

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:151148

CWP-25226-2013 (O&M)

RESERVED ON:28.08.2023

PRONOUNCED ON:09.11.2023

M/S CHANDRA AUTO ENGINEERS PRIVATE LIMITED

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate and
Mr. Vishal Pundir, Advocate
for the petitioner in CWP-25226-2013.

Mr. Vikram Singh Dhakla, Advocate
for the petitioner in CWP-20448-2013, CWP-22145-2013 and
CWP-22174-2013.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for
respondent No.6 in CWP-22174-2013.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Priyanka Kansal, Advocate for respondent No.5.

Mr. Anand Chhibbar, Sr. Advocate with
Ms. Ateevraj Sandhu, Advocate for respondent No.6.

Mr. Ashok Aggarwal, Advocate for the
Applicant/respondent in CM-9272-CWP-2023 in CWP-22145-
2013.

Mr. Vineet Chaudhary, Advocate for respondent No.13.

SANDEEP MOUDGIL (J)

1. This order will dispose of the instant writ petition alongwith
bunch of other petitions bearing No. CWP-22145-2013, CWP-20448-2013
and CWP-22174-2013, COCP-1821-2021, COCP-1822-2021 since the facts
and circumstances are similar, and all these petitions involves identical

2. The jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of orders dated 03.08.2011 (Annexure P-7), 04.07.2011 (Annexure P-8), 15.05.2012 (Annexures P-9 & P-10) and 09.07.2011 (Annexure P-11), 08.04.2013 (Annexure P-12) vide which Sanand Taksam was prepared only with the intent to facilitate grant of licence in favour of respondent No.5-M/s Anushria Computech Private Limited now known as M/s Ferrous Luxury World Private Limited.

3. The petitioners have also sought a direction to be issued to respondents for carrying out partition proceedings afresh by affording appropriate opportunity of hearing to all the parties and the procedure established in law as per mode of partition and after following due procedure apart from a direction restraining the respondents from creating any third party right in encumbrance-mortgage on the entire chunk of land measuring 88 kanals-12 marlas.

4. This Court in order to avoid any gravity or repetition of facts would take the brief background and the facts from the petition bearing CWP No.25226 of 2013, which was argued as lead case with the consent of all the parties being representing by their advocates before this Court at the time of hearing, which concluded on 25.08.2023.

5. The case set out of the instant petition is with the claim of the petitioner as owner of land measuring 3 kanals 7 marlas out of a total 88 kanals 12 marlas situated in Khewat No.6/6, 7/7 and Khewat No.10, Khewat No.13/13 etc. The respondent No.5-M/s Anushria Computech Private Limited now known as M/s Ferrous Luxury World Private Limited moved an application seeking partition of the agricultural land in question measuring a total of 88 kanals 12 marlas and on receiving the notice of said partition

dismissal of the said proceedings with the averment that relevant revenue records have not been attached. The said application was dismissed on 23.05.2011. It is however, material to record that Naksha Alif was called and subsequently sanctioned on 07.06.2011, whereas Naksha 'Kha' & 'Gha' was called after preparing the mode of partition. The proposed mode of partition is available on record as Annexure P-6 dated nil. The petitioner thereafter filed an appeal against the orders dated 09.05.2011, 23.05.2011 as well as 07.06.2011 including the proceedings vide which the Naksha 'Bay' and Naksha 'Jeem' had been called from Halqa Girdawar after preparation of the mode of partition by single order. Subsequent thereof, the partition application was accepted vide order dated 04.07.2015 (Annexure P-8) by the Assistant Collector and he issued Sanad Takseen on 03.08.2011 (Annexure P-7). The appeal preferred before the learned Collector, Faridabad vide order dated 15.05.2011 (Annexure P-10) against the orders dated 03.05.2011, 24.05.2011 and 07.06.2011, whereas against the order dated 04.07.2011, which was dismissed by the Collector, Faridabad on the same day i.e., 15.05.2012, but by a separate order (Annexure P-9). Aggrieved against the aforesaid order dated 15.05.2011, a revision petition came to be filed by the petitioner in the Court of Commissioner, Gurugram, Division Gurugram, which was also dismissed on 09.07.2011 (Annexure P-11) and consequently ROR before the Financial Commissioner-cum-Secretary Revenue Department, Government of Haryana was filed and the same also met with the fate of dismissal vide order dated 08.04.2013 (Annexure P-12).

6. It is in this background and chain of litigation, the instant bunch of petitions came before this Court primarily admitting the fact that mode of partition has been finalized and attained finality, but the passage has not been provided to the land of the petitioner, wherein joint area of petitioner M/s.

alongwith M/s D.D. Sales, in which the petitioner is a shareholder of 18 marlas. In fact, this 8 marla land stands allotted to the petitioner jointly alongwith other farmers namely Ramphool and Sunil and the mode on the basis of which land was to be partitioned has not been followed. Alleging the entire exercise conducted in undue haste and to advance wrongful gain to M/s Minus Collection Private Limited-respondent No.5, the entire partition proceedings were sought to be set aside. The bunch of writ petitions was decided by a co-ordinate Single Bench on 09.05.2016 with the following observations:-

“In view of above, impugned orders are set aside. Case is remitted back to the Assistant Collector Ist Grade, Ballabgarh, with a direction to afford opportunity to the respondents in the partition application to file reply and thereafter proceed in accordance with law. If the Assistant Collector comes to the conclusion to proceed with the application then he will call Naksha 'Ka' in accordance with law and thereafter shall frame a proposed mode of partition and give opportunity to the parties to file objections. Once the mode of partition becomes final, Naksha 'kha' will be called and again opportunity shall be provided to the parties to file objections to the same and thereafter a speaking order will be passed on the objections filed to Naksha 'kha' before approving or disapproving the same. Thereafter Assistant Collector Ist Grade shall proceed in accordance with law inviting Naksha 'gha' and sanad Taqsim in accordance with law. It is made clear that nature and character of the land which is subject-matter of partition has to be taken as final as on the date of applications for partition and not on the date of decision. If any construction is raised on the land in question subsequently i.e. after the date of filing of applications for partition, same shall be ignored and land shall not be treated as gair mumkin due to construction. If it is permitted it would amount to depriving the shareholders of their valuable right of partition under the provisions of the Punjab Land Revenue Act. The Assistant Collector Ist Grade shall decide the matter with regard to

proceed or not to proceed with application within a period of two months from the date of receipt of certified copy of this order. Parties, through their counsel, are directed to appear before the Assistant Collector Ist Grade, Ballabgarh, on 23.05.2016. Disposed of.”

7. In pursuance to the aforesaid order dated 09.05.2016, the matter was adjudicated afresh by Assistant Collector Grade-I, but the private respondents availed the remedy of Letters Patent Appeal, which set aside the judgment dated 09.05.2016 passed by the learned Single Judge and remanded the case back for fresh decision. Accordingly, on an application bearing No.CM-12038-CWP-2021, the instant bunch of writ petitions was restored back to its original number after the same was earlier heard by Mr. Raj Mohan Singh (Judge) and thereafter, recusal by couple of other Single Bench, the matter was heard by this Court on 04.08.2023 and partly heard on 22.08.2023 and finally on 23.08.2023, whereby the order was kept reserved. Though, at the time of conclusion of hearing, Mr. Vikram Singh Dhakla, learned Advocate for the petitioner particularly showed inclination for a chance to settle the matter amicably by means of sitting in mediation amongst themselves and on such request meeting among the parties with their consent, was fixed for 25.08.2023 at 12.00 PM and the outcome of said mediation was informed to this Court on 28.08.2023, by Mr. Dhakla, learned Advocate on behalf of the petitioner that the efforts could not succeed and requested the Court to proceed with passing of an order on merits, in pursuance to the order by which it was kept reserved.

8. Mr. Ashish Aggarwal, Sr. Advocate appeared with Mr. Vikram Singh, Advocate for the petitioners contend that the orders dated 08.04.2013 (Annexure P-12), passed by respondent No.1, 09.07.2012 (Annexure P-11) of respondent No.3, 15.05.2012 (Annexures P-9 & P-10) and

respondents No.3 & 4 respectively, whereby *sanad Taqsim* has been prepared only with the intent to facilitate the grant of licence to respondent No.5, as well as mode of partition, which has been conducted without following due procedure as established in law, is bad since the Financial Commissioner-respondent No.1 erred in law holding that since *sanad Taqsim* has been prepared and final instrument of partition stands issued, he has no jurisdiction observing that no revision would lie in such a case. He asserts that in view of Section 16 of Punjab Land Revenue Act, 1887 (hereinafter referred to as Act, 1887), which envisage that aggrieved party can invoke jurisdiction of Financial Commissioner against the orders dated 09.07.2012 (Annexure P-11), 03.08.2011 (Annexure P-7) and 04.07.2011 (Annexure P-8) alongwith 15.05.2012 (Annexures P-9 & P-10 respectively) empowering the Financial Commissioner to call for the record of any case pending before or disposed of by any Revenue Officer.

9. Mr. Aggarwal, Sr. Advocate assailing the mode of partition submits that it has been finalized and it is an admitted fact which has been ignored by the Revenue Authorities below, wherein no passage has been earmarked to the land of petitioners, who is owner of 3 kanal 7 marlas of land alongwith having another 18 marla in the adjoining land, which leads to killa No.125/1. He also urges that on record there is neither there is any order calling for objections on mode of partition nor an order of sanctioning the mode of partition. Mr. Aggarwal, Sr. Advocate vehemently argued that respondent No.5 has committed a fraud upon the petitioner in connivance with the officials of revenue department while getting prepared the instrument taking advantage of getting a part in share during partition which is most valuable piece of land, whereas land of no use and utility has been shown in the share of the petitioner. He submits that the partition proceedings have been

Act of 1887 as well as Chapter 18 of the Punjab Land Record Manuals, which stipulate that the application for partition is to be accompanied with the last detailed *jamabandi* with complete entry of holding for which the partition is sought along with name of all owners and mortgages but in the instant case, total go-bye has been given to the said statutory procedure as laid down therein. He supports his argument on fraud with the petitioners referring to the fact that the whole exercise was a pre-planned move and has been conducted solely to benefit respondent No.5, who in connivance with M/s Minus Collection Private Limited had already submitted application for licence to develop the land for residential purposes, which has caused material prejudice to the petitioner and other co-sharers and as such the proceedings are liable to be quashed even relating to the mode of partition.

10. On behalf of the petitioners, it has been further asserted before this Court that the authorities below have ignored the fact that while conducting the partition proceedings fixed for 02.05.2011, the petitioner appears through its counsel whereas respondents No.1 to 5, 7 & 8 were ordered to be summoned through proclamation for 09.05.2011. On this fixed date itself, the proceedings were initiated ex parte against the respondents and the petitioner moved an application for rejection of partition proceedings and for the consideration of same, the matter was adjourned to 16.05.2011 for filing reply to the said application for rejection of partition. After filing of the reply on 16.05.2011, matter was deferred for consideration on 23.05.2011, wherein the said application was dismissed and the matter was adjourned for *Naksha Alif* to 30.05.2011 and on submitting of said *Naksha Alif* by the field staff, it was adjourned for filing objections for 07.06.2011 on which date, the respondent (applicant therein) gave a statement accepting the *Naksha Alif*, however, no objections were filed by the petitioner, who pray for grant of time to file the same but such request was declined outrightly by the Court below

and the matter was fixed for 14.06.2011 for *Naksha Bey and Naksha Jeem*, on which date, respondent No.6 put in appearance and on his request, it was adjourned to 21.06.2011 for filing objections to these two documents and again proceedings were deferred to 30.06.2011. Mr. Aggarwal, Sr. Advocate points out that against the orders dated 09.05.2011, 23.05.2011 as well as 04.07.2011, vide which *Naksha Alif* and *Naksha Bey* had been approved along with acceptance of mode of partition depriving the petitioner from the right to file objections. Lastly, while concluding the arguments, it was contended that it is a case of partial partition in any case as all the co-sharers have not been allocated the land and the orders of Financial Commissioner-respondent No.1 are non-speaking and cryptic as well as also overlooking the illegality in the order dated 07.06.2011 (Annexure P-5 colly), passed by the Assistant Collector Ist Grade, whereby *Naksha Kha and Gha* were directly called without inviting objections to the mode of partition, and as such prays for acceptance of the instant writ petition.

11. Mr. Aggarwal, Sr. Advocate has relied upon on the case law in ***“Bhagwana and others versus Financial Commissioner, Haryana and others”***, 2005(3) RCR (Civil) 298, ***“Fateh Singh and others versus Assistant Collector Ist Grade, Israna and others”*** 2017(2) PLR 727, ***“Pritam Singh versus Jaskaur Singh”*** 1992 (2) PLR 742 and ***“Raghunath and others versus Commissioner, Rohtak Division, Rohtak and others”***, 2013 (2) RCR (Civil) 459, wherein all the relied upon judgments have remanded the case back to the Financial Commissioner for adjudicating a fresh after following the procedure taken therein.

12. Appearing on behalf of respondent No.5-M/s Anushria Computech Private Limited, Mr. Chetan Mittal, learned Senior counsel counters the argument raised by the petitioner on the strength that proposed

never challenged and made a reference to the orders dated 30.05.2011 and 07.06.2011 to demonstrate that *Naksha Alif* was filed and matter was adjourned to 07.06.2011 for filing of objections, if any, to the same but no objections were preferred by the petitioner (respondent No.6) before the Lower Court. The proceedings were initiated by moving an application dated 18.04.2011, for partition of land in question and the petitioner moved an application for dismissal of the said application (Annexure P-3), which was dismissed vide order dated 23.05.2011. He also asserts that since no objections were submitted, the Courts below vide order dated 07.06.2011, ordered the Halqa Girdawar to prepare *Naksha Kha* and *Naksha Gha* subsequent to preparation of mode of partition, which were put up on the file on 14.06.2011 and the matter was adjourned to 21.06.2011 inviting objections to *Naksha Kha* and *Naksha Gha*. It has been argued on behalf of respondents No.5 and 6 jointly that in pursuance to the order dated 07.06.2011, the proposed mode of partition was submitted on 14.06.2011 before the Assistant Collector Grade-I, who accepted the same on 04.07.2011 (Annexure P-8), since no objections were submitted and case file was put up for final orders to prepare/issue *sanad Taqsim* as per attached *Naksha Kha* on 03.08.2011 (Annexure P-7). Mr. Mittal, learned Senior counsel also contends to uphold the mode of partition urging that *sanad Taqsim* was prepared on 03.08.2011 (Annexure P-7) and stands issued as per order dated 04.07.2011.

13. Mr. Mittal, learned Senior counsel also drew attention of this Court to the orders dated 04.08.2011, vide which two separate appeals bearing No.86 and 88 filed by the petitioner were dismissed by the Collector whereby challenge was made to the orders dated 04.07.2011 in appeal No.88 and orders dated 09.05.2011, 23.05.2011 and 07.06.2011 were assailed in appeal No.86 (both of appeals are dated 06.03.2012) and were dismissed on 15.05.2012

(Annexure P-9), categorically holding that the final order of partition stands

issued and possession has been transferred with another finding that the opportunity was provided to the appellant-petitioner to file objections to the *Nakshas* but it was not availed and submissions made on their behalf are contrary to the record as per zimini orders dated 07.06.2011 particularly in the light of the fact that Halqa Patwari was directed to prepare *Naksha B and C* both and not *Naksha B* only as alleged. It has further come on record in the orders passed by the Collector dated 15.05.2012 (Annexures P-9 and P-10) i.e., on 21.06.2011, the Lower Court again provided an opportunity to file objections but still it was not availed off and rather the petitioner choose not to appear intentionally in an attempt to delay the whole proceedings of partition in furtherance of mode of partition as was accepted by the Assistant Collector Grade-I on 04.07.2011.

14. Mr. Mittal, learned Senior Advocate further argued on behalf of respondents No.5 and 6 to say that in the meantime change of land use (CLU) was issued in their favour vide licence No.5 of 2012 on 24.01.2012 and would further say that the revision petitions under Section 16 of Punjab Land Revenue Act filed by the petitioner against the orders dated 15.05.2012, were also dismissed on 08.04.2013 (Annexure P-12). The case at forth on behalf of respondents No.5 and 6 is that letter of intent was issued for grant of licence under Section 3 of Haryana Urban Development and Regulation of Urban Areas Act, 1975 (hereinafter referred as Act of 1975) for the land measuring 102.194 acres within the revenue estate of village Sihi to five private limited companies namely:-

- (i) Minus Collection Pvt. Ltd. (respondent No.5)
- (ii) Lavish Housing Pvt. Ltd.
- (iii) Earnest Housing Pvt. Ltd. (respondent No.6)
- (iv) Anushria Computech Pvt. Ltd.

(vi) C/o Ferros Infrastructure Pvt. Ltd.

15. Mr. Mittal, Senior Counsel has concluded the arguments submitting that the proposed mode of partition was never challenged which has attained finality and order of *sanad Taqsim* was passed after expiry of period of limitation to challenge *Naksha Gha* as prescribed under Section 118 (2) of the Punjab Land Revenue Act, 1887 apart from the appeals and subsequently the revision petition also stands dismissed. He lastly folded up the submissions that the Division Bench in LPA has remanded the case back primarily on two issues i.e., (i) No opportunity was granted to the parties to file objections to *Naksha Kha and Naksha Gha* and (ii) Mode of partition in fact was not prepared by Assistant Collector Grade-I but was done so by the Field Staff. He reiterated the submissions made as recorded hereinabove that despite specific opportunity given to the petitioner, they opted not to file any objections and in fact stopped appearing before the Court of Assistant Collector Grade-I and on the question No.2, it is evident from order dated 04.07.2011 (Annexure P-8) that the partition was duly accepted by Assistant Collector Grade-I and therefore, it cannot be assumed by any stretch that the partition was not prepared by the Assistant Collector Grade-I and prayed for dismissal of the instant writ petition.

16. Before parting with his arguments reliance has been made on a case laws i.e., “*Smt. Sharda versus State of Haryana and others*”, 2015(86) RCR (Civil) 264, “*Lala Ram versus Finance Commissioner*”, 1992(1) RRR 231, “*Munshi versus Finance Commissioner*”, 1994(2) RRR 66, “*Swaran Singh versus Punjab State and Ors.*”, 2014(5) RCR (Civil) 3, “*Pritam Singh versus Jaskaur Singh*”, 1993 (1) RRR 390, “*Ashok Kumar versus Financial Commissioner and others*”, 2019(2) Law Herald 1534, “*Hamara Reality Pvt. Ltd. versus Smt. Renu Sharma and another*”, CR No.6045 of 2013,

2009(11) SCC 229, “ECE Industries Limited versus SP Real Estate Developers Pvt. Ltd. and others”, 2009 (12) SCC 776 and “State of U.P. Versus Sudhir Kumar Singh”, 2020 SCC Online SC 847.

17. No other argument was raised by either of the parties to the present lis, hence, this Court would proceed further, while examining the submissions of the parties alongwith the record available on the file, the petitioners have assailed the order dated 03.08.2011 (Annexure P-7) passed by the Assistant Collector 1st Grade, whereby the implementation of order dated 04.07.2011 (Annexure P-8) i.e., order of partition was issued to be effective alongwith Sanad Taqsim, which was handed over to the applicants, Annexure P-9 dated 15.05.2011 by the Collector, Faridabad as an Appellate Authority upholding the final order dated 04.07.2011 (Annexure P-8) as well as Annexure P-10 dated 15.05.2012, whereby the Collector Faridabad held that the procedure adopted by the Lower Court do not suffer from any infirmity, while accepting the application for partition. Further the orders dated 09.07.2011 passed by the Revisional Authority-Commissioner, Gurugram Division, Gurugram vide which it held that once Sanad Taqsim stands issued, the partition proceedings have been completed and finally the order passed by the Financial Commissioner Haryana in ROR No.582-2011-2012, wherein the prayer was made by the petitioner for remanding the case back to the Assistant Collector Grade-1 on the ground that no opportunity was granted to the revisional petitioner-petitioners, while finalizing the partition proceedings, however, the same was also dismissed with a finding that service was duly effected as per law and both the parties have contested before the Assistant Collector 1st Grade through the proceedings as well as Sanad Taqsim stands issued, no illegality was found and ROR was dismissed.

18. Primarily the issue involved in the writ petition revolves around

the question as to whether mode of partition has been approved and Sanad

Taqsim was issued in accordance with law, after providing due opportunity to the petitioners.

19. The petitioners have alleged that Sanad Taqsim has been prepared with the intent to facilitate to grant of licence to respondent No.5-M/s Anushria Computech Pvt. Ltd., wherein the mode of partition was conducted without following the procedure as established in law. Another bone of contention on behalf of the petitioners is attracting this Court to Section 16 of Punjab Land Revenue Act, 1887, which envisages that aggrieved party can invoke jurisdiction of the Financial Commissioner against the orders dated 09.07.2012 (Annexure P-11), 03.08.2011 (Annexure P-7) and 04.07.2011 (Annexure P-8) alongwith the orders dated 15.05.2012 (Annexure P-9 & P-10 respectively) and the reason assigned by the Financial Commissioner to the effect that once Sanad Taqsim has been prepared and final instrument of partition stands issued he has no jurisdiction to entertain the 582-2011-2012 is therefore erroneous, who has failed to exercise the jurisdiction vested in him. On facts, the case put forth by the petitioners is that no passage has been earmarked to the land of the petitioners, despite being owner of 3 kanals 7 marlas of land alongwith another 18 marlas in the adjoining land leading to Killa No.125/1.

20. This Court having perused the records and securitizing the zimni proceedings on the basis of orders passed therein finds that the partition proceedings were fixed for 02.05.2011 and the petitioners appeared through its counsel, whereas respondents No.1 to 5, 7 & 8 were summoned through proclamation for 09.05.2011. The application for rejection of partition was preferred by the petitioners on 16.05.2011 which came up for consideration on 23.05.2011, which was dismissed having no merit and the mode of partition was only thereafter sanctioned on 07.06.2011 following which the land was

were called for. The petitioner was having reasonable opportunity to file objections, as is evident from the orders of AC 1st Grade dated 14.06.2011, 21.06.2011 and 30.06.2011 but these opportunities were not availed, as no objections were filed. Therefore, it is now to say that opportunity to file objection was not provided lacks merit. From the record, it is also clear that Naksha Alif was submitted by the Field Staff on 30.05.2011 and not on 13.05.2011, as has been alleged by the petitioner. Instead of filing objections, the petitioner preferred an application for dismissal of mode of partition which is suffice to infer without any doubt that petitioners were well aware of the proceedings conducted by AC 1st Grade qua preparation and sanction of mode of partition as well as issuance of Sanad Taqsim. Even the objections were sought while adjourning the case to 21.06.2011 qua Naksha Bey and Naksha Jeem even to this no objections were preferred, as is crystal clear from the zimni orders dated 21.06.2011 and 30.06.2011.

21. This Court can also make out that the order dated 07.06.2011 crystallize that Halqa Girdawar was directed to prepare Naksha Kha and Naksha Gha subsequent to preparation of mode of partition which were placed on the case file on 14.06.2011 and the matter was adjourned to 21.06.2011. The proposed mode of partition was also submitted on 14.06.2011, which was accepted by the AC 1st Grade on 04.07.2011 (Annexure P-8) with the orders to prepare/issue Sanad Taqsim as per Naksha Kha on 03.08.2011 (Annexure P-7), which was duly prepared and given effect to. Accordingly, the plea raised by the petitioners to the effect that no opportunity was given to file objections has no merits and is liable to be turned down at this stage.

22. Coming to the next question as to the alleged failure on the part of Financial Commissioner to exercise the jurisdiction in the light of Section 16 of Punjab Land Revenue Act is concerned, the Sanad Taqsim was passed

after expiry of period of limitation to challenge Naksha Gha under Section

118(2) of the Punjab Land Revenue Act, 1887 and only after the mode of partition to which no objections were admittedly filed, has attained finality. In the light of these facts added with the law of equity, which lies in favour of respondents No.5 & 6 on account of the fact that it is a company having got change of land use (CLU) issued in their favour on 24.01.2012 and the revision petition vide orders dated 15.05.2012 and 08.04.2012 stands dismissed, especially in the light that there were ample opportunities and occasions provided to the petitioner to file objections against the mode of partition, but it failed to do so, despite all diligence having full knowledge to the proceedings, which admittedly has attained finality and accordingly Sanad Taqsim stands issued. Even the said licence bearing No.5 of 2012 was renewed on 25.10.2021 against which the petitioners preferred an appeal under Section 19 of the Haryana Development and Regulation of Urban Areas Act, 1975 against the renewal of such licence, which was also dismissed on 31.08.2022 (Annexure A-7).

23. Coming to the case law relied upon by the petitioners the judgments therein are in such a circumstance where the procedure as established under law had not been followed like due notice was not issued to the respondents and as a result of which objections could not be filed on their behalf, as is evident from ***M/s Capital Builders vs. Financial Commissioner and Ors., 2013 (4) RCR (Civil) 348*** i.e. 'According to the aforesaid provisions, the personal service upon respondent no.6 in the partition proceedings is a sine qua non and in case of refusal, the summons may be served by pasting a copy thereof on the outer door of the house of the person to whom it is addressed. Insofar as the question of proclamation is concerned, it is the last resort which is provided under Section 20(3) of the Act, but in the present case the procedure of proclamation, which is a substituted mode of

served and the partition proceedings may be carried out behind his back in a clandestine manner after proceeding against him ex-parte.'

24. Similar is the ratio in the case law ***Maman vs. Financial Commissioner (R) Haryana and Others, 2016(2) RCR (Civil) 5***, as is evident from the observations made in para 8, which reads as under:-

“Admittedly, the original application for partition was dismissed in default and thereafter application for restoration of the application for partition was moved. Once the main application was dismissed in default and application for restoration of the same was filed, notices were required to be given to all the respondents in the application for partition. The application for partition had been restored by the Assistant Collector IIInd Grade only on the statement of one of the respondents in the application for partition. Even if the restoration was ordered, at least petitioner and other respondents in the application for partition should have been served and opportunity to defend the case should have been provided to them. Not only this, even the application for setting aside the ex parte proceedings had been dismissed and 'naksha khe' had been called on the same very day i.e. 18.08.1993. In the order of restoration it is nowhere mentioned that proceedings had been restored from the earlier stage. While restoring the application for partition, 'naksha ka' was called even without effecting service upon respondents No.1 and 3 to 5 in the application for partition and case was adjourned to 23.07.1993. On 18.08.1993, petitioner moved application for setting aside the ex parte order, however, the same was dismissed on the same date mentioning in the order that partition case was at the final stage. As per procedure for partition, prescribed in the Punjab Land Revenue Act, firstly service is required to be effected upon all the respondents in the application for partition and thereafter opportunity to file reply is required to be given. Thereafter, if the Court comes to the conclusion that partition proceedings should continue, then Assistant Collector proceeds for partition and 'naksha alf (k)', wherein the shares of the parties and their actual possession,

excess or less land is indicated, is called. Thereafter, statements of the parties are recorded for the purpose of framing the mode of partition. After that, mode of partition is approved. After the approval of mode of partition, 'naksha bay (khe)' is called and thereafter further opportunity to file objections is required to be afforded. Once the 'naksha bay (khe)' is finalized then 'naksha jeem (Ga)' is called and thereafter 'sanad Taqsim' (instrument of partition) is required to be filed, which is a document of final partition”.

25. In the instant bunch of petitions, there is due service of notice upon the petitioners qua the proceedings before the AC 1st Grade, who actually appeared and have even filed an application for dismissal of partition, but could not succeed. It is also an admitted position herein that objections were not filed but the said failure cannot be attributed either to the respondents or to the Court below to say that opportunity to file objections was not granted to the petitioner.

26. As far as the judgment in ***Raghunath and Ors. vs. Commissioner, Rohtak Division, Rohtak and Ors, 2013(2) RCR (Civil) 459*** is concerned, it relates to the ignoring of objections by the Court where there is violation of mode of partition and matter was remanded for passing fresh orders, in the light of amended mode of partition, but it is not the circumstance in the case in hand, wherein admittedly the proceedings/mode of partition/instrument of partition have already attained finality particularly once no objections were filed by the petitioner, as has been held in the case of Lala Ram vs. Financial Commissioner, Haryana, 1992 PLJ-45 and also is the ratio laid down in ***Pritam Singh vs. Jaskaur Singh, 1992(2) PLR 742***, whereby it was held that if the mode of partition is not challenged it becomes finality and according to the mode of partition, the Patwari prepares the map, which is known as Naksha Bess and once this Naksha becomes final and is agreed

popularly known as Naksha Jeem. The relevant part from the said judgment can be read from the following”-

8. The term "completion of partition proceedings" appearing in Section 121 of the Act says that when partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect recorded therein. The plain reading of Section 121 provides that instrument of partition? is to be prepared after, the partition had been completed which means that once the distribution or revenue, rent etc. had been determined under Section 120 of the said Act, partition is complete. The joint status of the parties comes to end once partition order has been passed. Partition is not effective in the absence of instrument of partition. No severance of status of co-sharers takes place in the absence of instrument of partition and delivery of possession of the allotted portion of joint land to parties. The term "completion of partition proceedings" as mentioned in Section 121 of the Act came up for interpretation in Hadayat Khan and Ors. v. Shahamand, A.I.R. 1924 Lah. 155, wherein it was held thus :--

"It means simply that all disputes raised before the Revenue Officer had been decided by him but to that date the joint estates remained joint The parties had not been even inducted into the several shares which it was proposed to allot to them under the scheme of any partition and apparently no formal order of that kind was ever passed. After appeals to the Settlement Officer and applications for revision to the Financial Commissioner had been rejected the Revenue Officer gave orders for the drawing up of the deed of partition and the deed of partition was accordingly drawn up on the 1st December, 1905, and in obedience to the provisions of Section 121 of the Land Revenue Act it was provided in that deed that the partition should take effect from Kharif 1905. It is, of course, quite possible that a partition should be made, and possession of the several lots be given and taken and that no format instrument of partition be prepared, in which

case no doubt the giving and taking of possession by the several shares of their several lots would be held to be the date on which the joint holding ceased to be joint and became severalty. The present, however, is not such a case. There was no doubt proceedings taken with a view to effect partition long before Kharif, 1905, but those proceedings culminated and found their ultimate result and expression in the instrument of partition, and that instrument provided that the land should remain joint up to Kharif 1905, and become severally only in that harvest. From this it follows that even if the sharers took possession of the plots allotted to them before Kharif 1905 their possession upto that date was merely the possession of co-sharers in separate possession of portions of the joint estate."

9. The right to partition flows from the notion of individual ownership of property. The right is one of the ordinary legal incidents of joint ownership. It is merely an arrangement whereby co-owners having an undivided interest in one or many properties take by arrangement specific property in lieu of their shares in all. Section III of the Act provides that any of the joint owners, or a person having a decree for partition or any written acknowledgement of the right is competent to apply for partition. On 'receiving the application the Revenue Assistant will summon all the interested parties, shareholders and legal heirs of the deceased shareholder according to the procedure prescribed by Section 20 of the Act. After the summoning is complete any of the co-sharer or co sharers who have been joined as respondent may file an application for separating his share in the joint holding. A co-sharer can file objections as mentioned in Section 112 of the Act. If the objection is regarding the question of title, the Revenue Officer is at liberty to decide such question himself or direct the parties to get it decided from the civil court and stop the partition proceedings until such question of title is decided. If the Revenue Officer comes to the conclusion, that there is no question of title involved, he will ask the Patwari to prepare a map of the land to be partitioned and share of the persons asking partition, popularly known as 'Naksha Alf'. This Naksha Alf contains the

details of the possession of the co-sharer asking for partition, excess or less area cultivated by that co-sharer. On receipt of Naksha Alf the Revenue Officer shall ask the parties to file objections to it After disposing of those objections he will frame the mode of partition. Any of the parties to the partition proceedings can challenge the mode of partition decided by the Revenue Officer in appeal under Section 118(2). If the mode of partition is not challenged it becomes finality The Revenue Officer shall ask the Patwari to get the shares separated of the joint owners. According to the mode of partition, the Patwari prepares the map. which is popularly called "Naksha Be". Any party aggrieved against "Naksha Be" can challenge it in appeal on the ground that it was not prepared according to the mode of partition. When "Naksha Be" becomes final or is agreed to by the parties, it is deemed to be sanctioned. The order of sanction is popularly known as "Naksha Jeem". The order is communicated to the Patwari, Kanungo and the parties After the expiry of period of limitation, instrument of partition is drawn on the stamp paper by the Revenue Officer. It is to be specified therein as to from which harvest partition will be effective and till then the status is joint. The Revenue Officer puts the parties in possession according to the instrument of partition within three years from the date of its preparation. In the instant case, no instrument of partition was drawn and hence there was no severance of status.”

27. A Single Bench of this Court in ***Smt. Shardha vs. The State of Haryana and Ors., 2015 (86) RCR (Civil) 264*** held as under:-

“Since the petitioner was satisfied with the mode of partition and no appeal was filed by her against it, though it is provided under Section 118(2) of the Punjab Land Revenue Act, 1887, therefore, she had no right to challenge the Sanad Taqsim, which has been prepared on the basis of the suggested mode of partition. Therefore, the orders passed by the Collector and the Commissioner are without any blemish.”

28. This Court is oblivious of the settled point in the light of Chapter IX of schemes of partition manifest that after the mode of partition is determined, its proceedings come to an end and the preparation of instrument of partition remains only an executory act, the appeal, if any is to be preferred, as envisaged vide Section 118 of the Punjab Land Revenue Act, 1887, within 15 days from the date of determination of mode of partition, which is not the case in the instant bunch of petitions and in fact Sanad Taqsim also stood issued and only at that time appeal/revision were preferred.

29. In ***Munshi vs. Financial Commissioner, Haryana (Chandigarh) 1994(1) PLR 723***, this High Court referring to Lala Ram's Case supra went to the extent of saying that *“if the orders specifically dealt with in the Act against which an appeal is provided for which otherwise determine the rights of the parties, like an order refusing partition, order determining title of the parties, are not appealed against and the partition proceedings are permitted to go on till finalization of the mode of partition then the consequential orders which only implement what has been determined earlier cannot be the subject-matter for appeals”*.

30. Though, in the instant case, the proceedings are not conducted ex parte, wherein the petitioner had sufficient and ample occasion to file objections at the appropriate time, but failed to do so at any stage of the proceedings, despite being fully aware and having knowledge of the date-wise proceedings, who were not only appearing before the AC 1st Grade, but moved an application for dismissal of application for partition, the reliance can be placed to ***Ashok Kumar vs. Financial Commissioner, Haryana (Chandigarh) and Ors., 2019(2) law Herald 153***, whereby the partition proceedings were upheld as stood concluded observing that merely because the parties were proceeded against ex parte should not be a sole ground to disturb the

31. Having examined the facts and the submissions alongwith the records of proceedings in the form of zimni orders, it is well established before this Court that the petitioners in the instant bunch of writ petitions were given reasonable opportunity, as crystal clear from the zimni orders dated 14.06.2011, 21.06.2011 and 30.06.2011 and in fact had every occasion to file objections at the appropriate stage, but though, despite having full knowledge of the proceedings, opt not to prefer any objections. Rather an application dated 09.05.2011 was filed by the petitioners for dismissal of the application for partition, but the said application was dismissed on 23.05.2011. Even at this stage, no appeal was preferred against the mode of partition, if at all the petitioners had any grievance against the application dated 18.04.2011 and the proposed mode of partition submitted on 14.06.2011. The appeal No.88 against the orders dated 04.07.2011 as well as appeal No.86 against the final orders dated 03.05.2011, 24.05.2011 and 07.06.2011 passed by the AC 1st Grade was instituted for the first time on 06.03.2012, which otherwise as per Section 118 of the Act of 1887 should have been filed within 15 days from the date of cause of action, if any arisen to the petitioners. These appeals do suffer from inordinate delay and even much later to the issuance of Sanad Taqsim were rightly dismissed by the Appellate Authorities.

32. On another aspect which also should not be ignored by this Court is principle of natural justice which also available to the respondents as well, wherein law of equity too lies in their favour, who have the Change of Land Use (CLU) got issued and subsequently even renewed against which also an appeal by the petitioners was filed and the same was dismissed by the Appellate Authority under Section 19 Act of 1975.

33. This Court alongwith enunciation of law and after due consideration to the principles of natural justice, wherein opportunity to file

that substantive provisions as normally to be complied with have been duly adhered during the proceedings leading to approval/sanction of mode of partition and issuance of Sanad Taqsim, as has been consistently established by the respondents No.5 & 6, whose arguments can be well reiterated, to decline any interference in the orders dated 03.08.2011 (Annexure P-7), 04.07.2011 (Annexure P-8), 15.05.2012 (Annexures P-9 & P-10) and 09.07.2011 (Annexure P-11), 08.04 2013 (Annexure P-12) suffering neither from any illegality nor infirmity.

34. Hence, the writ petitions are ordered to be dismissed with no order as to costs.

COCP-1821-2021 & COCP-1822-2021

35. The instant contempt petitions were preferred against interim order 01.07.2014 (Annexure P-1) and final order dated 09.05.2016 (Annexure P-2) in the bunch of writ petitions, which were adjudicated earlier vide main CWP No.25448 of 2013 against which and LPA was preferred whereby matter was remanded back to the Single Bench for fresh adjudication. In view of the present judgment, the contempt petitions do not survive and rule is accordingly discharged.

36. Both the contempt petitions also stand disposed of accordingly.

37. A photocopy of this order be placed on the files of other connected cases.

(SANDEEP MOUDGIL)
JUDGE

09.11. 2023

Meenu

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