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

**CWP No.17837 of 2021 (O&M)
Date of Decision: 20.05.2024**

Ram Niwas and another

s Petitioners

Versus

Commissioner, Hisar Division, Hisar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Aayush Gupta, Advocate
for the petitioners.

Ms. Upasna Dhawan, AAG, Haryana.

Mr. Deepak Jain, Advocate
for respondents No.3 to 7, 11 to 13 & 18 to 22.

RAJESH BHARDWAJ, J.

1. Present writ petition has been filed for setting aside the order dated 22.04.2019 (Annexure P-7) whereby the petitioners and proforma respondents were proceeded ex parte and the consequential order dated 20.05.2019, 27.06.2019, 16.07.2019 and 30.07.2019 (Annexures P-8 to P-11 respectively) whereby the partition proceedings were finalized and for setting aside the order dated 23.08.2021 (Annexure P-13) whereby the revision filed by the petitioners has been declined by respondent No.1. Further prayer has been made for directing the official respondents to decide the partition proceedings afresh after hearing both the parties as the impugned proceedings were proceeded ex-parte which were



completed within three months without serving the petitioners and the proforma respondents and the parties may be directed to maintain status quo upon the disputed property.

2. It has been submitted by learned counsel for the petitioners that respondents No.3 to 22 had filed the petition for partition against the petitioners and proforma respondents on 20.03.2019. He has submitted that the petitioners are the residents of Gujarat as is proved by Aadhar Cards and Voter Cards appended with the petition as Annexures P-4 to P-6. He has submitted that the service effected on the petitioners was manipulated wherein they were shown to have refused to receive the summons. He has submitted that vide order dated 22.04.2019, the petitioners were proceeded against *ex parte* and the subsequent orders were passed. He submits that on coming to know about the partition proceedings, the petitioners challenged the same by way of filing the revision petition on 17.08.2020. He submits that the revision petition filed by the petitioners was illegally dismissed by the learned Revisional Court i.e. respondent No.1 vide impugned order dated 23.08.2021.

3. Learned counsel for the petitioners has invited the attention of this Court to the order passed by the Assistant Collector IInd Grade, Alewa dated 13.03.2019 wherein the petitioners were shown to have refused to accept the summons. He has submitted that on the Aadhar cards of the petitioners, the address of the petitioners is clearly shown to be of Gujarat. He has submitted that the mode of partition was approved on 30.07.2019 without any objections. The Naksha Bey was approved on 27.06.2019 and Naksha Jeem thereafter was approved on 16.07.2019. He



submits that the partition proceedings were completed as the instrument of partition i.e. sanad takseem was issued on 30.07.2019. He has submitted that the Sarpanch and Panch of village had certified that Jagar son of Chhotu Ram was the permanent resident of village Pegan, who died in the year 2000. It was further asserted that Jagar had four children, out of them three are boys and one is girl. Names of sons are Ashbir, Ram Niwas (petitioner No.1) and Krishan (petitioner No.2). It was further submitted that the petitioners and Kitabo Devi i.e. their mother purchased the land in Gujarat in 2007 and since 2010 all of them were residing in Gujarat. He has submitted that thus it is evident that the petitioners were not residing in the village and thus, without effecting any service upon them on their place of living, the partition proceedings were carried out *ex parte* qua them. He submits that the learned Commissioner without appreciating the submissions made by learned counsel for the petitioners and the relevant record, illegally dismissed the same. He submits that the partition proceedings admittedly are in violation of the principles of natural justice and thus, the impugned order being unsustainable in the eyes of law deserves to be set aside by setting aside the partition proceedings carried out.

4. *Per contra*, learned counsel for the respondents has vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that the petitioners have not approached this Court with clean hands. He submits that whole case of the petitioners is based on the contention that they are residents of Gujarat and have no connection with the village where the land is situated. However the voter



cards and Aadhar cards have been produced only in order to mislead the Court. He submits that petitioner No.1 is registered at Sr. No.405 in the voter list for the Gram Panchayat election for the year 2015 in ward no.20 of village Pegan. However the voter ID card of petitioner No.1 has not been placed on record. He further submits that both the petitioners and their mother Smt. Kitabo Devi are registered with Citizen Resource Information Department, Government of Haryana and have got issued Parivar Pehchan Patra (PPP) having Family Identification Number allocated to each family residing within the State of Haryana. He submits that the petitioners are the permanent residents of village Pegan, District Jind. He submits that the petitioners, out of sheer greed after acquisition of land by the National Highway Authority of India had concocted and cooked up the story so as to vitiate the partition proceedings. He submits that it is apposite to mention that the oral partition among the co-sharers had already taken place long ago which has been duly endorsed by the Assistant Collector IInd Grade, Alewa and hence the entire proceedings before the learned Assistant Collector IInd Grade were consensual after the land was orally partitioned by the co-sharers long ago. He submits that the petitioners along with the proforma respondents were well aware of the entire partition proceedings and intentionally refrained themselves from appearing deliberately before the partition proceedings. He submits that the report of the process server, which was duly endorsed by Chowkidar of the village clearly proves that the petitioners had intentionally refused to accept the summons. He submits that from the facts and circumstances, it is amply clear that the petitioners were duly



visiting their village to meet their relatives which fact has been concealed by them. He submits that the revision petition was filed by the petitioners only for the reason that after the partition proceedings were concluded, the notification under Section 3A(1) of the National Highway Authority of India Act, 1956 was issued on 19.02.2020 followed by the notification under Section 3D(3) dated 16.07.2020. He has submitted that by virtue of the notification dated 16.07.2020, the total land measuring 44.4384 hectares was acquired by the National Highway Authority of India. The award in respect of the land so acquired was passed on 22.07.2020. Interestingly, the revision petition came to be filed by the petitioners on 17.08.2020 i.e. just 26 days after passing of the award. Thus, it is evident that soon after the passing of the award, the petitioners filed the revision petition before respondent No.1 by concocting the story that the partition proceedings have been carried out against them *ex parte*. He submits that respondent No.1 had duly appreciated the complete record and the arguments advanced by both the sides and thus, has rightly dismissed the same. He submits that the amount of award received is lying deposited with the Court due to the pendency of the present petition filed by the petitioners. He submits that there being no merit in the present petition, the same deserves to be dismissed.

5. The Court has heard learned counsel for the parties and perused the record with their able assistance.

6. As deciphered from the facts and circumstances of the case, the partition proceedings were initiated at the behest of respondents No.3 to 22 vide application dated 20.03.2019. The petitioners were duly



arrayed as respondents in the partition proceedings and the notices were issued. However as revealed from the record, the petitioners refused to accept the summons and thus, they were proceeded against *ex parte* by the Assistant Collector IInd Grade, Alewa vide his order dated 22.04.2019. Resultantly, the mode of partition, Naksha Bey, Naksha Jeem and thereafter the Sanad Takseem was issued by respondent authorities as there were no objections received. The Sanad Takseem was issued on 30.07.2019. Needless to say, the dispute involved in the present petition is not that the petitioners have not been allotted their due share, however the main thrust of counsel for the petitioners is that the whole proceedings are *ex parte* qua them. Though the petitioners are living in Gujarat, however there is nothing on record to show that the petitioners are permanently cut off from their parental village. It has been revealed from the record that the petitioners by way of sale deed no.890 dated 20.10.2006 sold 77 kanals 1 marla of land by specific number to Vijender son of Shaam Singh etc. This land was further sold vide sale deed No.687 dated 17.07.2013 of the specific number to Dinesh son of Asa Ram. After the partition, the same number came to Dinesh son of Asa Ram and mutation no.4332 was registered. Needless to say, this sale deed took place before the partition and thus admittedly it was a joint land and thus, the petitioners could have sold only their share and not any specific number.

7. From the facts and circumstances of the case, it is evident that from the stage of filing of the partition proceedings upto its culmination i.e. when the Sanad Takseem was issued on 30.07.2019, the



petitioners raised no objection on the ground that it was not in their knowledge. However this is an admitted fact that thereafter the National Highway Authority of India had acquired the land and the notification was issued on 19.02.2020 and thereafter the award was announced by the Court on 22.09.2020. Interestingly within a month, the petitioners filed the revision petition. If the argument raised by learned counsel for the petitioners is accepted that the petitioners are permanently living in Gujarat and thus remained totally unaware of the partition proceedings carried out then it is difficult to digest that how they came to know about the pronouncement of the award within such a short span. Thus, the circumstance substantiate the argument raised by learned counsel for the respondents that the revision petition was filed by the petitioners in a pre-fabricated manner due to the sheer greed of the amount given in the award.

8. There is no denial to the fact that the partition proceedings have been carried out *ex parte qua* the petitioners but as deciphered from the evidence on record, there was an oral partition among the co-sharers and thus, the petitioners remained complacent throughout the partition proceedings. However the trigger point was nothing else than the acquisition of the land falling in the share of the respondents soon after the partition proceedings.

9. In the overall facts and circumstances of the case, this Court finds that even if the partition proceedings were carried out *ex parte qua* the petitioners, the same caused no prejudice to them and it is due to this that they never agitated the partition proceedings. However, the

notification issued for the acquisition and the award pronounced thereafter on 22.07.2020 compelled them to change their mind and file the revision petition by agitating the partition proceedings to have been concluded expedite qua them.

10. This Court is unable to accept the argument raised by learned counsel for the petitioners. At the most it can be said to be the role of destiny that the land fallen in share of the respondents was acquired and not the land which had fallen in the share of the petitioners. Had the land fallen in the share of the petitioners would have also been acquired, probably there would not have been any revision petition filed by the petitioners.

11. Thus, this Court finds no ground to interfere in the partition proceedings and hence finds no infirmity in the impugned orders passed by the Revenue Authorities. Resultantly, the present petition being devoid of any merit is hereby dismissed.

20.05.2024

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No