

2024:PHHC:117533



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

CWP-12741-2024 (O&M)
Date of decision : 04.09.2024

ITBAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bhupinder Ghai, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J.

Petitioner (Itbar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 08.10.2021 (Annexure P-2) passed by the learned Assistant Collector Ist Grade, Beri; whereby, '*Naksha bey*' was approved.

A further prayer has been made for setting aside the order dated 06.03.2023 (Annexure P-3) passed by the learned Collector, Beri and also the order dated 11.12.2023 (Annexure P-4) passed by the learned Commissioner, Rohtak Division, Rohtak; whereby an appeal and revision filed by the petitioner against the approval of '*Naksha bey*', were dismissed, respectively.

2. During the course of hearing of the present petition, vide order dated 08.07.2024, learned counsel for the petitioner was directed to place on record the copy of the spot inspection report dated 03.03.2023 along with copy of the sanctioned mode of partition and also the objection submitted by the petitioner to the proposed '*Naksha bey*'.

2.1 In compliance of said order dated 08.07.2024, the petitioner has filed ***C.M. No.12556-2024*** for placing on record the copies of aforesaid documents as Annexures P-5, P-6 and P-7.

2.2 For the reasons recorded in the application (***C.M. No.12556-2024***), the same is allowed and Annexures P-5 to P-7 are taken on record, subject to all just exceptions.

3. Briefly, in the partition proceedings initiated by respondent No.5 (Husinder) in respect of land comprising *Khewat No.74* of Village Gochhi, Tehsil Beri, District Jhajjar, '*Naksha bey*' was received from the Field Staff, upon which the objections from the co-sharers were called.

3.1 The petitioner submitted objections to the proposed *Naksha bey*, wherein the following objections were taken :-

“1. That the above application for partition is pending before this Court and is fixed for today i.e. dated 09.07.2021 for filing objections to Map Bay.

2. That during the preparation of Map Bay the mode of partition and the rules were not complied with. There are many shortcomings, which are against the law, the rules, against procedure.

3. That Khewat no.74//62, Khatouni No.75 Kita 7 area 38 Kanal 11 Marla out of which ½ share equal to 19 Kanal 5 Marla and 5 Sarsahi the area allotted to me is less fertile.

4. The land allotted to my share is Banjar therefore the said land should be equally divided

between both the parties and the land which is fertile should also be divided equally to both. Therefore the adjustment should be done by adjusting the possession so that both the parties should get equal land in the Interest of Justice. Therefore it is prayed that the objections may be allowed and the necessary orders be passed to correct Map Bay.”

3.2 ‘Naksha bey’ came to be approved by the learned Assistant Collector Ist Grade, Beri, vide its order dated 08.10.2021 (Annexure P-2) while finding no force in the objections submitted by the present petitioner.

4. Feeling aggrieved against the order dated 08.10.2021 (Annexure P-2), the petitioner preferred an appeal before the learned Collector, which was dismissed vide order dated 06.03.2023 (Annexure P-3) by holding as under :-

“After hearing the arguments of counsel for both the parties and observing the facts and records presented in the case, I have come to the conclusion that as per the spot inspection report dated 03.03.2023 of Halka Girdawar and the existing map “Bay”, the variety and price have been found to be correct. The appeal filed by the appellant is not based on facts. Map “Bay” has been prepared by keeping in mind the type, price and possession as per the method suggested by the Subordinate Court. The appeal is not acceptable. Hence Appeal is rejected. Parties are instructed to appear in the court of Subordinate Court Assistant Collector Second Division, Beri on 20.03.2023. The order was pronounced. The case file be sent to record room after compliance of orders.”

5. Still aggrieved, the petitioner preferred a revision petition before the learned Divisional Commissioner, Rohtak, which

was also dismissed vide order dated 11.12.2023 (Annexure P-4), by holding as under :-

“I have considered the points raised by the petitioner in the Revision petition and have gone through the orders passed by lower courts apart from this I have perused the records and considered the submissions made by both the parties and came to this conclusion that according to the Jamabandi for year 2016-2017 the disputed land situated in Khasra No.126 and 130 are adjoining each other and the kind of land is NEHRI apart from this, the Court of Collector have found the spot inspection report and Naksha bay is prepared according to the possession and the value of land.

Accordingly, the present Revision Petition is found to be baseless, illogical and illegal and therefore is dismissed and the order passed by the Ld. Collector, Beri-cum-Sub Divisional, Beri District Jhajjar order dated 06.03.2023 and order dated 08.10.2021 passed by Assistant Collector Ist Class, Beri are ordered to be kept intact being logical, legal and being well founded.”

6. In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed here-in-above.

7. During the course of hearing, while referring to *Naksha Bey* (Annexure P-1 at Page 23), the only argument raised by learned counsel for the petitioner is that in one block of joint land comprised in Rectangle No.95, Killa No.23/1/2, 24/2/2, 24/2/3; the petitioner has been allotted land (orange colour) on both sides of the land allotted to respondent No.5 (yellow colour). It is submitted that the petitioner may be allotted land on

one side in a compact area so that he can utilize and manage the said land properly.

8. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

9. A bare look at the *Aks shajra*, which forms a part of *Naksha bey* (Annexure P-1) would indicate that the land under partition is comprised in two blocks and it appears that the co-sharers have been allocated land in both the blocks as per their share and entitlement.

10. As regards the grievance of the petitioner that in one block, he has been allocated land in such a manner that his land is bifurcated by land allotted to respondent No.5, therefore, he should be given land in one compact parcel; it is observed that considering the area and location of the block comprising Rect. No.95, Killa No.23/1/2, 24/2/2, 24/2/3, in case, the demand of the petitioner is to be accepted by allocating him land in one compact parcel, which is possible only if petitioner is given land out of Rect. No.95, *Killa No.24/2/2* and *24/2/3* but in that eventuality, the respondent No.5 cannot be fully accommodated in the area comprised in *Rect. No.95, Killa No.23/1/2* and to make good the balance area of respondent No.5, some fragment or strip of land will have to be carved out, out of the area comprised in *Rect. No.95, Killa No.24/2/2 or 24/2/3*, thereby making it difficult for respondent No.5 to cultivate and manage the land properly.

11. In my considered view, in the instant case, the parcels of land as carved out in two blocks of joint land and the manner in which the said parcels have been allocated to the petitioner and respondent No.5, are just, fair and equitable, especially taking note of the shareholding/entitlement of the respective parties and also the position existing at the spot. Moreover,

the area allocated to the petitioner in *Rect. No.95, Killa No.23/1/2 and 24/2/3*, has been duly provided with the passage.

11.1 It is also noticed that the objection, which is sought to be raised by the petitioner before this Court that the land allocated to him has been bifurcated by the land allocated to respondent No.5, was not even taken in the objections submitted by the petitioner before the learned Assistant Collector Ist Grade, Beri. Rather the only objection taken by the petitioner before the learned Assistant Collector Ist Grade, Beri, was that the land allocated to the petitioner was *banjar*/less fertile. However, the said objection is clearly negated from the Spot Inspection Report dated 03.03.2023 (Annexure P-5), which was carried out on the directions of the learned Collector, wherein it was reported that the possession was correct as per the Collector's rate. It is, thus, apparent that the value of the land under partition is the same in all *Killa Nos.*, therefore, the *Naksha bey* was rightly approved, after rejecting the objections of the petitioner.

12. Keeping in view the above discussion, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.

13. All pending application/s, if any, shall also stand closed.

September 04, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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