

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

CWP-18536-2017(O&M)

Decided on 12.12.2023

Santlal and another

...Petitioners

Versus

The Financial Commissioner, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Balraj Singh Rathee, Advocate, for the petitioners.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Mr.S.K. Yadav, Advocate, for respondents No.3 and 4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 24.05.2017 (Annexure P-20) passed by respondent No.1, order dated 27.04.2015 (Annexures P-15 and P-16) and order dated 05.06.2015 (Annexure P-17) passed by the learned Assistant Collector Ist Class, Nangal Chaudhary, whereby the partition proceedings have been done without following the statutory rules of partition and the partition proceedings are totally illegal, arbitrary and unconstitutional and in violation of mode of partition. Further, it is submitted by learned counsel for the petitioners that respondent No.3 filed suit/application dated 23.06.2011 for partition of the land Khewat No.95, Khatoni No.105, Mustil & Killa & Khasra No.8//18/2 (6-4), 23/1 (4-1), Kita 2, total area 10 Kanal, 5 marla in the revenue estate of village Mauja as entered in *Jamabandi* for the year 2007-2008 before the Assistant Collector Ist Class, Narnaul. He submits that respondent No.3 purchased 1/4th share of the above-said land vide Vasika No.126, dated 16.05.2011 from Kanwar Singh. It is submitted that the petitioners being owner of half share of the said land filed

their objections to the suit for partition vide his objections dated 18.04.2012. It is submitted that mode of partition was approved vide order dated 13.06.2012 passed by Assistant Collector Ist Class and it was decided that partition shall be done as per Rules of consolidation, the possession and cultivation is to be kept in kind. He submits that *Halqa Girdawar* without physically visiting the spot submitted *Naksha Bey* in violation of the mode of partition. He submits that aggrieved by the same, the petitioners filed their objections to the *Naksha Bey* on 13.09.2012 that they they have laid the pipeline in the west side of the land with *pucca* construction. He has submitted that the petitioners prayed that they be given the land towards west as they are the owners of half share of the land. He has submitted that finding their objections to be genuine, the learned Assistant Collector Ist Class directed to prepare three separate Khewat and while preparing the *Naksha Bey* quality of the land, possession was to be kept in mind and vide his order dated 06.11.2012 amended *Naksha Bey* was ordered to be prepared. Thereafter, *Naksha Bey* was submitted on 23.12.2012 but the same was approved without considering the objections submitted by the petitioners. He has submitted that aggrieved by the same, the petitioners again filed their objections dated 08.04.2013 that they were in possession of half share of the land towards west and as they laid pipeline, they were to be placed towards west in half share and their half share be given on the approach road leading to Nangli. However, the learned Assistant Collector Ist Class approved the *Naksha Bey* vide order dated 14.06.2013, which is totally illegal and arbitrary. It is submitted that again aggrieved the petitioners filed an appeal before the Collector-cum-District Revenue Officer, but their counsel without their consent made statement dated 18.12.2013 that the matter was compromised between the parties. He submits that the statement made by their

counsel, namely, Mr. B.S. Yadav, Advocate, was without their consent and in connivance with respondents No.3 and 4. He has submitted that the Assistant Collector Ist Class recorded the statement of their counsel dated 20.03.2015 that the amended *Naksha Bey* was prepared as per the compromise but the same was without consent of the petitioners. He has submitted that aggrieved by the same, the petitioners filed their objections to the *Naksha Bey* dated 27.04.2015 by engaging a new counsel, namely, Sh. Lakhi Ram, Advocate, but the learned Assistant Collector Ist Class without dealing with the objections rejected the same and ordered for preparation of *Naksha Zeem*. He has submitted that without dealing with their objections, *Sanad Takseem* was issued vide order dated 05.06.2015 in a totally illegal and arbitrary manner. It is submitted that the petitioners approached the learned Collector-cum-District Revenue Officer by way of filing appeal, but the same was dismissed on 03.05.2016 holding the same to be not maintainable. He has submitted that Halqa Girdawar in connivance with the respondents prepared report dated 06.07.2015 that the possession of the land in question has been handed over to the parties, thus, the partition proceedings were completed. It is submitted that aggrieved by the same, petitioner No.1 challenged the order dated 27.04.2015 by way of filing revision before respondent No.1 but the same was illegally dismissed by holding that *Naksha Bey* was approved on the mutual agreement between the parties. He has submitted that respondent No.1 has miserably failed to appreciate that the petitioners never agreed with the compromise alleged and the same was totally without their consent. He has further submitted that the partition proceedings have been carried out totally in violation of the settled proposition of law and the mode of partition approved, thus, the same being unsustainable in the eyes of law, deserves to be set aside. He has relied upon

the judgment of Hon'ble Supreme Court in Gurpeet Singh vs. Chatur Bhuj Goel, 1988 AIR (SC) 400 and judgment of Calcutta High Court in Molla Sirajul Haque vs. Gorachand Mullick and others, 1993 AIR (Calcutta) 58.

Per contra, learned counsel for respondents No.3 and 4 has vehemently opposed the submissions made by counsel for the petitioners. He has submitted that there is no illegality whatsoever committed by the respondent-authorities in carrying out the partition proceedings. He has submitted that on filing of the application for partition by respondent No.3, notices were issued to all the co-sharers and they duly appeared and filed their objections to the *Naksha Bey*. It is submitted that statement of counsel for the petitioners was recorded by the Collector on 18.12.2013 and thereafter, by the Assistant Collector Ist Grade on 15.07.2014 *Naksha Bey* was called and approved. Finally the *Sanad Takseem* was issued and possession was delivered to all the co-sharers. He has submitted that the appeal filed by the petitioners was dismissed on 03.05.2016, wherein, it was specifically mentioned that neither petitioner No.1 nor his counsel appeared for ten dates. He has submitted that thereafter, mutation was also sanctioned on 16.07.2015 and possession was delivered on 06.07.2015. He has submitted that thereafter, the petitioners became greedy and resiled from the compromise arrived at between the parties. It is submitted that clandestinely revision petition was filed on the ground that their counsel made statement without their consent. He has submitted that revision petition was filed after about four years of the finalization of the partition proceedings, which in itself is sufficient to conclude that the same has been filed after a due deliberation. It is submitted that there is nothing on record to show that the petitioners have taken any action against their counsel for making a statement without their consent. He has submitted that from the facts

and circumstances of the case, the conduct of the petitioners is writ large that they were duly satisfied with the partition proceedings carried out, however, lateron, they changed their mind and resiled from the compromise. It is submitted that no terms and conditions of the mode of partition has been violated and thus, 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 the partition proceedings were initiated at the behest of respondent No.3, who filed suit/application for partition on 23.06.2011. Notices were issued to the petitioners and they duly appeared through their counsel. The objections were filed, which were duly appreciated. Mode of partition was approved on 13.06.2012. Conditions No.1 and 2 of the mode of partition are as under:-

- “1. That the land entered in Khewat No.95, Khatoni No.105, Mustil and Killa and Khasra No.8//18/2 (6-4), 23/1 (4-1), Kitta 2, Revenue Area 10 Kanal, 5 Marla, Revenue Estate Mauja Bidsimli, Tehsil Narnaul, vide jamabandi for the year 2007-08, the separate Khewat is to be prepared for petitioner and the respondents.
2. That the possession and cultivation is to be considered.”

From the perusal of the same, it is apparent that total land to be partitioned was 10 Kanal 5 Marla. Besides this, it was approved that separate Khewat is to be prepared for the petitioner and the respondents therein. As per condition No.2, possession and cultivation was to be considered for carrying out partition. *Naksha Bey* and *Naksha Kha* were also prepared after considering the objections filed. The statement of the counsel for the petitioners was recorded by the Collector on 18.12.2013. Thereafter, an appeal filed was

dismissed and revision filed before the learned Financial Commissioner was also dismissed. Learned counsel for the petitioners has drawn the attention of this Court to the *Naksha* showing the location of the land partitioned. A perusal of the same shows that separate khewats of all the co-sharers have been carved out and all three have been given access from the main road. There is no gainsaying that the petitioners have the biggest share in the total land partitioned. In the given situation when the conditions for the partition were to be complied with, the authorities have maintained the same. The petitioners were given separate khewat and a rasta was provided to the same from the main road. Any other method would have definitely fragmented the share of the parties and thus, no violation of mode of partition has been committed by the respondent-authorities. The petitioners have vehemently contended that compromise relied upon by the authorities was on the basis of the statement made by their counsel for which they never gave consent. There is nothing on record to show that the petitioners have taken any action against their counsel, if the statement is made without their consent. It is also apparent that the petitioners have joined the partition proceedings since beginning and thus, no proceedings were carried out in their absence. It is further apparent that the revision petition was filed before respondent No.1 after a considerable time when the possession of the respective shares had already been handed over to the parties and the mutation was also entered. There is no dispute regarding the law settled in the cited cases by Hon'ble Supreme Court and the Calcutta High Court as submitted by learned counsel for the petitioners, however, in the facts and circumstances, the same is distinguishable and thus, not applicable in the case in hand. This Court does not find any infirmity in the impugned orders

passed and thus, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

12.12.2023
sharmila

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