

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

CWP-16146-2013

Date of Decision: 18.08.2023

Pehal Singh

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vikram Singh, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. Parminder Singh, Advocate, for respondents No.5 to 10.

Rajesh Bhardwaj, J.

Petitioner has approached this Court praying for setting aside the order dated 17.06.2013 (Annexure P-8) passed by respondent No.1, order dated 13.10.2011 (Annexure P-7) passed by respondent No.2, whereby the appeal filed by the private respondents has been accepted and the order dated 19.12.2008 (Annexure P-5) passed by respondent No.4, whereby *ex parte* proceedings have been set aside from that stage and accepted the Naksha Bay without giving any opportunity to file objection against Naksha Zeem and Naksha Bay and for upholding the order dated 22.07.2009 (Annexure P-6) passed by respondent No.3, vide which the appeal filed by petitioner has been rightly accepted with direction to start the case afresh after issuing notice to the respondents and to the legal representatives.

It has been contended by learned counsel for the petitioner that some of the respondents filed partition application before the Assistant Collector, IInd Grade, Indri and summons were issued by the Court in violation of Section 20 of Punjab Land Revenue Act (for short, 'the Act'), hence, the petitioner was proceeded *ex parte*. He has submitted that the

petitioner filed application for setting aside the order but the Assistant Collector IInd Grade, did not allow the petitioner to join the proceedings from the stage as it was on 18.10.2006 and thus, illegally rejected the plea of the petitioner vide order dated 19.12.2008 (Annexure P-5). He has submitted that aggrieved by the order dated 19.12.2008, the petitioner filed a statutory appeal before the Additional Collector-cum-SDO (Civil), Karnal. He submits that the learned Appellate Court duly appreciated the grievance of the petitioner and it was observed that no notice of personal service was issued to the petitioner and Munadi was also conducted in violation of Section 20 of the Act. It was also observed by the learned Appellate Court vide its order dated 22.07.2009 (Annexure P-6) that number of respondents mentioned therein were dead at the time of filing of the application for partition, thus, the appeal was accepted with a direction to the Assistant Collector IInd Grade to initiate partition proceedings afresh after issuing notices to the other side and to the legal representatives of deceased co-sharers. He has submitted that the order was further challenged by respondents No.5 to 10 before respondent No.2-Commissioner, Rohtak Division, Rohtak, which was illegally accepted by the learned Commissioner vide impugned order dated 13.10.2011 (Annexure P-7). Aggrieved by the same, the petitioner filed an ROR before respondent No.1-Financial Commissioner, which was illegally dismissed vide impugned order dated 17.06.2013 (Annexure P-8) by upholding the order dated 13.10.2011. He submits that thus both the respondent -authorities i.e. the Commissioner and the Financial Commissioner have fallen in error in not appreciating the evidence on record. It has been further submitted by learned counsel for the petitioner that the procedure followed on the

application for partition by the Assistant Collector IInd Grade was totally against the provisions of Section 20 of the Act. It is submitted that no procedure as per mandate of the Act for the service of the petitioner was adopted and thus, petitioner was illegally proceed *ex parte* in the partition proceedings. He has submitted that the petitioner having been proceeded *ex parte*, there was no question of filing of objections to the mode of partition by the petitioner and to the subsequent proceedings which totally vitiated the partition proceedings. He has submitted that the learned Additional Collector-cum-SDO had duly appreciated the grievance raised by the petitioner and thus rightly accepted the appeal filed by the petitioner by directing the Assistant Collector IInd Grade to initiate the proceedings afresh vide order dated 22.07.2009. He has submitted that appeal against the order dated 22.07.2009 was illegally accepted by the learned Commissioner and the ROR was illegally dismissed by learned Financial Commissioner. He has submitted that it is evident from the facts and circumstances of the case that the partition proceedings carried out by respondent-authorities in violation of the principle of *audi alteram partem* as the petitioner was not even served in accordance with the statutory provisions of the Act. He has submitted that the land to be partitioned is Mushtarkaa Malkaan which vests in the proprietor and the land which is Mushtarkaa Malkaan cannot even be partitioned. He submits that there is no discussion by the respondent-authorities regarding the same. He has submitted that once the property in dispute is Mushtarkaa Malkaan as per the revenue record, the title dispute is to be first decided and then the partition proceedings could be initiated, however there was no discussion regarding the same. He has submitted that the petitioner should have been allowed to join the proceedings from the

stage as it was on 18.10.2006 i.e. at the time of sanction of mode of partition so as to enable him to file his objections. He submits that in view of this, the impugned orders are totally unsustainable in the eyes of law and deserve to be set aside.

Learned counsel for respondents No.5 to 10 has opposed the contentions raised by learned counsel for the petitioner. He has submitted that the petitioner is an imposter who has initiated a proxy litigation at the behest of the person behind him. He submits that as per Naksha Alaf of the village, the petitioner was having the 3779 share which is equal to 1 Kanal 2 Marlas of land and the answering respondents had no objections allocating the land of his choice to the petitioner. He has submitted that the petitioner has levelled false and frivolous allegations only in order to delay the partition proceedings. He has submitted that the present petition being devoid of any merit deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that it is not under dispute that the petitioner is the co-sharer of the land which is to be partitioned. It is also evident from the record that the petitioner had been proceeded *ex parte*. The petitioner filed appeal before the Additional Collector-cum-SDO, which was accepted while observing that the petitioner was proceeded *ex parte* and number of share holders had also died before the initiation of the partition proceedings and thus, vide order dated 22.07.2009, the Collector IIInd Grade was directed to initiate fresh proceedings. However, same was upset by the Appellate and the revisional authorities by overlooking these seriously disputed question of facts. Besides this learned counsel for the petitioner

has also raised arguments regarding the status of the land to be partitioned, wherein it was argued that the land is Mushtarkaa Malkaan and there is a title dispute as well. From the record of the case, it is clear that there is no discussion regarding the same. Thus, these are serious disputed question of facts, which require to be redressed after appreciation of the evidence to be produced by the parties. Besides this the petitioner was proceeded *ex parte*. Thus, both the impugned orders dated 13.10.2011 and 17.06.2013 are found to be perverse and hence are set aside. The case is remanded to the competent authority to initiate the proceedings afresh after joining the petitioner petitioner from the stage as it existed on 18.10.2006, whereby he would be duly issued notice by providing him opportunities to file objections regarding the mode of partition.

The petition stands disposed of.

The Collector would decide the case within a period of three months from the date of receipt of certified copy of this order.

18.08.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No