

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(105)

CWP-24119-2022

Date of decision: - 07.02.2023

Balwinder Dass alias Gurnam Dass and others

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Bikramjit Singh Baath, Advocate,
for the petitioners.

Mr. Ferry Sofat, Additional Advocate General, Punjab
for respondents No.1 to 3.

VIKAS BAHL, J. (ORAL)

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 10.08.2022 (Annexure P-5) passed by respondent No.1 and order dated 10.12.2019 (Annexure P-1) passed by respondent No.2 whereby the partition application filed by respondent No.4 has been decided. Challenge has also been laid to the order dated 21.04.2022 (Annexure P-2) passed by the Collector, Sub Division Khamano, District Fatehgarh Sahib.

2. Brief facts of the present case are that an application under Section 111 of the Punjab Land Revenue Act was filed by respondent No.4 Gurdas Singh with respect to land comprised in Khewat No.422/417

Khatoni no.462, Khasra Number 40//6(7-9), 40//7/1(1-1), 40//13(8-0), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 19/2(4-18), 22(8-0), 23(8-0), 24(8-0), 25(8-0), 41//10(3-8), 11(3-6), 4//20(3-8), 21(3-10) situated in the area of village Nanowal, Hadbast No.99, Tehsil Khamanon, District Fatehgarh Sahib as per Jamabandi for the year 2012-13.

3. During the first round of litigation, the matter had gone up to the Financial Commissioner Revenue, Punjab, Chandigarh who, had directed the authorities to decide the same afresh after hearing all the parties. After the said remand order, the Assistant Collector 1st Grade (Tehsildar), Khamanon, Fatehgarh Sahib/respondent No.2, vide order dated 10.12.2019 (Annexure P-1) approved Naksha "Irri" and respondent No.4 was directed to present the stamp paper worth Rs.500/- alongwith application for the purpose of *sanad takseem* on the expiry of the period of limitation for filing the appeal. In the said order, respondent No.2 had observed that after the remand of the case, spot was inspected in the presence of the parties and objections raised by petitioners No.1 to the effect that there was a passage from the side of Khasra No.40//26 and that passage should be given to respondent No.4 instead of providing a passage from western side of Khasra No.40//22 and western and northern side of 19/2 was taken note of. It was observed that, after the spot inspection, it surfaced that Khasra No.40//26 was not a part of the application for partition and since the co-sharers to the present partition application did not have any share in the said land, therefore, no passage could have been provided from the said Khasra number. It was also observed that on the basis of the same, an amended Naksha "Arra" was submitted on 10.09.2019 and was shown to the parties and the objections were invited and although, the present petitioners had

submitted the objections on the aspect of passage but the counsel for the petitioners did not appear for substantiating his objections. It is further apparent in the impugned order that the objections of the present petitioners to the amended Naksha “Arra” were considered and the same was rejected on the ground that Khasra No.40//26 was not part of the partition proceedings and thereafter, the amended Naksha “Arra” was passed on 15.10.2019 and directions were issued to prepare Naksha “Irri”. After the Naksha “Irri” was prepared, the same was compared with Naksha “Arra” and the same was found to be correct and no objection was raised by any of the parties, much less, by the petitioners against Naksha “Irri” inspite of an opportunity having been granted and accordingly, Naksha “Irri” was approved on 10.12.2019. Against the order dated 10.12.2019 (Annexure P-1), an appeal was filed before the Collector, District-Fatehgarh Sahib by the petitioners which was dismissed on 21.04.2022 (Annexure P-2).

4. The sole argument raised before the Collector was to the effect that the passage should be provided from Khasra No.40//26 and the same was rejected. The petitioners filed a revision petition before the Financial Commissioner Revenue, Punjab against the orders dated 10.12.2019 and 21.04.2022 and the said revision petition was dismissed by Financial Commissioner Revenue, Punjab vide order dated 10.08.2022 (Annexure P-5). In paragraph No.4, the Financial Commissioner Revenue, Punjab had noticed that the only grievance of the petitioners was that passage to the “tak” of respondent No.4 should have been provided from Khasra No.40//26. The said objection was rejected by reiterating the fact that Khasra No.40//26 is not a part of the total land which is sought to be partitioned and it was further observed that the said objection had been rightly rejected by

the Assistant Collector 1st Grade and that the said order had been rightly affirmed by the Collector. The Financial Commissioner Revenue, Punjab had observed there was no illegality in the orders of the Courts below and thus, dismissed the revision petition.

5. Learned counsel for the petitioners has argued that there was a passage from khasra No.40//26 and it is the said passage, which should have been given to the “tak” of the respondent No.4 instead of creating a new passage from the western side of Khasra No.40//22 and western and northern side of 19//2. It is further submitted that the orders of the authorities below deserve to be set aside on the said ground alone.

6. This Court has heard counsel for the parties and has perused the paper-book.

7. The Assistant Collector 1st Grade (Tehsildar) vide order dated 10.12.2019 (P-1), the Collector, vide order dated 21.08.2022 (P-2) and the Financial Commissioner Revenue, Punjab, vide order dated 10.08.2022 (P-5) had concurrently observed that Khasra No.40//26 is not a part of the partition application and is not shown to be in the ownership of the co-sharers who have applied for partition and thus, no passage could be provided from the said Khasra No.40//26. The said finding has not been shown to be perverse or illegal. It is not the case of the petitioners that Khasra No.40//26 is either a part of the partition application or is owned by the co-sharers who were party to the said application. The sole argument raised by the learned counsel for the petitioners to the effect that earlier a passage did exist from Khasra No.40//26 and thus, the same passage should continue, is misconceived, inasmuch as, neither the said land comprising in Khasra No.40//26 is a part of the partition application, nor the co-sharers to

the present application have been shown to be the owners of the same, thus, the passage cannot be provided from the said land. No judgment of any Court or provision of law has been referred to before this Court to show that passage running in the land beyond the land, which is subject matter of the partition application, could be provided to the co-sharers for access of their land. It is not case of the petitioners that the said passage is referred in any revenue record (revenue *rasta*). The usage of the said passage would depend upon the wish and will of the person in whose ownership the said passage would fall and the said person may not like to use the same as a passage.

8. It is further relevant to note that the Assistant Collector had specifically noticed that the Naksha “Irri” was submitted in the Court on 05.12.2019 and was shown to the parties and the said Naksha “Irri” was compared with Naksha “Arra” and the same was found to be correct and in spite of an opportunity granted to the parties, no objection was raised by any persons to the said Naksha “Irri” and thus, the said Naksha “Irri” in which the passage had been provided from western side of Khasra No.40//22 and western and northern side of 19/2 had been approved on 10.12.2019. The petitioners have not been able to show that the said observation made by the Assistant Collector 1st Grade in order dated 10.12.2021 (at page 21) is perverse or illegal. Once, the petitioners had not raised any objection with respect to the Naksha “Irri”, thus, it would not be open to the petitioners to now raise a plea contrary to the said Naksha “Irri”.

9. Keeping in view the above-said facts and circumstances, this Court is of the view that the orders passed by the respondent authorities are legal, valid and in accordance law and thus, do not call for any interference and the present writ petition being sans merit, deserves to be

dismissed and is accordingly, dismissed.

February 07, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes