

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-16957-2022

Date of decision : 13.01.2023

Sukhdev Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present:- Mr.Shakti Mehta, Advocate
for the petitioners.

Mr.Ferry Sofat, Addl.A.G. Punjab
for respondents no.1 to 4.

VIKAS BAHL, J.(ORAL)

This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the order dated 23.02.2022 whereby respondent no.2 has dismissed the revision petition filed by the petitioners against the order dated 28.10.2021 passed by respondent no.3 vide which respondent no.3 has upheld the order dated 10.07.2018.

Brief facts of the present case are that respondent nos. 5 to 11 had filed an application for partition of land measuring 59 kanal 0 marla situated in village Lubana Karmu, Tehsil Nabha, District Patiala as per the jamabandi for the year 2011-12. The Assistant Collector Ist Grade vide order dated 02.06.2016 had observed that after perusing the record it was found that some area of land falls under *gair mumkin* and some land was

chahi and after observing that the applicants had mentioned in the application that the *gair mumkin* land be left out and the agricultural land be ordered to be partitioned. The petitioners had challenged the said order before the Collector, Sub Division Nabha and the Collector, Sub Division Nabha vide order dated 10.07.2018 had dismissed the appeal filed by the petitioners. It had been observed that every co-sharer is entitled to seek partition of the joint land and since the *gair mumkin* land had been left out, thus, there was no merit in the appeal and dismissed it accordingly. The revision petition filed by the petitioners was dismissed by the Divisional Commissioner, Patiala Division, Patiala after observing that the applicants who had filed application for partition were co-sharers in the suit land and had every right to get the land partitioned by filing application for partition and the said application was filed on the basis of jamabandi, to which presumption of truth is attached and since, only the agricultural land was partitioned, thus, the argument of the petitioners to the effect that the partition of the said land cannot be done, was rejected. The Divisional Commissioner, Patiala Division, Patiala further observed that the revision petition had been filed only to delay the proceedings and the partition proceedings had been pending since 5 years and accordingly, directed the A.C. Ist Grade, Nabha to complete the partition proceedings within 6 months from the date of receipt of the order. The petitioners being dissatisfied with the same, filed a revision petition before the Financial Commissioner which was dismissed vide order dated 23.02.2022 and it was observed in the said order that only a small portion of the land was *gair mumkin* and major portion of the land was agricultural land.

Learned counsel for the petitioners has submitted that once

certain part of the land was found to be *gair mumkin* then, the remaining part of the land, even if it was agricultural land, should not have been partitioned by the revenue authorities.

However, no law has been cited by the learned counsel for the petitioners to substantiate the arguments raised.

This Court has heard learned counsel for the petitioners and has perused the paper book.

A perusal of the order dated 02.06.2016 passed by the Assistant Collector Ist Grade would show that the land which was *gair mumkin* had been left out and the remaining agricultural land was ordered to be partitioned. The Financial Commissioner has, vide order dated 23.02.2022, stated that the portion of the land which was *gair mumkin* was very small and major portion of the land was agricultural land. On a pointed query raised by this Court, learned counsel for the petitioners has not been able to state that as to how much land of total land measuring 52 kanal 0 marla is *gair mumkin* land. Be that as it may, the authorities have found that private respondents no.5 to 11 who had filed the application for partition were co-sharers in the land and their ownership also reflected in the jamabandi to which, presumption of truth is attached. It is a matter of settled law that agricultural land is to be partitioned by the revenue authorities in accordance with the provisions of chapter IX of the Punjab Land Revenue Act, 1887. No law has been cited before this Court to show that in case a small portion of the land is *gair mumkin* then the partition with respect to the remaining land i.e., agricultural land cannot be done by the revenue authorities under the Punjab Land Revenue Act, 1887. In case, the argument of learned counsel for the petitioners to the effect that the agricultural land

should not have been partitioned is accepted, then, there would be no forum for seeking partition of the agricultural land.

In view the above, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

January 13, 2023
Davinder Kumar

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