

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

CWP-20864-2023

Date of decision : 25.09.2023

Ashwani Kumar and others

.....Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vivek Sharma, Advocate
for the petitioner.

Mr. R.S. Chauhan, Advocate
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate
for caveator/respondents.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing order dated 21.07.2023 (Annexure P-9) passed by respondent No.1 vide which the revision petition filed by the petitioner under Section 16 of Punjab Land Revenue Act, 1887 against the order dated 25.01.2008(Annexure P-3) passed by SDM-cum-Collector, Mukerian and 28.02.2006 (Annexure P-2) passed by Tehsildar-cum-Assistant Collector Grade-1, Mukerian has been dismissed. Further prayer has been made for issuance of directions to respondents No.1 to 4 to partition the land situated in Village Changrawan, Tehsil Mukerian, District Hoshiarpur in accordance with the Punjab Land Revenue Act and after hearing the petitioners and allow to submit the objections and dividing the land in accordance with the quality of the land and in accordance with share.

It has been contended by counsel for the petitioners that the partition proceedings were initiated by respondent-Samar Singh (since deceased) with regard to land measuring 5069 kanals, 02 marlas comprising in Khewat No.95/96/97 situated in Village Changarwan, Tehsil Mukerian, District Hoshiarpur. It is submitted that respondent No.4 without issuing notices to the petitioners proceeded *ex parte* qua the petitioners and issued mode of partition dated 12.09.2005. He has submitted that the partition proceedings were carried out against the terms and conditions of the mode of partition. He has submitted that the respondents were given more land than their share and the petitioners were given the less land than their entitlement. He submits that respondent No.4 allotted the superior land to the respondents and has not provided any passage to Khasra No.31/3 and Khasra No.26 which is under the control of the petitioners. It is submitted that the revision filed by the petitioner i.e. RR No.46/2008 before the Additional Commissioner (Appeals), Jalandhar Division challenging the order dated 25.01.2008 passed by the SDO(C)-cum-Collector, Mukerian and order dated 12.09.2005 passed by respondent No.4 on the ground that the same were proceeded *ex parte* qua the petitioners. It is submitted that the Commissioner vide order dated 04.02.2010 allowed the revision petition filed by the petitioners and thus, remanded the case back to the respondents-authorities to re-examine the case on merits. He submits that the respondents challenged the order dated 04.02.2010 before the learned Financial Commissioner, Punjab which was allowed by him vide order dated 13.07.2017 on the ground of jurisdiction. However, the petitioners were given the opportunity to challenge the final partition order passed by

the Assistant Collector Grade-I before the competent Court of law. Accordingly, the petitioners challenged the order dated 25.01.2008 and 28.02.2006 passed by respondents No.3 and 4 respectively by filing ROR No.61/2018. He submits that the said petition came up for hearing on 21.07.2023 and dismissed the same by passing a cryptic order. He submits that the impugned orders passed by the Financial Commissioner are totally against the facts and circumstances of the case and the law settled. He submits that there was no *munadi* conducted and thus, the petitioners were proceeded *ex parte*. He submits that the precise grievance of the petitioners that they have been given the inferior quality of land and that too without any passage. He submits that as the impugned orders are passed without adhering to the terms and conditions of mode of partition, the impugned orders being illegal deserve to be *set aside*.

Learned counsel for the caveator/respondents has opposed the submissions made by counsel for the petitioners and has submitted that the partition proceedings were initiated in the year 2006 and thereafter, all the co-sharers were duly served by conducting the *munadi*. He submits that the petitioners are residents of village but intentionally did not file the objections. It is submitted that the *sanad takseem* was issued long back and there is no violation of the mode of partition as contended by counsel for the petitioners. It is submitted that the petition has been filed only to re-commence the partition proceedings which were finalized on issuance of *sanad takseem*. He submits that no cause of action is accrued to the petitioners and thus, petition being devoid of any merits deserves to be dismissed.

Heard. Evidently, the partition proceedings were initiated in 2006 at the behest of respondent-Samar Singh (since deceased). The mode of partition was passed on 12.09.2005. The *munadi* was conducted. There are numerous co-sharers in the land and due opportunities for filing the objections were given. Admittedly, at one stage, the appeal filed by the petitioners were also accepted by the Appellate Authority and the case was remanded back after appreciation of his arguments that the partition proceedings were carried out ex parte. On the remand, the case was re-appreciated by the Assistant Collector and thus, the partition proceedings were conducted in accordance with the terms and conditions of the mode of partition. The spot was also personally visited by the Assistant Collector Grade-I, Mukerian and after following the due procedure, the *sanad takseem* had been issued. Learned Financial Commissioner has appreciated the facts and circumstances of the case and the law settled in the revision filed before him and thus, finding no merit, the same was dismissed. On comparison the facts and circumstances of this case and relying upon the judgment by this Court in 'Krishan and another Vs. State of Haryana' CWP No.7546 of 2020 decided on 05.06.2020, this Court finds that the due process as enumerated in Punjab Land Revenue Act has been followed and there was no violation of the principles of natural justice. Thus, finding no merit in the petition, the same is hereby dismissed.

25.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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