

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

CWP-26825-2023

Decided on 08.12.2023

Kudiya Ram

...Petitioner

Versus

Divisional Commissioner, Gurugram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish Yadav, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the orders dated 02.11.2023 (Annexure P-8) passed by the learned Commissioner, Gurugram in Executive Revision Petition No.14 of 2023 as well as the orders dated 13.09.2022, 21.10.2022 and order dated 04.11.2022 (Annexures P-1, P-3 and P-4) passed by learned Assistant Collector Ist Grade, Badshahpur, District Gurugram in partition case No.238/NB of 2022, whereby the partition case filed by the private respondents who are the property dealers, has been approved and allowed in a very illegal and arbitrary manner and in violation of settled rules of Punjab Land Revenue Act, 1887.

Learned counsel for the petitioner has submitted that the petitioner alongwith respondents No.2 to 5 were co-owners and co-sharer in the agricultural land situated in Khewat/Khata No.1048/1078 situated in revenue estate of village Badshahpur, Tehsil Badshahpur, District Gurgaon. He submits that the whole land was owned by the family of the petitioner, however, thereafter, the land measuring 5 Kanal 2 Marla was purchased by respondents No.2 to 5 from the other family members of the petitioner. He submits that respondents No.2 to 5 filed an application for partition before the Assistant

Collector Ist Grade, Badshahpur in the year 2017. He submits that after receiving notice, the petitioner duly appeared before the Assistant Collector Ist Grade, Badshahpur and engaged a counsel. However, the counsel did not attend the proceedings before Assistant Collector Ist Grade, Badshahpur and thus, defence of the petitioner was struck off. He submits that thus, right of hearing to the petitioner was forfeited. He submits that the Assistant Collector Ist Grade sanctioned *Naksha Bay* which has caused prejudice to the petitioner as valuable land was given to the private respondents and no passage was provided to the petitioner for the land given to him in the partition proceedings. He has submitted that Assistant Collector Ist Grade, Badshahpur without even waiting mandatory period of 30 days for filing appeal against sanctioning of *Naksha Bay* prepared the *Sanad Taksim* in a hasty manner on 04.11.2022. He has further submitted that the partition proceedings have been carried out in violation of the mode of partition as possession of the petitioner was disturbed and he was given the land of less value. He has submitted that the petitioner came to know about the illegal partition proceedings in the month of January 2023 when the private respondents tried to dispossess the petitioner from his peaceful possession in Killa No.5 and thus, the petitioner came to know about the *Sanad Taksim* having been issued and hence, he filed revision before the Commissioner, Gurgaon. He has submitted that the petitioner duly submitted before the Commissioner that he was given the land of less value on the main road and his possession was also disturbed. He has submitted that the petitioner was given less front on the main road as compared to that of private respondents and thus, a serious prejudice has been caused to him, however, the learned Commissioner failed to appreciate the same and thus, has illegally dismissed the revision petition vide order dated 02.11.2023. He has relied upon

the judgment of this Court in LPA-1480-2023 titled as M/s Capital Builders, New Delhi vs. Financial Commissioner, Haryana and others, decided on 21.08.2013 by this Court.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the partition proceedings were initiated by respondents No.2 to 5. As reflected from the record, notice was issued to the petitioner and he duly served and engaged a counsel as well. Learned counsel for the petitioner has submitted before this Court that though the counsel was engaged, however, he did not appear before the Court. It is apparent that mode of partition was also approved but no objection to the same was filed by the petitioner. *Sanad Taksim* was issued vide order dated 04.11.2022. There was no objection filed by the petitioner to the *Naksha Bay* as well. It is apparent from the record that the petitioner neither recorded his statement nor produced any objection to the mode of partition or *Naksha Bay*. It is further apparent from the record that mode of partition has also been sanctioned. The petitioner himself appeared before the authorities on 15.06.2022. *Naksha A* was approved on 13.09.2022 and no objection was filed by the petitioner to the same. From perusal of the site plan, it is apparent that all the co-sharers were given land on the front side. Thus, it is apparent that the partition proceedings were carried out by following due process wherein the petitioner was duly served. The partition proceedings were carried out in accordance with the mode of partition. Thus, in the considered opinion of this Court, there is no material illegality in the partition proceedings.

In all its humility, there is no denial to the law laid down in the judgment relied upon by learned counsel for the petitioner, however, in the facts and circumstances of the present case, the same are distinguishable.

Hence, finding no merit in the present petition, the same being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

08.12.2023
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No