

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

CWP-15078-2023 (O&M)

Date of Decision: 10.08.2023

Rajpal and others

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sanjay Kumar, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

CM-12969-CWP-2023

Allowed as prayed for. Annexure P-6 is taken on record.

Main case

Petitioners have approached this Court praying for quashing of order dated 05.01.2022 (Annexure P-1) passed by the Assistant Collector IInd Grade-cum-Tehsildar, Faridabad, order dated 09.06.2022 (Annexure P-2) passed by the Collector-cum-Sub Divisional Magistrate, Faridabad and order dated 03.05.2023 (Annexure P-3) passed by Divisional Commissioner, Faridabad and further directing respondents No.1 to 4 to carry out partition proceedings afresh.

It has been contended by learned counsel for the petitioners that the petitioners are the residents, inhabitants and proprietors of village Bhataula, Tehsil & District Faridabad and partition of land measuring 199 kanals 17 marlas had been carried out without due procedure of law. It is submitted that the orders in the partition proceedings dated 05.01.2022, 09.06.2022 and 03.05.2023 passed by the Assistant Collector IInd Grade, Faridabad, Collector-cum-Sub Divisional Magistrate, Faridabad and Divisional Commissioner, Faridabad, respectively, are against the facts and

circumstances of the case and the settled proposition of law. He submits that aggrieved by order passed by Assistant Collector IInd Grade, the petitioners filed an appeal before the Collector-cum-Sub Divisional Magistrate on 19.04.2022 and the decision was pronounced on 09.06.2022, whereby the appeal was dismissed and thereafter, the revision filed against the order dated 09.06.2022 before the Divisional Commissioner was also dismissed on 03.05.2023. He submits that the petitioners and the private respondents are co-sharers in the land measuring 199 kanals 17 marlas and out of it, 10 kanals 7 marlas is recorded in the revenue record as non-cultivable, wherein houses of different co-sharers were constructed. He submits that the non-cultivable area was much more than 10 kanals 7 marlas. He has submitted that the petitioners are aggrieved by the partition proceedings carried as they had been given land in prime khasra numbers for path only in killa No.9, 10, 6/1, 15/1, 11/1 and that too by deducting share of land only of the petitioners. He has submitted that the petitioners should have been given the piece of land in the front by dividing killa No.11, 15 and 6, which had not been done. He has submitted that in view of Section 13 of the Haryana Land Revenue Act, 1887, only remedy left with the petitioners is to approach this Court by way of filing the present petition. He has relied upon the judgment of this Court in **Balbir Chand vs. Financial Commissioner Appeals-II, Punjab**, 2010(2) RCR (Civil) 263 and has submitted that the as per the law settled finality attached to a Sanad Takseem can always be impugned by invoking the powers under Articles 226 of the Constitution of India. He further relies upon the judgments of this Court in **Lal Chand vs. Sunil Kumar**, 2014(54) RCR (Civil) 257 and **Arvind Kumar and another vs. Financial Commissioner, Punjab and others**, 2017(2) LAR 113 P&H. He

has submitted that all the co-sharers were not served properly and thus, proper opportunity was not given to the co-sharers to file their objections. He has further submitted that the impugned orders passed are not speaking orders and are *ex parte* against the co-sharers and thus, are unsustainable in the eyes of law. He submits that the partition proceedings have been carried out by not adhering to the mode of partition as in the instant case specific Khasra numbers were proposed to be given to specific persons. It is submitted that the mode of partition was proposed on 30.11.2021 and was approved on 08.12.2021, within a period of less than 10 days. He has submitted that there are so many glaring irregularities while preparing naksha 'kh'. He has further submitted that naksha 'kh' to 'g' both were sanctioned on the same date i.e. 05.01.2022 and thus, the partition proceedings have been carried out in a haste. He submits that in view of this, the impugned orders are unsustainable in the eyes of law and thus, deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated and notices were issued by the Assistant Collector IInd Grade, Faridabad. The respondents were served as per rules for their appearance on 07.01.2008. On the commencement of the partition proceedings on 09.11.2021, map 'k' was accepted. On 30.11.2021, mode of partition was proposed and opportunities were given to file objections. On 08.12.2021, while accepting the mode of partition map "kh' was presented. On 20.12.2021, map 'kh' was received from the field staff. No objections over map "kh' were filed. On 22.12.2021, the opportunities were given to file objections over the map 'kh'. On

29.12.2021, map 'kh' was approved and on 05.01.2022, map 'kh' was accepted and alongwith map 'kh' map 'g' was also prepared and thereafter, map 'g' was accepted. The appeal was filed by the petitioners against the order dated 05.01.2022 before the learned SDM, Faridabad. Notices issued to the respondents by the appellate authority and both the parties were heard and it was observed that mode of partition was proposed on 30.11.2021 and 08.12.2021, date was fixed for objections to the mode of partition. After considering the same, mode of partition was approved on 08.12.2021. Having given opportunities for filing the objections, mode of partition was approved on 05.01.2022. It was observed by the learned Appellate Court that the Assistant Collector after granting opportunities for filing objections had ordered partition dated 05.01.2022 and after issuing the order of partition, sanad takseem was published on 07.02.2022. Resultantly, the appeal was dismissed vide order dated 09.06.2022. Aggrieved by the same, the petitioners filed revision before the learned Commissioner, Faridabad. Both the sides were again heard and the record was perused. It was observed that during the partition proceedings the petitioners did not raise any objections even after having been given opportunities. There were no objections filed regarding mode of partition, map 'kh' or partition etc. Thus, after following procedure, sanad takseem was issued and thus, partition proceedings were finalized. It is evident that the petitioners duly participated in the partition proceedings since beginning and thus, the partition proceedings had been carried out after following due process of law. It is settled proposition of law that once sanad takseem has been issued, the partition proceedings are finally executed and thereafter, the contentions raised by the petitioners as in the present case are only a method for

prolonging the partition proceedings. Even otherwise, the scope of writ jurisdiction as held in various judgments is limited that in disputed question of facts, the writ Court cannot interfere on the factual aspects recorded by the authorities below.

Hon’ble Division Bench of this Court in Ranbir Singh vs. Financial Commissioner, Haryana and others, Law Finder Doc Id # 83602 held as under:

“9..... the final order of partition can be impugned by filing a writ petition under Article 226 of the Constitution of India. However, while examining the orders, passed in partition proceedings, this Court does not appraise the correctness thereof as an appellate or revisional forum. This Court while exercising its writ jurisdiction, would confine itself to examine any legal infirmities in the proceedings. Examination of findings of fact would be beyond the purview of this Court’s jurisdiction.”

This Court in Mir Singh and another vs. State of Haryana and others, 2020(3) RCR (Civil) 38 held that partition effected after following due procedure as prescribed in the Punjab Land Revenue Act, 1887 should not be interfered with.

In the considered opinion of this Court and in view of the law settled, the impugned orders suffer from no illegality and thus, the present petition being devoid of any merit is hereby dismissed.

10.08.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No