

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14082-2022 (O/M)
Date of decision : 12.11.2024

Savatri Devi and others Petitioner(s)

Versus

State of Haryana and others Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Randhir Singh, Additional A.G. Haryana.

Mr. R.S. Mamli, Advocate
for respondent No. 5.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Savatri Devi 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 of order dated 01.12.2021 (Annexure P-5), passed by learned Assistant Collector 2nd Grade, Fatehabad, whereby the objections to Naksha 'Bey', submitted by petitioners, were dismissed; order dated 13.01.2022 (Annexure P-6), passed by learned Collector, Fatehabad (in short 'Collector'), whereby an appeal filed by the petitioners against order dated 01.12.2021 (Annexure P-5) was dismissed; sanad takseem issued vide order dated 01.04.2022 (Annexure P-7) and also the order dated 17.05.2022 (Annexure P-8), passed by learned Commissioner, Hisar Division, Hisar (in short 'Divisional Commissioner'), whereby two

separate revision petitions, filed by the petitioners, challenging the partition proceedings/orders and also the sanad takseem, were dismissed.

2. Briefly, respondent No. 5 (Smt. Alka) submitted an application, seeking partition of joint land, comprised in Khewat No. 277, measuring 78 kanals - 11 marlas, situated at village Jhalania, Tehsil and District Fatehabad, as per Jamabandi for the year 2015-16. In the aforesaid partition proceedings, mode of partition (Annexure P-2) was prepared on 30.09.2019 and the same was approved vide order dated 08.01.2021. Thereafter, Naksha 'Bey' was called from the Field Staff, whereupon the petitioners submitted their objections, however, learned Assistant Collector 2nd Grade, Fatehabad, dismissed the said objections, vide order dated 01.12.2021 (Annexure P-5).

2.1 Petitioners challenged the aforesaid order dated 01.12.2021 (Annexure P-5) by filing an appeal before learned Collector, however, the same was dismissed, vide order dated 13.01.2022 (Annexure P-6).

2.2 It transpires that the petitioners challenged the orders (Annexure P-5 and Annexure P-6) by filing a revision petition i.e. Executive Revision No. 15212/Partition (Date of Instt.: 28.01.2022), before learned Divisional Commissioner, however, during the pendency of the aforesaid revision, Naksha 'Jeem' came to be approved on 22.02.2022 and sanad takseem was issued on 01.04.2022 (Annexure P-7). Accordingly, the petitioners filed another revision petition i.e. Executive Revision No. 15320/Partition (Date of Instt. : 13.04.2022), before learned Divisional Commissioner.

2.3 Both the aforesaid revision petitions came to be dismissed by learned Divisional Commissioner, vide order dated 17.05.2022 (Annexure P-8).

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

4. During the course of hearing, learned counsel for petitioners has primarily raised following submissions :-

- (i) that the partition has been carried out in violation of the mode of partition ;
- (ii) that respondent No. 5 has been wrongly allotted area bearing Khasra No. 60//4/3 (0-12). It is submitted that the entitlement of respondent No. 5 was 12 marlas of area and for that, a passage has been provided, which has consumed 24 marlas. Accordingly, it is submitted that respondent No. 5 should be allocated area in Khasra No. 60//13/1.
- (iii) that respondents No. 7 and 8 in the partition application (respondents No. 9 and 10 herein) have been wrongly allocated land in Khasra No. 57//18/2, although, the said area can be completed in Khasra No. 60//13/1 and adjoining Khasra No. 60//8.
- (iv) The passage has been carved out in the manner which bifurcates the land of the petitioners and other co-sharers into two parts.

4.1 With the aforesaid submissions, learned counsel for petitioners contends that the partition proceedings as well as sanad

takseem are unsustainable in the eyes of law being arbitrary and unfair, therefore, the same be set aside and the matter be remanded to the concerned learned Assistant Collector for fresh decision.

5. Per contra, learned State counsel as well as learned counsel appearing for private respondent No. 5 have opposed the submissions made on behalf of petitioners by submitting that the partition has been carried out in consonance with the mode of partition, wherein it was specifically provided that the partition would be carried out by keeping the possession intact and also that 2 karam water course and 3 karam passage would be provided to each kurra (block), as allocated to respective co-sharers. It is stated that as per Clause 5 of sanctioned mode of partition, the co-sharers, who have planted orchard, installed the tubewell or constructed the Dhani (hutment), the same would be allotted to those co-sharers only. It is submitted that the kurras (blocks) of respondent No. 5 and respondents No. 9 and 10 herein have been carved out by keeping in view their possession and Dhani, therefore, there is no violation of mode of partition. It is also submitted that the water course and the passage has been provided in the same manner as it was existing prior to the partition. In this regard, reliance is placed upon the spot inspection report, carried out by the Local Commissioner in the proceedings before the civil court. It is stated that there is no infirmity in the partition proceedings and, therefore, prayer has been made for dismissal of the instant civil writ petition.

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

7. In the first blush, the arguments raised by learned counsel for petitioners looked impressive, however, on closer scrutiny of the record, it is revealed that there is no merit therein.

7.1 The mode of partition provided as under :-

“Land under partition is Khewat No. 277 Khatoni No. 298 and 299, Kitte 11 measuring 78 Kanal 11 Marla situated at village Jalaria Tehsil and District Fatehabad as per the Jambandi for the year 2015-2016 :-

- 1. At the time of conducting the partition one kurra of applicant and one separate kurra of respondents no. 4, 5, 6 and one separate kurra of respondents no. 7, 8, 9 and one separate kurra of remaining respondents shall be carved out. Total four (4) be carved out.*
- 2. The partition be conducted after keeping the possession intact and keeping the value of land intact.*
- 3. The trees be kept with the land.*
- 4. Two karam water course and 3 karam passage to each kurra be allotted.*
- 5. The co-sharer who planted the orchard, installed the tubewell, constructed the Dhani, the same be allotted to him.*
- 6. The co-sharer who mortgaged his share, the same be allotted to him.*
- 7. At the time of partition the shortage of 2 marla shall be ignorable.*
- 8. The partition be conducted with the help of Patwari Halqa under the supervision of Girdawar Halqa.*
- 9. The partition of gair mumkin area will not take place.”*

7.2 A perusal of the above extracted mode of partition would show that the partition was to be carried out by keeping the possession intact and also keeping in view the value of the land. In the mode of partition, it is mentioned that 2 karam water course and 3 karam passage would be provided to each kurra (block) and the orchard, tubewell and

Dhani will go to the same co-sharers, who have constructed/established the same. A perusal of site plan (Annexure P-9) would show that respondents No. 9 and 10 herein have been allocated land shown in green colour, whereas respondent No. 5 has been allocated land shown in blue colour. The area depicted in yellow colour shows the land of other co-sharers (including petitioners) as 'joint owners' in one khewat. There is no dispute as regards entitlement of respondent No. 5 and respondents No. 9 and 10 herein.

8. The only submission of the petitioners is that respondent No. 5 and respondents No. 9 and 10 be allotted land out of Killa No. 60//13/1 and 60//8, so as to avoid wastage of land in provisioning of rasta and water course to their land. On the other hand, the stand of respondent No. 5 as well as respondents No. 9 and 10 is that they have been allocated only that land which was in their possession, where they have constructed a Dhani/installed tubewell etc. In support of the said plea, they rely on the Local Commissioner's report (Annexure R-5/3) and site plan (Annexure R-5/4), prepared by Local Commissioner, which was submitted in a civil suit amongst some of the co-sharers in land under partition. The relevant extract of Local Commissioner Report dated 28.11.2009 (Annexure R-5/3) reads as under :-

“ Respondent Het Ram and Kheta Ram Dhani is constructed 2 acres away on the northern western side in the field from the land in dispute. On the demarcation of Halqa Patwari, the khal was verified in the presence of the persons. On the spot, the applicant has shown one map of canal department. The Halqa Patwari has verified the same. As per the Naksha, the disputed khasra No. 60//4, 7, 14 on the western side, khasra

No. 60//13, 19, 21, 61//25, 24, 23, 22, 21 and on the Burji towards southern side, pucca khal was found which has been constructed by the canal department.

The person present has stated in the demarcation of Patwari that this khal has been constructed to irrigate the field from Mehmadvpur Rohi miner 18800-Right.

Thereafter, killa No. 60//14, 7, 4, the width and the depth of the khal there is a barma the same is digging khal. The lift system has been adopted to lift the water. The same has been constructed pucca.

On the spot Khasra No. 60//13 on the southern dole the attach map Mark A, B 4 to 4 ½ deep and 4 to 5 feet wide and 4, A there is a Pulia/Convert for making the lift system the pucca spot has been made from bricks and cement.

From point B to C, the khal is 4 to 5 feet width and 4-5 feet deep and Khasra No. 60//14 situated on the western dol. On the eastern dol, there are six trees on the point C there is a lift system and there is a engine and handpump. Further from point C, Khasra No. 60//7 and 60//14 in between dol from the west to east there is a khal.

From point C to D, khal/water course is 4 to 5 feet wide, 5 to 5 ½ deep, Khasra No. 60//7 on the western dol the point is constructed. From the eastern dol of khal. On the eastern dole of the khal very old Sheesham tree is there and on the western dol, two trees are there which has been shown in the Naksha. On the point D for putting the lift system/barma 5 ½ feet deep, pucca point is made with cement and bricks.

From ahead of point D, khasra No. 60//4 and 60//7 on the middle dol from west to east one khal is made which is from point E 4 to 5 wide and 5-6 deep. In the northern dol of khal two old trees are there which has been shown in Naksha. Point E to North, 50 feet khal is of digging in

which 6 feet deep barma/lift system is there. The place of barma is pucca point constructed with cement and bricks, one engine is installed. On the western dol of khasra No. 60//4 there is a khal.

From the spot, it seems that the khal has been constructed by canal department for irrigation. The respondent is using the khal to irrigate their field.

All the killa Nos. 60//4, 7, 13, 14 there is no tubewell or house on the spot. The report is submitted.”

A perusal of above extracted report and site plan would clearly show existence of water channel in the land in question, which appears to be provided by Canal Department.

8.1 Furthermore, the contention of learned counsel for petitioners that a lot of land has been wasted in providing passage and water channel to the kurras (blocks) of respondent No. 5 as well as respondents No. 9 and 10; has been dealt with by learned Divisional Commissioner in its order dated 17.05.2022 (Annexure P-8) by observing as under :-

“10. It has been found from the perusal of record of lower court that the mode of partition Naksha Kha has been accepted by the Assistant Collector 2nd Grade after hearing both the parties on the basis of merits and demerits. It is clear from the spot inspection report dated 28.11.2009 conducted by local commissioner available on the file and local commissioner report dated 24.10.2021, the Panchayati compromise dated 05.02.2020 and report of Halqa Patwari dated 16.02.2022 that in the Naksha Kha the running water course and passage are on the same place on the spot and where the water course and passage has been left and as per the possession on the spot the Naksha Kha has been prepared rightly. In this case Sanad Taksim has issued. As per rule the Sanad Taksim should not be changed until there

is any grave irregularity in the Sanad Taksim. In this Sanad Taksim also no grave irregularity seems.

11. So keeping in view the above mentioned circumstances the application dated 17.02.2022 filed by the respondent No. 1 is accepted while finding force and both the revisions of the revisionist are dismissed while finding no force in both the revisions. The certified copy of the judgment passed by this Court be sent back with the record of lower court. While preparing the second copy of this order be placed on both the revisions. The file be consigned to record room after compliance.”

8.2 Learned counsel for petitioners has failed to dislodge the contentions of respondent No. 5 as well as respondents No. 9 and 10 and has further failed to controvert the findings/observations made by learned Financial Commissioner in above extracted order.

8.3 Apparently, the partition has been carried out keeping in view the interest of all co-sharers, who are in specific possession of their land and the passage/water course has been provided, as per position already existing at the spot.

9. In this view of the matter, it cannot be said that the manner, in which the partition has been carried out, is in violation of sanctioned mode of partition. It is further noticed from the sanad takseem (Annexure P-7) that apart from the petitioners, there are other co-sharers as well, whose shares have not been separated in these partition proceedings and they have been kept under one khewat as joint owners. In my view, in case, these co-sharers, who have been kept in one khewat in the present partition proceedings, also seek partition of their respective shares in future, then they can be easily adjusted on either side of passage, which stands provided in the present partition proceedings.

10. That apart, learned counsel for petitioners has also failed to point out any prejudice caused to petitioners with the manner in which partition has been carried out. Therefore, there is no scope for any interference in the partition proceedings, by this Court. The final partition appears to be fair, just and equitable.

11. Resultantly, finding no merit in the instant civil writ petition, the same is dismissed.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

12.11.2024
sjks

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