



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10761-2018 (O&M)
Date of decision : 03.09.2024

RAM KUMAR AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

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

Mr. Ashok Kumar, Advocate
for respondent No.5.

HARSH BUNGER, J. (ORAL)

1. Petitioners have 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 16.04.2015 (Annexure P-5), whereby the objections filed by the petitioners to the proposed *Naksha Bay*, were dismissed.

1.2 Petitioners further seek setting aside of an order dated 30.06.2016 (Annexure P-6) passed by the learned Collector, Kaithal,

whereby the appeal of the petitioners against the order dated 16.04.2015 (Annexure P-5) was dismissed.

1.3 A further prayer has been made by the petitioners for setting aside the *Sanad Takseem* dated 13.10.2016 (Annexure P-8) and also the order dated 16.01.2018 (Annexure P-10) passed by the learned Financial Commissioner (Revenue), Haryana, whereby the revision filed by the petitioners challenging the partition proceedings/orders along with *Sanad Takseem*; was dismissed.

2. Briefly, respondent No.5 filed an application for partition of joint land measuring 69 *Kanals* – 12 *Marlas*, situated in Village Pinjupura. The petitioners appeared in the said partition proceedings and contested the claim, *inter alia*, on the plea that the land already stood partitioned in the year 1986 by way of private partition.

2.1 It appears that the learned Assistant Collector Ist Grade, Kalayat, vide order dated 09.02.2012 (Annexure P-1) sanctioned the mode of partition and thereafter, the *Naksha Bay* was called from the Field Staff. Upon receipt of *Naksha Bay* from the Field Staff, objections were called. The petitioners filed their objections to *Naksha Bay*; however, the same were rejected vide order dated 20.12.2012 (Annexure P-2) by the learned Assistant Collector Ist Grade, Kalayat.

2.2 It transpires that the petitioners preferred an appeal before the learned Collector against the afore-said order dated 20.12.2012 (Annexure P-2), which was allowed and the matter was remanded to the learned Assistant Collector. Upon remand, a fresh *Naksha Bay* was received, to which, the petitioners submitted their objections, however, the learned Assistant Collector Ist Grade, Kalayat, dismissed the objections

filed by the petitioners vide order dated 16.04.2015 (Annexure P-5). A further appeal by the petitioners against the order dated 16.04.2015 (Annexure P-4) was also dismissed vide order dated 30.06.2016 (Annexure P-6). It transpires that the petitioners preferred a further revision before the learned Commissioner, Ambala Division, Ambala, however, during the pendency of the said revision, *Sanad Takseem* dated 13.10.2016 (Annexure P-8) came to be issued, whereupon, the petitioners withdrew their revision before the learned Commissioner and thereafter, the petitioners preferred a Revision Petition (ROR No.80 of 2016-17) before the learned Financial Commissioner, Haryana, which was dismissed vide order dated 16.01.2018 (Annexure P-10).

2.3 In the afore-mentioned circumstances, the petitioners have preferred the present writ petition before this Court, for the relief/s, as noticed here-in-above.

3. Learned counsel for the petitioners submits that the partition has been carried out against the sanctioned mode of partition, inasmuch as that the principles of consolidation of holdings have been violated. It is further submitted that the area comprised in *Killa No.27//2/1* has been given to another co-sharer namely, Darya, whereas, it was required to be given to the petitioners. It is next submitted that the area comprised in *Killa No.27//2/2* and *3/1* was to be given to Darya but the same was given to the petitioners and even *Killa No.27//19* has been bifurcated and a portion thereof has been given to Darya, whereas, the entire *Killa No.27//19* was to be given to the petitioners. Accordingly, it is contended that the possession of the parties has been disturbed, which is in violation of the sanctioned mode of partition.

3.1 With the afore-said submissions, learned counsel for the petitioners prayed that the impugned orders/*sanad takseem* be set aside and the matter be remanded to the learned Assistant Collector, for afresh decision.

4. Per contra, learned counsel appearing for respondent No.5 has opposed the submissions made on behalf of learned counsel for the petitioners by submitting that the partition has been carried out in accordance with the sanctioned mode of partition and there has been no violation thereof. It is submitted that respondent No.5 has been litigating for the last more than ten years for his separate block of land, however, the petitioners are intentionally delaying the finalization of the partition proceedings. It is further submitted that there is no illegality or perversity in the final partition order and no prejudice has been caused to the petitioners. Accordingly, prayer for dismissal of the writ petition has been made.

5. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

6. Concededly, the petitioners were initially litigating against the approved *Naksha Bay* on the plea that their objections to the proposed *Naksha Bay* were not considered, however, it appears that during the pendency of those proceedings initiated by the petitioners against *Naksha Bay*, the *sanad takseem* (Instrument of partition) came to be issued on 13.10.2016 (Annexure P-8) and the revision filed by the petitioners before the learned Commissioner, against *Naksha Bay* was withdrawn by them. Thereafter, the petitioners filed a Revision Petition (ROR No.80 of 2016-17) before the learned Financial Commissioner, challenging the final partition proceedings/*sanad takseem*, however, the same was dismissed

vide impugned order dated 16.01.2018 (Annexure P-10), by holding as under :-

“6. I have carefully considered the facts of the case, have gone through all the documents placed on record and have given my thoughtful consideration to the rival contentions of both the parties and my findings are as under :-

- (i) At the outset, it is pointed out that ROR is full of avoidable errors. It has been mentioned that the A.C. Ist Grade rejected the objections vide his order dated 23.07.2015 which is infact, 16.04.2015. Similarly, the appeal has been rejected by the Ld. Collector vide his order dated 30.06.2016 and not vide order dated 21.07.2016 as claimed. It is also surprising that an application was submitted for correction of Petition wherein it was claimed that area involved in this Petition is 291K-16M and not 69K-12M as stated in the original ROR. Even though this application was allowed on 07.11.2017 as same was not opposed by the Counsel for the Respondent, on careful scrutiny, I have found that the area involved is infact 69K-12M only and not 291K-16M comprising of Khewat No.49, Khatoni No.73, Jamabandi 2000-2001. Hence, this application was not required to be filed at all.*
- (ii) A wrong plea has been taken in ROR that the instrument of partition was issued even before the appeal was rejected by Ld. Collector on 30.06.2016. Infact, the instrument of partition has been issued on 13.10.2016 i.e. much after the dismissal of the appeal by the Ld. Collector on 30.06.2016 and therefore, plea of the Petitioners in this regard is not tenable.*
- (iii) There is concealment of a fact in the ROR. It was found from record that they had earlier filed an appeal before the Ld. Collector who had decided the matter and*

passed some directions on 11.02.2014 against which no appeal has been preferred by any party. The amended Naksha Bay has been prepared in accordance with the orders of the Ld. Collector dated 11.02.2014 and this fact has been mentioned by the Ld. Collector, Kalayat in his orders dated 30.06.2016. This fact was not disclosed by the petitioners, Hence, on this ground alone, ROR is not tenable.

- (iv) *The petitioners have throughout claimed that land comprising in Rectangle No.43//2 and 43//9 was required to be given to them as they had installed Tubewell and Transformers therein. The Counsel for the respondent placed on record a report as per which, neither there is any Tubewell nor any Transformer in these Khasra Nos. Now at the time of arguments, the Counsel for the petitioners claimed that these Khasra Nos. were mentioned erroneously and actual Khasra Nos. are 43//3 and 43//8. No cognizance of this plea can be taken because even while filing the Revision Petition on 22.11.2016 and amended Revision Petition on 06.11.2017, these Khasra Nos. were not corrected. If the petitioners had come to know of the error mentioned in Khasra Nos. in which Tubewell and Transformers are located, the correction should have been done in the ROR or atleast in the amended ROR and hence, the plea in this regard is not tenable.*
- (v) *The plea that it is mandatory on the part of the Asstt. Collector to carry out physical verification before ordering partition as laid down in 1996 PLJ 203 is also not tenable because even cursory look at this judgment reveals that this is not any interpretation of law or rule but it was rather a direction by the Financial Commissioner in that particular case to visit the spot. In any case, it has been observed that field inspection had*

been done by the Asstt. Collector before carrying out the partition proceedings.

- (vi) *It is surprising that the petitioners have blamed respondent for not revealing the fact of issuance of Sanad Takseem before Ld. Collector but the fact is that same was issued on 13.10.2016 and an appeal had been filed by the petitioners on 18.10.2016 in the Court of Ld. Commissioner. The petitioners should have been aware of the issuance of Sanad Takseem on 13.10.2016 when they filed the case before Ld. Commissioner and hence, it is not proper for them to blame the respondent in this regard.*
- (vii) *The plea that a private partition had already been effected in this case is not tenable because neither same has been incorporated in the Revenue records nor any documentary proof in any form has been furnished evidencing this fact.*

In view of the above, it is crystal clear that the partition proceedings have been carried out by the Asstt. Collector Ist Grade in accordance with the law and he had even amended the Naksha Bay in accordance with the earlier order of Ld. Collector in appeal dated 11.02.2014 and there is no infirmity or irregularity as pointed out above. Hence, the Revision Petition is hereby dismissed.”

6.1 A perusal of the above extracted findings returned by the learned Financial Commissioner, would clearly indicate that all the objections were duly considered and dealt with.

7. During the course of hearing, learned counsel for the petitioners has failed to point out any illegality or perversity in the order passed by the learned Financial Commissioner and neither, it has been shown as to in what manner, the final partition is contrary to the sanctioned

mode of partition or which clause of the sanctioned mode of partition has been violated.

8. That apart, a perusal of the *Aks Shajra*/site plan (Annexure P-11) attached with the writ petition would show that the partition has been carried out in a fair, equitable and justified manner. Further, the petitioners have also failed to show as to what prejudice has been caused to them with the final partition carried out in this matter.

9. Keeping in view the afore-mentioned facts and circumstances, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.

10. All pending applications (if any) shall also stand closed.

September 03, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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