

118

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

CWP-10658-2024

Date of decision : 08.05.2024

Lalita Yadav

.....Petitioner

versus

The Commissioner, Gurugram Division and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Abhishek Jindal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Prayer in the present petition is for setting aside the impugned order dated 07.03.2024 (Annexure P-6) passed in Case No.145/2023, Case ID 03501R0120369323, passed by learned Commissioner, Gurugram Division (respondent No.1) being illegal, void and without jurisdiction. Further prayer has been made for staying the operation of the impugned order dated 07.03.2024 during the pendency of the present petition.

2. It has been submitted by learned counsel for the petitioner that respondent No.3-Maya Devi filed an application dated 20.06.2022 before the Assistant Collector Grade-II, Farukhnagar for partition of the joint land contained in Khewat/Khata No.379/423 measuring 69 kanals 07 marlas as respondent No.3 was the owner of 12 kanals. He submits that the Assistant Collector IInd Grade passed the order dated 02.09.2022 vide which respondent No.2 was proceeded *ex parte*. The mode of partition was accepted on 07.10.2022 and the *naksha bey* was approved on 02.12.2022. He submits that vide order dated 06.01.2023 *naksha jeem* was confirmed and thereafter, the *sanad takseem* was issued as per Section 121

of the Punjab Land Revenue Act, 1887 on 13.01.2023. It is submitted that respondent No.2 Narender Singh filed an appeal on 07.04.2023 before the Collector, Gurugram. He submits that the appeal was not maintainable as the statute expressly bars any appeal against the mode of partition or instrument of partition. He submits that after issuance of *sanad takseem*, respondent No.3 sold her partitioned land admeasruing 12 kanals mutually to respondent No.4 namely, Vijay Kumar on 24.04.2023 vide Mutation No.4624. This land was purchased by the petitioner from respondent No.4 vide sale deed dated 12.06.2023 and the possession of the land was handed over to the petitioner on the spot. It is submitted that the Collector passed a well reasoned order dated 02.08.2023 wherein the Appellate Court gave the findings that it had no jurisdiction to entertain the appeal after issuance of *sanad takseem*. Respondent No.2 assailed the same by way of filing the revision before the Divisional Commissioner on 17.08.2023. It is submitted that learned Commissioner without appreciating the evidence on record and the law settled illegally accepted the revision petition and remanded the case to the Assistant Collector Ist Grade with direction to initiate the partition proceedings. He submits that the impugned orders passed by the learned Commissioner is against the settled position of the law as the *sanad takeem* can be challenged only by invoking jurisdiction of Financial Commissioner or by invoking the writ jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India. He has relied upon the judgments titled as *Amar Khan and others Vs. State of Punjab and others, 2009(1) RCR(Civil) 741; Puran Singh @ Sampuran Singh Vs. Financial Commissioner (Development), Punjab, 2009(2) RCR(Civil) 712; Fateh Singh and others Vs. Assistant Collector Ist Grade Israna and others, 2017(2) PLR*

727 and *Kanwar Lal and others Vs. Financial Commissioner Haryana and others, 2020(2) RCR (Civil) 594.* It is submitted that the petitioner was a *bona fide* purchaser but the same has not been taken into consideration and thus, the impugned order being unsustainable in the eyes of law deserves to be *set aside*.

3. Heard. This Court has heard counsel for the petitioner and perused the record. As apparent from the facts and circumstances of the case, the partition proceedings were initiated at the behest of respondent No.3. The Assistant Collector Ist Grade passed the order for summoning of the co-sharers on 01.07.2022 and thereafter, the case was adjourned for 05.08.2022 for summoning the co-sharers through *munadi*. Thereafter, the *ex parte* proceedings were initiated vide order dated 07.10.2022 and the mode of partition was accepted on 02.12.2022 and finally, *sanad takseem* was issued on 06.01.2023. As per mode of partition, the partition proceedings were to be carried out by maintaining prevailing possession. It has been found that respondent No.3-Maya Devi were allotted Killa No.47//11(8-0), 2/1(3-0), 19/2(1-0) whereas, at the time of spot inspection, Dharmender Yadav son of Maya Devi had admitted that they had never been in possession of these Killa Numbers which was allotted to them in partition. Thus, from the spot inspection it was found that the Assistant Collector Ist Grade did not take into consideration the prevailing position on the spot at the time of conducting the partition proceedings. The partition proceedings having been found to be conducted in violation of the principles of the law i.e. against the mode of partition. Learned Commissioner has accepted the revision petition filed by respondent No.2 and thus, remanded the case for a decision afresh.

4. There is no dispute with regard to the preposition of law held in the judgment relied upon by learned counsel for the petitioner. The contention of counsel for the petitioner is that after issuance of *Sanad Takseem*, the revision only was maintainable before the Commissioner. In the case in hand the same authority has entertained it but against the order passed by the Collector, who rightly did not entertain the same for want of jurisdiction. Had the Collector passed the impugned order on merits, then there was the illegality and the petitioner would have been prejudiced. But now the Revisional Authority has remanded the case on merits. Hence, this Court finds that accepting the argument raised would only prolong the litigation, especially, when there is no material prejudice, found to have been caused to either party, in remanding the case by the competent authority for the decision afresh.

5. Thus, this Court finds no merit in the present petition as there is a violation of the mode of partition in carrying out the partition proceedings, hence the present petition is dismissed. However, keeping in view the facts and circumstances of the case, the Assistant Collector IInd Grade is directed to conclude the partition proceedings afresh after hearing both the sides expeditiously, preferably within three months from the date of receipt of copy of this order, in case there is no legal impediment and any stay order passed by any Superior Court in this case. Office is directed to send copy of this order to the Assistant Collector IInd Grade forthwith who on receipt of the same will issue notice for appearance to all the parties concerned and proceed further with the matter.

08.05.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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