

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CWP-21481-2011
Date of decision: 01.05.2023

IQBAL SINGH AND ANOTHER

.....Petitioners

VERSUS

FINANCIAL COMMISSIONER & OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Avinit Avasthi, Asstt. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present petition raises a challenge to the order dated 29.09.2011 passed by the Financial Commissioner (Annexure P-14) vide which the petition filed by the petitioners was dismissed on the ground of maintainability. Challenge is also raised to the order dated 13.11.2007 passed by the Divisional Commissioner, Jalandhar (P-12) whereby the well reasoned order dated 20.03.2007 (Annexure P-8) passed by the Collector had been set aside.

2. Briefly summarized the case of the petitioners is that they are co-owners to the extent of 1/6th and 2/3rd share respectively in total land measuring 18 kanal and 05 marlas. An application for seeking partition of the land was moved on behalf of respondent No.2 i.e. Harwinder Kaur D/o Ajit Singh on 11.08.2005. Notice was accordingly issued to the respective

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parties and Mode of Partition was approved by the Assistant Collector, First Grade, on 26.09.2006. As per Clause 1 of the aforesaid Mode of Partition, the possession of the parties was to be kept intact while Clause 3 prescribes that passage should be attached with the existing ridge as per the need. Aggrieved of the aforesaid Mode of Partition, the petitioner No.1 preferred an appeal before the Collector, Nawanshehar taking a plea that the land in question was situated adjacent to the road and that the value of the land abutting the road was much higher. Accordingly, the Mode of Partition should take into consideration the value of the land on the basis of its frontage to the road as well. The Mode of Partition dated 26.09.2006 was accordingly stayed by the Collector, Nawanshehar vide order dated 29.11.2006.

3. After hearing the arguments of the respective parties and considering the written arguments, appeal was allowed vide order dated 20.03.2007 and the Assistant Collector, First Grade, Nawanshehar, was directed to assess the value of the land on the basis of its access from the main road. Proportionate share of valuable road front was thus ordered to be assigned. The Mode of Partition was accordingly modified to the said extent. It is averred that in compliance to the amendment order a fresh Mode of Partition was prepared by the Assistant Collector, First Grade, Nawanshehar vide order dated 05.07.2007. The amended Mode of Partition was never challenged in any collector proceedings and had since then become final. However, the respondent thereafter preferred an appeal before the Divisional Commissioner, Jalandhar Division against the order dated 20.03.2007. The said appeal was allowed by the Divisional Commissioner

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vide order dated 13.11.2007 by observing that there was no order dated 26.09.2006 whereby Mode of Partition was approved by the Assistant Collector, First Grade, Nawanshehar and that the Mode of Partition had in fact been approved vide order dated 12.09.2006. The said Mode of Partition was never challenged in appeal by respondent No.1 and as such the Collector, Nawanshehar committed an illegality and irregularity in accepting the said appeal vide its order dated 20.03.2007. Consequently, the appeal was accepted and order of the Collector was set aside. The case was remanded to the Assistant Collector, First Grade, Nawanshehar to proceed further in the partition application in light of the Mode of Partition dated 12.09.2006. Parties were directed to appear before the Assistant Collector, First Grade, Nawanshehar on 07.12.2007. The above said order was further challenged by the petitioner by means of an appeal under Section 13 of the Punjab Land Revenue Act, 1887, however, vide order dated 29.09.2011, the abovesaid appeal was dismissed on the grounds of maintainability.

4. Notice of the petition was issued to the respondents on 20.08.2013 and parties were directed to maintain status quo regarding the property in dispute. It was specifically noticed as under by the High Court while issuing notice of motion :-

“Learned counsel for the petitioners, inter-alia, contends that an application for partition was filed by the respondents claiming the petitioners to be the co-sharers. Mode of partition was suggested by the A.C.Ist Grade, Nawanshehr on 26.9.2006 which was challenged by way of appeal by the petitioners and the same was allowed by the Collector vide order dated 26.3.2007.

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Grievance of the petitioners against the mode of partition is that the possession was ordered to be maintained, whereas according to the petitioners, possession should have been broken and the partition of the land should have been decided keeping in view the value of the land.

Learned counsel for the petitioners further submits that the appeal filed by the respondents has been allowed by the Divisional Commissioner observing that “in fact, mode of partition was approved vide order dated 12.9.2006 and this order was never challenged in appeal by the respondent No.1”.

Learned counsel for the petitioners has very fairly submitted that there is a zimini order dated 12.9.2006 but it is not qua mode of partition as the order of mode of partition is dated 26.9.2006 which has been challenged by the petitioners and has been set aside in appeal by the Collector.

Notice of motion for 06.11.2013.

Status-quo regarding the property in dispute be maintained in the meanwhile as it exists today.”

5. The counsel for the contesting respondent entered appearance on 21.07.2014 and sought time to file reply. The matter remained pending for consideration before this Court on various dates thereafter to enable the respondent No.2 to file his response, however, no reply was filed. The last opportunity was granted to the respondent No.2 to file his response vide order dated 09.02.2017, failing which his defense was ordered to be struck off.

6. The counsel representing respondent No.2 thereafter sought time to withdraw his Power of Attorney on behalf of the said respondent whereupon notice was issued to respondent No.2 for 10.08.2017. It was recorded in the order dated 24.01.2018, that there is no representation on

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behalf of respondent No.2 despite service. However, in the interest of justice the matter was adjourned thereafter to 01.08.2018. It was taken up for hearing on 23.01.2019, 08.05.2019, 25.09.2019, 16.01.2023 as well as 13.03.2023 to grant an opportunity to the respondent No.2 to enter appearance. The case was thereafter adjourned for today i.e. 01.05.2023. There is no representation on behalf of the said respondent today as well.

7. Taking into consideration the circumstances, this Court has no option but to proceed further in the matter proceeding ex-parte against the respondent No.2. He is thus proceeded against ex-parte.

8. Learned counsel appearing on behalf of the petitioners contends that the Financial Commissioner committed an error in dismissing the appeal preferred by the petitioner and that he ought to have entertained the same. He further contends that the petition had been dismissed only on the ground that a subsequent notification had been issued by the Government of Punjab whereby the revisional power of the Financial Commissioner had been taken up. It is contended that the petition in question had been filed in the year 2007 and it remained pending for more than two and half years (2 ½ years) before the notification issued by the State of Punjab. It is averred that the once the matter had already been instituted, it was incumbent upon the respondent-Financial Commissioner to have decided the said case on merits and that the Notification would be operative prospectively. He further contends that the Divisional Commissioner had felt in an error while setting aside the well reasoned and speaking order passed by the Collector dated 20.03.2007 whereby the Mode of Partition was amended to give land of proportionate value to the respective share holders vide order dated

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13.11.2007. He contends that it is undisputed that the land abutting road is higher in value. A proportionate allotment of land was ordered to be done by the Collector, Nawanshehar on the respective shareholding and valuation on the basis of frontage on the main road. It is further averred that the respondent revenue authorities had even carried out a final partition in compliance of the order of the Collector dated 05.07.2007 and that the partition had not been challenged and the same has attained finality amongst the parties. He contends that the subsequent order passed by the Commissioner, not being based upon correct appreciation of the documents available on record, is liable to be ignored,

9. He strenuously argued that the Divisional Commissioner, Jalandhar Division was swayed by the submissions on behalf of the respondent No.2 that the Mode of Partition was never approved on 26.09.2006 and was in fact approved on 12.09.2006 and thus proceeded on the presumption that in the absence of any order approving the Mode of Partition, there could have been no modification in the same and directed that the partition be carried out in terms of the Mode of Partition approved on 12.09.2006. He referred to the record and the zimni orders wherein it has been mentioned by the Assistant Collector, First Grade, Nawanshehar that the Mode of Partition was initially approved on 12.09.2006 and as per the said zimini order, the case was adjourned to 26.09.2006 calling upon the revenue officials to submit the Naksha in terms of the approved mode of partition. The case file has also been perused which shows that the Mode of Partition, as approved by the Assistant Collector, First Grade, Nawanshehar in the above said partition case was endorsed to the revenue authorities vide

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No. 143/Reader/DRO dated 26.09.2006. Since the endorsement on the aforesaid Mode of Partition was of 26.09.2006, seemingly, at the time of preferring the appeal before the Collector, the said endorsement number was mentioned as the date of orders of Mode of Partition itself. There is thus no error insofar as the foundation of the order passed by the Collector, Nawanshehar is concerned and that the modification in the Mode of Partition was in accordance with the Principles of proportionate valuation of land. He further contends that the amended Mode of Partition thereafter attained finality and Naksha 'Bay' had also been prepared on 05.07.2007. Objection to the said Naksha could have been filed within a period of 30 days thereafter, failing which, the sanad taksim was issued and the partition attained finality.

10. Learned State counsel contends that the contesting interest is between the petitioners and respondent No.2 and that they have passed the orders in exercise of their quasi judicial powers.

11. Having heard learned counsel appearing on behalf of the petitioners, I find that the order passed by the Divisional Commissioner, Jalandhar suffers from an error of appreciation. He was required to go in to the record to ascertain whether the Mode of Partition was actually the same as had been approved and was understood between the parties. The order of the Collector had been set aside by the Commissioner only on technical noting that the Mode of Partition was mentioned by the Collector to be approved on 26.09.2006 whereas the same approved on 12.09.2006. He has, in the said process, missed out that the said date of endorsement was mentioned on the Mode of Partition. There was thus no error in considering

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the correct mode of partition as if referred to the same Mode of Partition. Further, noticing that the final Mode of Partition had already been executed and given effect to between the parties and Naksha “eiri” having been prepared which further attained finality as no objection/challenge had been raised to the same, I find that the orders passed by the Divisional Commissioner, Jalandhar and the Principal Secretary, Department of Revenue are liable to be set aside. While the order of the Commissioner proceeded on an assumption as if the collector had considered a wrong Mode of Partition while allowing the appeal, the Financial Commissioner dismissed on the presumption that he did not have any power. The Commissioner definitely proceeded on an erroneous consideration. The respondents also chose not to inform about the amended Mode of Partition and the finalization of partition including issuance of Sanad Taksim. The respondent No.2 is seemingly satisfied by the partition as effected by the revenue authorities in compliance of order dated 20.03.2007 passed by the Assistant Collector, First Grade, Nawanshehar and have thus chosen not to contest the present petition which is claimed to be also implemented.

12. Accordingly, the present petition is allowed and the other issues are accordingly not required to be delve into at this stage. Hence, the present petition is allowed. The order dated 29.09.2011 passed by the Financial Commissioner and the order dated 13.11.2007 passed by the Divisional Commissioner, Jalandhar are set aside. The order passed by the Divisional Magistrate, Nawanshehar dated 20.03.2007 is restored. The Mode of Partition, if already effected in compliance of the order dated 20.03.2007 passed by the Sub Divisional Magistrate-cum-Collector, Nawanshehar is

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ordered to be given effect to amongst the parties as per the order of partition
endorsed on 26.09.2006.

(VINOD S. BHARDWAJ)
JUDGE

MAY 01, 2023
Vishal Sharma

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