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

1. CWP-8855-2023

Ram Narian and othersPetitioners

versus

Financial Commissioner and others Respondents

2. CWP-8860-2023

Ram Narian and othersPetitioners

versus

Financial Commissioner and othersRespondents

Reserved on: 21.12.2023

Date of decision : 27.12.2023

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Akshay Jindal, Advocate with
Mr. Vrishank Suri, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Gaurav Datta, Advocate
for respondents No.5 to 7 in CWP-8855-2023.

Ms. Amarjeet Khurana, advocate
for respondents No.10 to 12 in CWP-8860-2023.

RAJESH BHARDWAJ, J.

These two writ petitions have arisen out of two different revisions filed by the petitioners against the co-sharers numbered as ROR-614 of 2017-18 and ROR-615 of 2017-18 and both were decided together by respondent No.1 vide impugned order dated 21.07.2022.

By this common order I intends to disposed of abovesaid two petitions which are interconnected and relate to the common issue. The facts of the case are being taken from CWP-8855-2023.

Prayer in the present petition is for quashing the order dated 21.07.2022 (Annexure P-16) passed by the respondent-learned Financial Commissioner, Haryana, Chandigarh whereby the revision petition filed by the petitioners has been dismissed. Further prayer has been made for quashing the order dated 20.01.2023 (Annexure P-17) whereby the review filed against the said order dated 21.07.2022 has also been dismissed by the learned Financial Commissioner. Further prayer has been made for quashing the order dated 01.08.2018 (Annexure P-14) passed by the learned Commissioner, Hisar Division, Hisar, whereby the appeal preferred by the present petitioners was dismissed. Further prayer has been made for quashing the order dated 07.06.2018 (Annexure P-12) passed by the learned Collector, Sub Division, Jind whereby appeal preferred by the respondents No.5 to 7 has been allowed. It is further prayed that during the pendency of the present writ petition further proceedings pending before the learned Assistant Collector 2nd Grade, Jind in partition application (Annexure P-1) may kindly be stayed.

Learned counsel for the petitioners has submitted before the Court that respondents No.5 to 7 filed an application before the learned Assistant Collector 2nd Grade, Jind for the partition of joint land measuring 412 kanals 12 marlas comprising in Khewat No.25, Khatoni No.39 to 42 on 24.11.2006. He has submitted that the primary thrust of the application was that Killa No.48//15 be partitioned. It is submitted that initially the mode of partition was prepared on 05.09.2007 and after

receiving objections from the parties, the final mode of partition was approved on 15.01.2008. The *naksha bey* was called for and acquisition proceedings were finalized. He submits that thereafter the objections were filed against *naksha bey* by respondents No.9, 10 & 12 and similar objections were filed by respondents No.5 to 7 on 28.05.2015. He submits that the objections filed were rejected and with slight amendment, *naksha bey* was proposed on 16.07.2015. Thereafter, again the objections were filed on 28.10.2015 and the same were rejected. He submits that the amended *naksha bey* was finally accepted on 20.11.2015. It is submitted by counsel for the petitioners that respondents No.10 to 12 filed the appeal against *naksha bey* dated 20.11.2015 on 02.12.2015. He submits that learned Collector illegally accepted the appeal filed by respondents No.10 to 12 on 07.06.2018. He submits that aggrieved by the same, the petitioners filed the appeals i.e. Executive Appeal No.13719 of 2018 and Executive Appeal No.13718 of 2018 (in 2nd case) before the learned Commissioner on 25.06.2018. He submits that learned Commissioner without appreciating the facts and circumstances of the case, dismissed both the appeals vide impugned order dated 01.08.2018. Being aggrieved, the petitioners filed revision against the order dated 01.08.2018 before learned Financial Commissioner. However, learned Financial Commissioner again fallen in error in dismissing the revision petition filed by the petitioners vide his order dated 21.07.2022. He submits that being aggrieved, the petitioners filed review petitions before the learned Financial Commissioner however, the same were also dismissed vide impugned order dated 20.01.2023. Learned counsel has vehemently contended that as is evident from the proceedings, the objections filed by

the respondents were dismissed on 16.07.2015. He submits that originally the mode of partition was finalized on 05.09.2007 and as per Condition No.2, it was decided to carry out the partition by keeping in view the value of the land i.e. good land out of good and bad land out of bad. However, thereafter, the Mode of Partition (hereinafter referred to as "MOP") was amended and accepted on 15.01.2008. Thus, the earlier mode of partition dated 05.09.2007 was merged into the amended mode of partition dated 15.01.2008, according to which, the partition proceedings were to be carried out. He submits that as per Condition No.2 of the amended mode of partition, it was decided to carry out the partition proceedings keeping in view the nature and value of the land and if need, by disturbing the possession. He submits that the objections filed by the respondents to naksha bey were dismissed on 16.07.2015 and the same were never further challenged. Thus, the naksha bey was finalized on 20.11.2015. It is submitted that amended naksha bey was accepted on 20.11.2015. He submits that this was challenged by the respondents by filing objections before the learned Assistant Collector 2nd Grade, however, the same were dismissed. He submits that the appeal filed by respondents No.10 to 12 was accepted by the learned Collector vide order dated 07.06.2018 and thereafter, the petitioners challenged the same before the appellate authority and the same were dismissed as already submitted. Learned counsel has submitted that once the objections filed by the respondents were dismissed vide order dated 16.07.2015 and the same having not been further challenged, respondents were debarred from filing the appeals as the same amounted to constructive *res judicata*. He has further submitted that the first MOP dated 05.09.2007 was amended

and thus, the final MOP was approved and accepted on 15.01.2008. However, the respondents-authorities have fallen in error in relying upon the earlier MOP dated 05.09.2007 instead of carrying out the partition proceedings as in accordance with the final amended MOP dated 15.01.2008. He has submitted that as per amended mode of partition dated 15.01.2008, the possession was not to be disturbed in carrying out the partition proceedings however, the respondents-authorities failed to adhere to the same and thus, carried out the partition proceedings by disturbing the possession. He has relied upon the judgments titled as **Jeet Singh and others Vs. Financial Commissioner, Appeals-II, Punjab and others, 2010(2)RCR (Civil) 325 and Pritam Singh Vs. Jaskaur Singh, 1993(1)RRR 390** and thus, submits that on account of the constructive *res judicata*, the appeal filed by the respondents was nonest in the eyes of law but the respondents-authorities failed to appreciate the same. Further he has submitted that by disturbing the possession, the partition proceedings have resulted in fragmentation of the land partitioned and thus, the partition proceedings have been totally vitiated. He submits that the respondents-authorities have failed in appreciating the evidence on record and the law settled and as the impugned orders are perverse and illegal thus, the same deserve to be *set aside*.

Per contra, learned counsel for respondents No.5 to 7 has vehemently opposed the submissions made by counsel for the petitioners. He has submitted that the petitioners have not come to the Court with clean hands and as they have concealed the material facts of this case and on account of this alone, the petition deserves to be dismissed. He has submitted that the submissions made by counsel for the petitioners

regarding *res judicata* is not attracted in view of the settled principles of the law. He has submitted that the civil appeal was filed wherein learned District Judge, Jind in Civil Appeal No.113 of 14.10.2010 passed the order and the operative part of the judgment is as follows:-

“15. in view of above proposition of law defendants-respondent cannot be restrained to raise any construction or to alienate the area under their exclusive possession in any manner whatsoever but to the extent of their share. However, it is observed that same shall be subject to final partition, proceedings of which are already pending before revenue authorities. It is also observed that if Rect. No.48 Killa No.15 would not fall to the share of defendant-respondent Ram Narain and his sons in that event he would hand over the vacant possession of it to his co-owner who would get the same in partition by removing his construction within one week.”

Learned counsel has submitted that when the Civil Court has given a specific finding regarding the same property then there was no question of the petitioners to challenge the same in the review proceedings. Rather he has submitted that the litigation by the petitioners is barred by *res judicata* and issue of estoppel. He submits that once the Civil Court has already decided the issue between the parties, the petitioners are restrained from reagitating it. He submits that the findings of the Civil Court were cleverly concealed by the petitioners from this Court by not making it a part of the record of the petition filed by them. He submits that the fact that the residential house in question is merely upon 628 square yards has also been concealed by the petitioners. He has submitted that by reading both the mode of partition i.e. dated 05.09.2007

and 15.01.2008, it is apparent that the primary consideration was given to the value and nature of the land and not to the possession and thus, the partition proceedings were rightly carried out by giving priority to the nature and value of the land and not to the possession as the same was approved in the amended mode of partition as well as in the old mode of partition. It is submitted that respondents No.10 to 12 filed their objections to the amended naksha bey on 28.10.2015 when naksha bey was to be amended then the earlier naksha lost its relevance and the same got merged into the new naksha bey. He submits that the objections filed by respondents No.10 to 12 were finally rejected vide order dated 20.11.2015 and thus, vide the same order dated 20.11.2015 amended naksha bey was finally approved and accepted. He submits that this was duly challenged by respondents No.10 to 12 by filing appeal before the Assistant Collector 2nd Grade, Jind and thus, the contention of the petitioners that the order dated 16.07.2015 was not challenged is totally misconceived and hence unsustainable in the eyes of law. He has submitted that the respondent-authorities have rightly dismissed the appeal, revision and review filed by the petitioners as the same sans merits. Learned counsel for respondents No.5 to 7 has submitted that the sanad takseem i.e. final instrument of partition has been issued on 20.04.2023 and the same has not even been challenged by the petitioners. He has relied upon the judgments titled as **Vikas Gupta and others Vs. FCR Punjab and others, 2015 SCC Online P&H 10145; Harcharan Singh petitioner Vs. Financial Commissioner Revenue Punjab, Chandigarh and others, 2010 SCC Online P&H 7954; Phul Chand Vs. Financial Commissioner, Haryana and others, (1989) PLJ 180;**

Amarjeet Singh Vs. Chhittar Singh @ Bachitar Singh, (1993) 1 RRR 172; Alka Gupta VS. Narender Kumar Gupta, (2010) 10 Supreme Court Cases 141 and Ramjas Foundation and another Vs. Union of India and others, (2010) 14 Supreme Court Cases 38.

Learned counsel for respondents No.10 to 12 has also vehemently opposed the submissions made by counsel for the petitioners on the same line. She has submitted that in view of the law settled, the constructive *res judicata* is not applicable in the present case. She has submitted that the combined reading of both the earlier mode of partition dated 05.09.2007 and the amended mode of partition dated 15.01.2008 shows that the partition proceedings were carried out by keeping in view the value and nature of the land which has been duly adhered to by the respondents-authorities. She submits that the possession of the petitioners over the particular khasra number was on the joint property which by no means could be considered as their exclusive possession. She has submitted that the petitioners have concealed the material facts from this Court as the Civil Court had already specifically decided the issue raised by the petitioners before this Court. She submits that the impugned orders totally being in accordance with the settled principles of law, suffer from no infirmity and thus, the petition being devoid of any merits deserves to be dismissed with costs.

Learned State counsel has submitted that the respondents State authorities have decided the case in the capacity of *quasi judicial* authorities on the basis of the revenue record and by adhering to the law settled and the same suffer from no perversity whatsoever.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that the partition proceedings have been initiated at the behest of respondents No.5 to 7. As submitted, out of total land to be partitioned measuring 412 kanals 12 marlas, land measuring 238 kanals 16 marlas was acquired by the State of Haryana for the development of residential and commercial Sectors 6, 7, 8, 9 to be developed by HUDA. The notice was got issued on the application to the rest of the co-sharers. The objections filed were dealt with and dismissed. The first MOP was approved on 05.09.2007. The Condition No.2 of the same read as follows:-

“Partition to be carried out keeping in view the value of land, good land out of good and bad land out of bad.”

However, this was later on amended on 15.01.2008. The Condition No.2 of this amended MOP read as follows:-

“Partition to be carried out keeping in view the nature and value and if need be by disturbing the possession.”

Thereafter, the objections filed by the respondents were dismissed on 16.07.2015. Before this, the parties went to the Civil Court as well wherein learned Appellate Court i.e. learned District Judge, Jind vide his order dated 14.10.2010 had passed the order as reproduced earlier. The reading of the same would show that it was observed that if Rectangle No. 48 Killa No.15 would not fall to the share of the defendant-respondent Ram Narain and his sons in that event he would hand over the vacant possession of it to his co-owner who would get the same in partition by removing his construction within one week. In the

partition proceedings initiated, the objections filed by the respondents were dismissed on 16.07.2015. The amended naksha was accepted on 20.11.2015 and the same was challenged by the respondents by filing their objections. On dismissal of the same on 20.11.2015, the appeal filed by the respondents was accepted by the Collector vide order dated 07.06.2018. The petitioners duly challenged the same by way of filing their executive appeal before the Commissioner which was dismissed on 01.08.2018. The revisions filed against the same before the Financial Commissioner were also dismissed on 21.07.2022 by the Financial Commissioner and the review petitions filed were also dismissed on 20.01.2023. It is apparent from the record that the parties appeared before the Civil Court as well as before the quasi judicial authorities in the partition proceedings. The respondents had filed their objections though were earlier rejected by the Assistant Collector 2nd Grade, however, on the finalization of the amended naksha bey which was approved on 20.11.2015 was also objected by them by way of filing their objections.

In the overall facts and circumstances, the arguments raised by the counsel for the petitioners regarding the applicability of the constructive *res judicata* against the respondents is without any force. The respondents were availing their remedies by filing the objections and thus, the authorities relied upon by the petitioners are distinguishable on the facts and circumstances of the present case. Rather petitioners have not discussed regarding the civil litigation pending between both the parties where the issue regarding the possession over the Killa No.48//15 was agitated before the Civil Court.

From the combined reading of Condition No.2 of both the MOPs, it is apparent that the priority has been given to the value of the land and not the possession. Thus, the respondents-authorities could not have carried out the partition proceedings by giving priority to the possession of the co-sharers, which they had prior to the partition. As evident from the record, the Killa No.48//15 which is primarily the bone of contention of both the sides, is of prime value and hence, interest of all the co-sharers had to be kept in mind for the partition purposes. The petitioners admittedly had constructed his house on this killa in the area measuring 624 square yards and rest of their land is lying vacant as is reflected from the record. As submitted before this Court, sanad takseem has already been issued on 20.04.2023. The rulings relied upon by the counsel for the respondents strengthens the view taken by this Court that the impugned order passed are in consonance with the principles of partition proceedings. In the considered opinion of this Court, this Court does not find any infirmity in the impugned orders passed and thus, both the petitions being devoid of any merits are hereby dismissed.

27.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No