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

CWP-9810-2023 (O&M)

Reserved on: 12.01.2024

Date of decision :19.01.2024

Jagdish and others**.....Petitioners**

versus

Commissioner, Hisar Division, Hisar and others **..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. R.S. Kundu, Advocate and
Mr. Chirag Kundu, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Ashok Kumar Verma, Advocate and
Ms. Shikha Dogra, Advocate
for respondent No.4.

*********RAJESH BHARDWAJ, J.**

This petition has been filed for quashing/setting aside the order dated 07.02.2020 (Annexure P-6) whereby Tartim (Amended) Naksha 'Kha' was called, order dated 18.12.2020 (Annexure P-7) whereby Naksha 'Kha' was accepted, order dated 28.01.2021 (Annexure P-8) whereby Sanad Taksim was called, order dated 02.03.2021 (Annexure P-9) whereby Sanad Taksim was accepted/sanctioned and Sanad Taksim (Annexure P-10) and order dated 09.02.2022 (Annexure P-14) and order dated 02.08.2022 (Annexure P-15) passed by respondents No.2 and 1 respectively, being violative of mode of partition (Annexure P-2) and rules of partition and violative of *audi alteram partem* and Articles 14 and 16 of the Constitution of India as well as Haryana Land Revenue Act

and violative of law settled regarding partition whereby it is settled that

no partition/sanad taksim can be made in violation of mode of partition and violative of law of equality and equal protection of law as provided under Articles 14 and 16 of the Constitution of India. Further prayer has been made for prohibiting and directing the respondents not to implement the partition/sanad taksim and not to dispossess the petitioners from their land.

It has been contended by counsel for the petitioners that respondent No.4-Anup Singh filed an application dated 07.09.2016 for partition of agricultural land total measuring 192 kanals 13 marlas jointly owned and possessed by the petitioners and respondents No.4 and 5. He has submitted that the mode of partition was prepared with the consent of the parties. It is contended that after the mode of partition, Naksha 'Kha' was prepared and objections were filed on behalf of the petitioners. Thereafter, Naksha 'Kha' was accepted and notice for Naksha 'G' was issued on 18.02.2020. He submits that Naksha 'G' was received on 11.01.2021. It is submitted that the sanad taksim was issued on 02.03.2021. He has submitted that as the same was violative of the mode of partition, the petitioners assailed the same by way of filing the appeal before the learned District Revenue Officer-cum-Collector who without appreciating the facts and circumstances of the case and the legal provisions dismissed the same by holding that he had no jurisdiction to hear the appeal after issuance of sanad taksim vide his order dated 09.02.2022. Aggrieved by the same, petitioners filed the revision before the learned Commissioner. However, learned Commissioner also dismissed the same vide his order dated 02.08.2022 by upholding the order passed by the District Revenue Officer-cum-Collector dated

09.02.2022.

It has been contended by counsel for the petitioners that the partition proceedings were initiated by respondent No.4 by filing the application for partition on 07.09.2016 and thereafter, sanad taksim was prepared on 02.03.2021. He has submitted that the appeal filed before respondent No.2 was decided on 09.02.2022 and thereafter, the revision filed before respondent No.1 was decided on 02.08.2022. He has submitted that Section 16 of Haryana Land Revenue Act, 1887 (for short 'the Act') was amended which was notified and published on 10.04.2017. It is submitted that hence the appeal and revision were maintainable before respondents No.1 and 2 on the date of the notification dated 10.04.2017 as the proceedings for partition were pending before the competent authority. It is submitted that the amendment made is procedural, as it provides remedy of appeal and revision before respondents No.2 and 1 as per law. Thus, respondents No.1 and 2 have illegally dismissed the revision and appeal filed by the petitioners which is totally unsustainable in the eyes of law. He has submitted that the Appellate and Revisional Authorities have failed to exercise their judicial power and has dismissed the appeal and revision filed by the petitioners. He has relied upon the judgments titled as **Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Private Limited and others, (2023) SCC 355** and **Birmati and others Vs. Jai Narain and others passed in CWP-12947-2017 decided on 08.05.2018.**

Per contra, learned counsel for respondent No.4 has opposed the submissions made by counsel for the petitioners. He has vehemently contended that the present petition is not maintainable in view of the

amendment made in Section 16 of the Act which was notified on 10.04.2017. He has submitted that admittedly the application for partition proceedings was filed on 07.09.2016 and thus the partition proceedings were initiated prior to the amendment came into effect. It is submitted that in view of the settled principles of law, the amendment being prospective in nature, provisions of the unamended Act would be applicable in the present case and thus, the impugned orders have been rightly passed holding the appeal and revision filed by the petitioners to be not maintainable before the Collector and the Commissioner. He has relied upon the judgments titled as *Nirmal Kaur Vs. Assistant Collector Grade I, Tehsil Abohar, District Fazilka and others, 2012(68) R.C.R. (Civil)307; Ram Singh and others Vs. State of Haryana and others passed in CWP-10667-2017 decided on 18.05.2017; Balbir Singh Vs. State of Punjab etc, 2009(51) RCR (Civil) 249; Amar Khan and others Vs. State of Punjab and others, 2009(1) RCR (Civil) 741 and Krishan Vs. State of Haryana and others, 2009(4) RCR (Civil) 353.* It is submitted that as per the unamended Section 16 of the Act, the competent authority would be the Financial Commissioner before whom the revision filed by the petitioners is maintainable and thus, this petition being devoid of any merits deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that counsel for the petitioners has argued on merits and on the maintainability of the petition. Learned counsel for respondent No.4 has vehemently opposed the maintainability of the petition, hence, the prime consideration involved in the case is regarding the maintainability of the present petition. It is apparent from the facts and

circumstances on the record that the partition application was filed by respondent No.4 on 07.09.2016 and thus, admittedly, before the amendment of Section 16 of the Act. For appreciating the controversy involved, the provisions of unamended and amended Section 16 of the Haryana Land Revenue Act are to be appreciated. The unamended Section 16 (1) of the Act as follows:-

Unamended provision:

16. Power to call for examine and revise proceedings of Revenue-officers:- (1) *The Financial Commissioner may at any time call for the record of any case pending before, or disposed by, any Revenue-officer subordinate to him.*

Amended provision:

16. Power to call for examine and revise proceedings of Revenue-officer:-(1) *The Commissioner may call for the record of any case pending before, disposed of by, any Revenue-officer under his control and pass such orders, as he thinks fit.*

On perusal of the same, it is apparent that in the unamended provisions of Section 16 (1) of the Act, the Financial Commissioner had the jurisdiction to entertain the revision filed after the issuance of sanad taksim, however, this Section has been amended which was notified on 10.04.2017. The plain reading of the amended Section would show that after the amendment, power of revision lies with the Commissioner whereas before the same, it was with the Financial Commissioner. As per Rule of interpretation, if there is no ambiguity in the plain reading of the statute, the same cannot be interpreted to give it a different meaning. In the judgment relied upon by the petitioner i.e. **Katta Sujatha Reddy and another Vs. Siddamsetty Infra Projects Private Limited and others (supra)**, the Hon'ble Supreme Court laid down in Para No.57, which reads

as follows:-

“57-In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.”

Thus, it is evident that the legislature has said nothing expressly that the amendment made would be applicable retrospectively. Hence, the same cannot be made applicable retrospectively on mere assumptions. There is no dispute on the reading of the facts and circumstances of the case that the partition proceedings were initiated prior to the amendment of Section 16 of the Act and thus, provision of Section 16 of the Act as it existed prior to the amendment would be applicable in the present case. The sanad taksim was issued on 02.03.2021 thus, the judgments relied upon by the petitioners are also do not support the contentions raised by them and thus, this Court does not find any infirmity in the impugned orders passed and thus, upholds the same. Accordingly, the present petition is dismissed. However, the petitioners would be at liberty to approach the competent authority by filing the appropriate petition. If any such petition is filed, the competent authority would take into consideration submissions of both the parties and decide the case on merits after hearing both the sides in accordance

with law, expeditiously preferably within three months from the date of filing of the petition. It is being clarified that this Court has not decided the case on merits as the same is to be taken into consideration by the competent authority, as in accordance with the law.

19.01.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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