexure P-10), which has been assailed by the appellants but unfortunately they have been unsuccessful all through up to the learned Single Judge. The plea with regard to change of possession having been given effect to after a period of four decades also cannot be accepted in the light of the settled principle that all co-sharers have a vested right to pro rata share as per the valuation of the land. They are owners in possession of each and every nook and corner of the land. The said principle when has to be applied, the valuation of the land has to be taken into consideration and each co-sharer, according to their pro rata share would be entitled to the same quality of land as per their own entitlement. The said principle having been applied by the revenue authorities cannot be faulted with. The principle of good quality land out of good quality and not too good quality out of not so good quality land during the partition proceedings when has been adhered to cannot be said to be unjust or unreasonable. Merely because a party has been in possession of a land for a long period of time does not confer any vested right to continue in such possession when the above principle of valuation and quality of land has to be given effect to. The plea, therefore, of keeping the possession intact cannot be accepted. The judgment passed by the learned Single Judge being based upon the said principle do not call for any interference by this Court. The appeal, therefore, being devoid of merit stands dismissed.

(AUGUSTINE GEORGE MASHI)
JUDGE

October 10th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No