

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.17959 of 2023
Date of Decision : 21.08.2023

Beena @ Krishna and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

RAJESH BHARDWAJ, J. (Oral)

Present writ petition has been filed praying for quashing the impugned orders dated 04.05.2023 (Annexure P-12) passed by learned Commissioner, Gurugram Division, Gurugram; order dated 13.08.2022 (Annexure P-9) passed by learned Sub Divisional Officer-cum-Collector, Gurugram and order dated 09.12.2021 (Annexure P-7) passed by learned Assistant Collector, 2nd Grade, Gurugram whereby the objection to the Naksha Bey had been dismissed, which has been affirmed while dismissing the appeal and revision filed by the petitioners and conducted the partition proceedings in highly improper and arbitrary manner. Further prayer has been made for setting aside the Sanad Taksim if any issued.

It has been contended by learned counsel for the petitioners that respondents No.5 to 11 filed an application titled as “**Dayanand and others vs. Beena and others**”, before the Assistant Collector, 2nd Grade, Manesar, District Gurugram for partition of the joint land owned and

possessed by the petitioners and respondents. He has submitted that the abovesaid land comprised in Khewat No.420 and 649 was the joint ownership of the petitioners and the private respondents being co-sharers. Besides this, the petitioners and private respondents were also owner in possession of the land situated in Khewat No.425. He submits that the respondents deliberately while filing the application for partition had not included the land situated in Khewat No.425. He further submits that the proceedings on the application filed by respondents No.5 to 11 had been initiated by the Assistant Collector, 2nd Grade, Manesar on 25.03.2021. Statements of parties with regard to the mode of partition were recorded through their counsel and their counsel made the statement on 25.03.2021. Thereafter, mode of partition was prepared and accepted on 18.04.2021. He vehemently submits that in the mode of partition, there was a condition that possession would be kept intact and the land would be completed by disturbing the possession from the adjacent land if so necessary. He further submits that the petitioners submitted that there were in possession of land Killa No.17 and 24 of Rectangle No.14 and Killa No.4, 7 and 14 and the same be given to them. He submits that while preparing the Naksha Bey on 27.09.2021, the conditions as incorporated in the mode of partition were not adhered to and thus, the Naksha Bey was prepared in violation of the terms and conditions of mode of partition at the instance of respondents as the possession was disturbed at the time of partition. He submits that possession of the petitioners has been broken in highly improper and arbitrary manner on 11.11.2021. He submits that objections filed by the petitioners were dismissed by passing a non speaking order dated

09.12.2021. He further submits that aggrieved by the same, the petitioners filed an appeal before the learned Collector, Gurugram on 20.12.2021. However, the appeal filed by the petitioners had been dismissed by the learned Collector without considering the facts and circumstances of the case and the law settled vide impugned order dated 13.08.2022. He submits that no spot inspection was made while preparing Naksha Bey and possession of the petitioners had been disturbed. It is submitted that aggrieved by the impugned order, the petitioners approached the learned Commissioner, Gurugram by filing the petition against the orders dated 09.12.2021, 13.08.2022 on 15.09.2022. It is further submitted that revision petition filed by the petitioners had been illegally dismissed by the learned Commissioner vide impugned order dated 04.05.2023 as neither the evidence on record had been appreciated nor the settled proposition of law has been adhered to. He has submitted that the impugned orders being against the evidence on record and the law settled, deserve to be set aside.

I have heard learned counsel for the petitioners and perused the material on record.

After hearing learned counsel for the petitioners and perusing the record, it is evident that application for partition has been filed by respondents No.5 to 11 for partition of the land measuring 143 Kanal 17 Marla. Mode of partition was prepared on 18.04.2021. Condition No.3 was incorporated in the mode of partition, as per which the partition would be done by keeping the possession intact and nature and price of land would be kept in notice. The possession could be disturbed for completing the difference of land. Thereafter, proceedings were carried out. The Assistant

Collector 2nd Grade, Manesar heard the parties on the objections filed by the petitioners. Finding no merit in the objections against the site plan Bey, same were rejected and thus, site plan B was approved by him vide order dated 09.12.2021. Thereafter, the appeal was filed before the Sub Divisional Officer-cum-Collector, Gurugram. In the appeal filed by the petitioners, both the sides were heard and record was perused. The Sub Divisional Officer-cum-Collector called the spot inspection report from the Tehsildar, Manesar on which his report dated 13.07.2022 was recalled. The contentions/objections of both the parties were heard and appreciated. It was found that partition proceedings were carried out as per terms and conditions of mode of partition and thus, finding no infirmity in the order passed by the Assistant Collector 2nd Grade, Manesar, the appeal was dismissed. Aggrieved by the same, the petitioners filed an appeal under Section 16 of the Haryana Land Revenue Act, 1887 before the Commissioner, Gurugram. Notice was issued to the other side and counsel for both the parties were heard. Record was appreciated. After hearing, the Commissioner had observed that land had been partitioned as per the share of parties and it was suggested that if they wanted partition of the land, which is Gair Mumkin Chah, they would have to file application for the partition of the land before the Assistant Collector, 2nd Grade, Manesar. Accordingly, the directions were issued to the Assistant Collector, 2nd Grade, Manesar.

Evidently, as a result, the appeal filed was disposed of and thus, from the perusal of the impugned orders, this Court does not find any perversity in the impugned orders passed dated 04.05.2023

(Annexure P-12), 13.08.2022 (Annexure P-9) and order dated 09.12.2021 (Annexure P-7), and thus, the same are in consonance with the mode of partition. Resultantly, the petition being devoid of any merit, is hereby, dismissed.

(RAJESH BHARDWAJ)
JUDGE

21.08.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No