

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

CWP-21294-2023

Date of decision: 22.09.2023

Malkit Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.S. Salar, Advocate, for the petitioners.

RAJESH BHARDWAJ, J.

Petitioners have approached this Court praying for quashing of the order dated 16.12.20009 (Annexure P-5), order dated 18.01.2010 (Annexure P-6), passed by Tehsildar-cum-AC IInd Grade, Tohana, whereby without considering the objections of the petitioners, Tehsildar-cum- AC IInd Grade accepted *Naksha Bey* and *Zeem, Sanad Takseem* dated 18.02.2010 (Annexure P-7) the order dated 06.10.2010 (Annexure P-8) passed by Sub Divisional Officer (Civil) Exercising the Powers of Collector, whereby the appeal filed by the petitioners was dismissed and the order dated 24.01.2011 (Annexure P-9) passed by the learned Commissioner, whereby, the revision petition against all the orders was dismissed and also the order dated 19.06.2023 (Annexure P-10) whereby the learned Financial Commissioner dismissed the ROR filed by the petitioners.

It has been contended by the learned counsel for the petitioners that as per the *jamabandi* for the year 2002-03, four brothers, namely, Dayal Singh, Nihal Singh, Desa Singh and Kashmir Singh were owners of the land in

dispute to the extent of 1/4th share each out of total land being 49 kanals 4 marlas and Dayal Singh-respondent No.6 filed application for partition on 21.09.2005 and mode of partition was approved on 24.09.2009. He submits that as per mode of partition, water channel and passage were to be provided to each of the four co-sharers. He submits that the objections filed by the petitioners were rejected on 16.12.2009. It is submitted that *Naksha Bey* was approved and thereafter, *Naksha Zeem* was approved on 18.01.2010 and *Sanad Takseem* was prepared on 18.02.2010. He has submitted that appeal against the approval of *Naksha Zeem* was dismissed on 06.10.2010 and revision filed by the petitioners was also dismissed by the Commissioner on 24.01.2011. It is submitted that aggrieved by the same, the petitioners filed revision before the Financial Commissioner, which was dismissed on 19.06.2023. He has further submitted that the partition proceedings are vitiated as the same had not been carried out in accordance with the mode of partition. He has submitted that neither any passage nor any water channel has been provided to the co-sharers during the partition. He submits that as per mode of partition, the petitioners were entitled to be allotted Khasra No.52//3 and rest of their land from Khasra No.52//2. He submits that the Collector and thereafter, the Commissioner and Financial Commissioner have failed to appreciate the same and thus, have illegally dismissed the claim of the petitioners. He submits that the impugned orders are totally cryptic and non-speaking, thus, being perverse deserve to be set aside.

Heard.

On hearing learned counsel for the petitioners and perusing the record, it is apparent that the partition proceedings were initiated at the behest of respondent No.6-Dayal Singh on 21.09.2005. Mode of partition was

approved and objections were invited. On dealing with the objections, further Naksha Bey was approved and thereafter, *Naksha Zeem* was received and approved. *Sanad Takseem* was prepared on 18.02.2010. Record of the case would show that the petitioners duly joined the partition proceedings and objections filed by them were duly appreciated and were dismissed after due consideration. Resultantly, *Naksha Bey* was approved and *Sanad Takseem* was approved on 18.02.2010. It is also apparent that during the pendency of the partition proceedings, the petitioners on the earlier occasion were found to have been proceeded *ex parte*. The Collector remanded the case to the Assistant Collector IInd Grade and mode of partition was approved on 24.09.2009. *Naksha Bey* was approved against which objections were filed by the petitioners, which were rejected after consideration. Thus, mode of partition was approved after granting due opportunities to the co-sharers. It was found that the contentions regarding the family partition between the parties could not be substantiated as no evidence was produced regarding the same. On appreciation of the facts and circumstances of the case, it was further found that the quality of the land is same and thus, there is no substantial variation in the value of the land, hence, every chunk provided to the co-sharers would be of almost of equal value. Thus, providing land from every chunk of the land would result in multiple fragmentation of land, which would be against the objective of the partition proceedings. As per the mode of the partition, proper passage and *khaal* had been provided to the main chunk and thus, there is no violation of terms and conditions of the mode of partition as approved. Hence, from the overall facts and circumstances of the case, there is no perversity in the partition proceedings carried on. There are concurrent findings given by the

authorities concerned. *Sanad Takseem* has already been issued. Thus, finding no merit in the present petition, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

22.09.2023
sharmila

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