

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

LPA-1032-2017 (O&M)

Date of Decision: 25.01.2023

Bhag Singh

.....Appellant

Vs.

Financial Commissioner, Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Amardeep Singh Gill, Advocate,
for the appellant.

Mr. Akash Mehta, Advocate, for
Mr. Munish Gupta, Advocate,
for the respondent-Caveator.

G.S.SANDHAWALIA, J. (ORAL)

The challenge in the present Letters Patent Appeal is to the order of the learned Single Judge who allowed the writ petition No. 1111 of 2013 of the private respondents No. 13 to 16 and set aside the order of the Commissioner dated 13.12.2006 (Annexure P-8) and the Financial Commissioner dated 31.08.2012 (Annexure P-10) and upheld the order of the Assistant Collector, dated 05.05.2005 (Annexure P-5) which had approved the Mode of partition dated 03.09.2004 (Annexure P-2), vide order dated 23.03.2017.

A perusal of the paper-book would go onto show that an application of partition by way of separation of the shares of land measuring 38 kanals and 7 marlas described in the said application Annexure P-1 falling in Village Bhajjal, Tehsil Garhshankar, was filed by

the said private respondents. It is specifically averred that the land is situated on the road side and each co-sharer is entitled to get the land on the road side as per their share and there is a major dispute on that account. The proposed mode of partition dated 03.09.2004 (Annexure P-2), as prepared by the Assistant Collector, Grade-I, subsequently mentioned that the partition be done after restoration of possession and the nature and location of the land will take care of. As per clause No. 4 the land/area adjoining to the road was to be given as per the shares. The same has been objected to by the present appellants, on the ground that they were in separate physical possession as per the entitlement for the last 50 years and there was no need to effect the partition while disturbing the possession as it is against the rules of consolidation. The passage situated towards east was a link road and the value of the land was the same and therefore Clause 4 as such of the Mode of Partition was objected to, as per the objections dated 21.02.2005 (Annexure P-3).

In the reply filed by the private respondents before the Assistant Collector, Ist Grade, Garhshankar, on 14.03.2005 (Annexure P-4), it was stated that the land under partition was on the metalled road and more valuable and therefore it was stated that it be distributed proportionately among all the co-sharers.

Eventually, the Assistant Collector, vide his order dated 05.05.2005 (Annexure P-5), on the basis of the said objections came to the conclusion that it is necessary to provide justice that each party be given his share keeping in view the nature and location of the land, even if it is a link road and whether near the '*Abadi*' or near the village, the rate would be differ. Consequently, the objections raised by the present appellants

regarding the Mode of Partition was rejected and Mode of Partition prepared on 03.09.2004 (Annexure P-2) was sanctioned.

The appeal filed by the present appellants was dismissed by the Sub-Divisional Magistrate-cum-Collector, Garhshankar, on 13.12.2005 (Annexure P-6), after perusing the record of the lower Court who also inspected the same in the presence of the parties. It was noticed that the area of 121 Kanals was near the '*Abadi*' and that land was costly than other land and therefore, has been equally divided. It was also noticed that there is no entry in the revenue record regarding 50 years old partition and therefore Clauses 3 and 4 of the proposed mode of partition were not contradictory to each other rather they were supplementary and accordingly, the appeal was dismissed.

Unfortunately, the Commissioner chose to interfere, vide order dated 13.12.2006 (Annexure P-8), on the basis of written submissions and apparently without hearing the parties, which would also be clear from the order of the Commission that even the presence of the counsel is not recorded. Reference in the order is also to the written arguments and reference was made to the order of the Assistant Collector, Ist Grade, that he had failed to give finding as to whether any part of the land is abutting metalled road or link road, which was in contradiction to the appellate order passed by the Collector who had visited the site. Resultantly, while exercising the revisional powers he wrongly relied upon the order of the Assistant Collector rather than the order of the Collector and reversed the same and directed framing a fresh Mode of Partition.

The private respondents unsuccessfully challenged the order before the Financial Commissioner who also failed to rectify the legal flaw

and passed a non-speaking order by disposing of the revision petition and referring to to the order of the Assistant Collector Ist Grade and without even examining the record.

We have also perused the site plan which has now been appended which would go on to show that the appellants herein have the possession of all the 04 Killas which are falling on the link road and have a lions share on the frontage, whereas the other 04 Killas are at the back of the private respondents.

In such circumstances, it is apparent that the order of the Collector dated 30.12.2005 (Annexure P-6) was justified in the facts and circumstances, whereby he directed that all the parties be given the benefit of the front portion also, so that the land has equally distributed. A perusal of the site plan would also go on to show that the said land can easily be bifurcated among the shareholders by giving the benefit of the approach from the mettelled road.

In such circumstances, we find that the Mode of Partition prepared on 03.09.2004 (Annexure P-2) and which was duly sanctioned on 05.05.2005 (Annexure P-5), does not suffer from any infirmity in the facts and circumstances. The interference at the Commissioner level and the learned Financial Commissioner not interfering in the revision petition filed by the private respondents has been rightly rectified by the learned Single Judge.

In view of the above, we find no merit to interfere in the impugned judgment passed by the learned Single Judge.

The appeal is consequently, dismissed.

Pending miscellaneous applications, if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

January 25, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No