

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

CWP-1090-2018

Date of Decision: 10.08.2023

Hukam Chand

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ishan Bhardwaj, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. Parminder Singh, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

Petitioner has approached this Court praying for quashing of impugned order dated 30.10.2017 (Annexure P-5) passed by respondent No.2 i.e. District Revenue Officer-cum-Collector, Karnal, whereby, the order dated 14.02.2017 (Annexure P-3) passed by the Assistant Collector 2nd Grade has been set aside.

It has been contended by learned counsel for the petitioner that the petitioner filed application for partition under Section 111 of the Punjab Land Revenue Act, 1987 on 02.01.2015 for the land bearing Khewat No.219. He submits that the Assistant Collector 1st Grade proposed/prepared the mode of partition (Tarika Taksim) on 19.08.2016 (Annexure P-2). He submits that the private respondents filed their objections on 06.09.2016 and thereafter petitioner also filed his reply to the objections on 09.12.2016. He submits that the learned Assistant Collector 2nd Grade rejected the objections and accepted the mode of partition on 14.02.2017 (Annexure P-3). He submits that being aggrieved, respondent No.4 filed an appeal against the order dated 14.02.2017 before the District Officer-cum-Collector, who vide order dated 30.10.2017 (Annexure P-5) set aside the order dated

14.02.2017 and remanded the matter and illegally allowed the appeal without looking into the facts and evidence on record. He has submitted that the mode of partition was proposed on 19.08.2016 and as per the condition No.3 thereof, partition of land was to be made keeping in view the price and type of the land and attempt would be made to give front land on the Pucca road to each party according to their share. He submits that the objections filed by the respondents to the mode of partition were heard and the same were rejected vide order dated 14.02.2017. He submits that respondent No.4 filed an appeal which was accepted vide order dated 30.10.2017 by setting aside the order dated 14.02.2017, wherein the matter was remanded to the Court below with instructions that the proceedings of partition be completed keeping in view the possession of each co-sharer of the land in dispute. He submits that the learned Collector had not only remanded the case for fresh decision, but specifically gave instructions regarding the possession. He submits that keeping in view the location of the land of the petitioner vis-a-vis the mode of partition, the directions given by the Collector while remanding the case would defeat the purpose of remand for decision afresh, thus, the view taken by learned Collector, is unsustainable in the eyes of law and deserves to be set aside.

On the other hand, learned counsel for respondent No.4 has submitted that the petitioner has approached this Court by assailing the order dated 30.10.2017 passed by the Collector, whereas, as per the provisions of the Punjab Land Revenue Act, 1987, an alternative statutory remedy lies against the same, which the petitioner has not availed. He submits that the order passed by the Collector is as per the mode of partition proposed between the parties.

Heard.

After hearing learned counsel for the parties and perusing the record, it is evident that the mode of partition was proposed on 19.08.2016, which was finalized on 14.02.2017 after hearing the objections filed by the respondents. However, the precise submission made before this Court is that there is no denial to the fact that the impugned order passed by the Collector is further assailable before the Appellate authority as provided under the Punjab Land Revenue Act, 1987. However, the petitioner has approached this Court by way of filing the present petition. On hearing learned counsel for the parties, it is found that the precise grievance of the petitioner is regarding remand of the case by the Collector by giving specific instructions which would restrict the subordinate authority from deciding the case afresh as the subordinate authority would be bound by the instructions given by the learned Collector. In these circumstances, to meet the ends of justice, this Court finds that the partition proceedings are not yet finalized, but the order of the Collector in remanding the case with specific instructions would defeat the purpose of remand for deciding it afresh. Thus, the impugned order dated 30.10.2017 is set aside, the case is remanded to the Collector for passing order afresh after hearing both the sides.

The petition stands allowed. The Collector would decide the case afresh within a period of two months from the date of receipt of certified copy of this order.

10.08.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No