

107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7281-2023 (O/M)

Date of decision : 12.08.2024

Bikram Singh and others Petitioners

Versus

Jaswinder Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Kuldeep S. Chaudhary, Advocate
for the petitioners.

Mr. Vineet Chaudhary, Advocate
for caveators-respondents No. 1 to 4.

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HARSH BUNGER, J.

1. Petitioners (Bikram Singh and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 17.04.2017 (Annexure P-3), passed by the learned Assistant Collector 1st Grade, Dera Bassi, allowing application for partition of joint land, submitted by respondents No. 1 to 4 herein.

1.1 A further prayer has been made by the petitioners for setting aside the order dated 15.12.2020 (Annexure P-2), passed by the learned Divisional Commissioner, Rupnagar Division, Rupnagar (in short 'Divisional Commissioner'), whereby the appeal filed by respondents No. 1 to 4 herein against the order dated 10.08.2017 (Annexure P-4), passed by learned Sub Divisional Magistrate-cum-Collector, Dera Bassi (in short 'Collector') was allowed and the order dated 10.08.2017 (Annexure P-4), passed by the learned Collector, remanding the case to the Assistant Collector 1st Grade, Dera Bassi, for fresh decision of the

partition case; was set aside. Still further prayer has been made for setting aside the order dated 07.09.2022 (Annexure P-1), passed by the learned Financial Commissioner (Revenue), Punjab (in short 'Financial Commissioner'), whereby the revision petition filed by the petitioners against the order dated 15.12.2020 (Annexure P-2), was dismissed.

2. Briefly, respondents No. 1 to 4 herein filed an application seeking partition of joint land, measuring 51 bighas-9 biswas, situated at village Bhagwasi, Tehsil Dera Bassi, District SAS Nagar (Mohali). The aforesaid partition application came to be finally allowed by the learned Assistant Collector 1st Grade, Dera Bassi, vide its order dated 17.04.2017 (Annexure P-3).

2.1 Feeling aggrieved against the aforesaid order dated 17.04.2017 (Annexure P-3), an appeal was preferred by predecessor-in-interest of petitioners No. 1 to 3 herein, namely, Ram Singh alongwith petitioners No. 4 and 5. The said appeal was allowed by the learned Collector, vide order dated 10.08.2017 (Annexure P-4), whereby order dated 17.04.2017 (Annexure P-3) was set aside and the matter was remanded to the Assistant Collector 1st Grade, Dera Bassi to decide the matter afresh.

2.2 Respondents No. 1 to 4 herein challenged the order dated 10.08.2017 (Annexure P-4) by filing an appeal before the learned Divisional Commissioner, which came to be allowed, vide order dated 15.12.2020 (Annexure P-2), whereby the order dated 10.08.2017 (Annexure P-4) was set aside and the order dated 17.04.2017 (Annexure P-3) was upheld.

2.3 The writ petitioners challenged the order dated 15.12.2020 (Annexure P-2) before the learned Financial Commissioner by filing a revision petition (ROR-132-2021), which came to be dismissed vide order dated 07.09.2022 (Annexure P-1).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioners submits that the learned Assistant Collector 1st Grade, Dera Bassi, while partitioning the joint land, has not followed the due procedure prescribed under the Punjab Land Revenue Act. It is submitted that the objections raised by the petitioners have wrongly been brushed aside. It is further submitted that in the year 1982, there was an oral agreement between the parties, whereupon an oral partition had taken place and it was decided that the front of four killas of land of village Miyanpur shall be given to respondents No. 1 to 4, whereas the front in village Bhagwasi shall be given to the present petitioners. It is submitted that in terms of the oral partition, the possessions of the respective areas were taken by the respective parties and entries in the khasra girdawari(s) were made accordingly, wherein khasra No. 463, 464, 465, 466, 467 were given to the petitioners and khasra No. 468 to 473 were given to respondents No. 1 to 4 by providing a passage through khasra No. 464. It is next submitted that respondents No. 1 to 4 have cunningly got the land of village Bhagwasi partitioned. It is still further submitted that the final partition is against the sanctioned mode of partition and the same has been carried out without visiting/inspecting the spot. It is contended that although the learned Collector had rightly set aside the final partition

order dated 17.04.2017 (Annexure P-3) and remanded the case for fresh decision, however, the learned Collector's order was wrongly and arbitrarily set aside by the learned Divisional Commissioner and a further revision petition filed by the petitioner was also wrongly dismissed by the learned Financial Commissioner. Accordingly, it is prayed that the impugned orders be set aside and the order passed by the learned Collector remanding the case to the Assistant Collector 1st Grade, Dera Bassi, for fresh decision, be upheld.

5. Per contra, learned counsel for caveators-respondent No. 3 has opposed the submissions made on behalf of the petitioners by submitting that the learned Financial Commissioner has duly considered all the objections raised by the petitioners and has passed speaking and a well reasoned order, which does not call for any interference by this Court. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

6. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

7. In the present case, the aforesaid submissions raised on behalf of the petitioners have been duly considered and dealt with by the learned Financial Commissioner, vide its order dated 07.09.2022 (Annexure P-1), by holding as under :-

“3. I have heard the Ld. Counsel for the petitioners. Counsel has stated that impugned orders are suffering from glaring infirmities being not in conformity with the true facts of the case and the evidence brought on record in their support. It was contended by the counsel that mode of partition specifically provide for allotment

of land to the petitioners near their share in one lot, however, their land has been bifurcated and staggered in different parts, whereas, the land of the respondents were given in one lot. Counsel further stated that Assistant Collector while overruling the objections filed by the present petitioners and ignoring the vital fact while allotting Khasra Nos. 466, 468, 469 and 463 which are in triangle shape whereas rectangle and land in between the land of the petitioners on both side were allotted to the respondents whereas there was oral agreement between the parties which took place in the year 1982 vide which it was decided that front of four killas of land in village Miyanpur shall be given to the present respondents and front in Bhagwasi village shall be given to the present petitioners. Complying with the said compromise, oral partition was effected and possessions were taken and entries in Khasra Girdawaries were also made and Khasra No. 463, 464, 465, 466, 467 were given to the present petitioners and Khasra No. 468, 469, 470, 471, 472, 473 were given to the present respondents with provision of passage from Khasra No. 464. But acting cunning, the present respondents did get the land partitioned for Village Bhagwasi only. Counsel stated that these objections raised by the petitioners were ignored by the AC 1st Grade in a very erroneous manner and no spot visit was made. Counsel further submitted that the Ld. Collector after appreciating the facts of the case had rightly passed order dated 10.08.2017, but the Ld. Commissioner has wrongly upheld the order of the AC 1st Grade. Counsel prayed for setting aside the order dated 15.12.2020 passed by the Commissioner Rupnagar while quashing the partition proceedings.

4. *I have heard the averments made by the Ld. Counsel for the petitioners and have also gone through the record including the file of Assistant Collector Grade 1, Derabassi. A perusal of the Coloured Map of partition suggests that both the parties have been given front on the main road leading to village Mianpur from village Bhagwasi. Infact, present petitioners have been given more front on the said road, than their entitlement. The 'tucks' of the parties have been carved out in a very reasonable manner. The oral agreement of year 1982 referred by the counsel for the petitioners cannot be relied upon, as the same has not been effected in revenue record. The objections to the partition papers (Naksha Arra) raised by the petitioners were duly considered by the AC 1st Grade and the same were rejected through a reasoned order. Moreover, the spot was also visited by the AC 1st Grade on 27.07.2016 in the presence of both the parties before finalizing mode of partition. Therefore, the Ld. Commissioner has rightly upheld the order of the AC 1st Grade, while setting aside the order dated 10.08.2017 of the Collector.*

5. *In view of the above position, I do not find reason to interfere in the order of the Ld. Commissioner. The same is upheld and the present petition is dismissed being with (as typed) any substance.”*

7.1 The learned counsel for the petitioners has failed to dislodge the aforesaid observations and findings of fact returned by the learned Financial Commissioner by referring to any material whatsoever.

7.2 That apart, as regards the contention of the petitioners that the partition has been carried out without inspecting the spot, it is

observed that in para-7 of the writ petition, the following averment has been made -

“7. That the Naksha Arah has been prepared ignoring the objections raised by the petitioner at the time of visit to the spot by predecessor to the Assistant Collector 1st Grade Dera Bassi and which was incumbent upon the concerned authorities to do when the petitioner as well as other villagers present there stated that the petitioners are in possession of land abutting to land in village Mianpur but ignoring this fact, the same has been allotted to respondents.”

7.3 From a perusal of the above extracted para-7, it is clearly borne out that the spot was inspected by the concerned Assistant Collector 1st Grade, therefore, the objection of the petitioners that the partition has been carried out without inspecting the spot is hereby rejected.

8. As regards the contention of the petitioners that the partition already stood effected between the parties by way of oral agreement in the year 1982, it is observed that the learned Financial Commissioner has rightly rejected the said objection of the petitioners by observing that the oral agreement of the year 1982 cannot be relied upon as the same has not been effected in the revenue record.

9. As regards the contention of the petitioners that respondents No. 1 to 4 have cunningly not got the land of village Mianpur partitioned, it is observed that in case the petitioners had a genuine grievance as regards non-partitioning of land of the village Mianpur, then they could have filed an appropriate application in that regard before the concerned revenue authority, however, no such course was adopted.

In the present case, the revenue authorities have partitioned the joint land

of the parties comprised in village Bhagwasi. The petitioners have been unable to show as to how the final partition is contrary to the sanctioned mode of partition and/or which clause of the sanctioned mode of partition has been violated while carrying out the final partition. The petitioners have further failed to show either by producing the site plan or any other material, as to what prejudice has been caused to them with the final partition effected between the parties.

10. In view of the above discussion, I do not find any merit in the instant civil writ petition, resultantly, the same is dismissed.

11. All pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

12.08.2024
sjks

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