

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15425-2024 (O/M)
Date of decision : 13.09.2024

Shri Chand

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sarvjit Singh Khurana, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana and
Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Shri Chand) has 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 the order(s) dated 05.12.2022 (Annexure P-4), passed by the learned Assistant Collector 1st Grade, Manethi, District Rewari (in short 'Assistant Collector'), whereby Naksha 'Bey' was sanctioned; order dated 23.01.2023 (Annexure P-6), passed by the learned Assistant Collector, whereby Naksha 'Zeem' was sanctioned; order dated 25.01.2023 (Annexure P-7), passed by learned Assistant Collector, whereby sanad takseem (instrument of partition) was issued. A further prayer has been made for setting aside the order dated 09.05.2024 (Annexure P-9), whereby the revision petition filed by the petitioner challenging the partition proceedings/orders including sanad takseem

(instrument of partition), was dismissed by the learned Commissioner, Gurgaon Division, Gurgaon (in short 'Divisional Commissioner').

1.1 Another prayer has been made for issuance of a writ of mandamus for directing the official respondents to prepare fresh Naksha 'Bey' as per the mode of partition and to decide the partition proceedings afresh.

2. Briefly, respondent No. 5 (Singh Ram) filed an application seeking partition of joint land measuring 142 Kanal - 0 Marla situated at village Dhamlawas, Tehsil Manethi, District Rewari. The present petitioner appeared in the aforesaid partition proceedings and submitted his reply. It appears that the mode of partition was sanctioned and thereafter Naksha 'Bey' was called from the field staff.

2.1 Upon receipt of Naksha 'Bey', objections thereto were called from the co-sharers. It appears that no objection was submitted by any of the co-sharers to the Naksha 'Bey', accordingly, the same was sanctioned, vide order dated 05.12.2022 (Annexure P-4) and Naksha 'Zeem' was called for. Upon receipt of Naksha 'Zeem' and finding it correct according to Naksha 'Bey', the same was sanctioned, vide order dated 23.01.2023 (Annexure P-6). Thereafter, sanad takseem (instrument of partition) was issued on 25.01.2023.

2.2 It transpires that petitioner alongwith other co-sharers filed a revision petition before the learned Divisional Commissioner wherein challenge was made to the orders dated 05.12.2022 (Annexure P-4), 23.01.2023 (Annexure P-6) and 25.01.2023 (Annexure P-7), however, the said revision petition was dismissed, vide order dated 09.05.2024 (Annexure P-9).

3. In the aforementioned circumstances, the petitioner has filed the present writ petition before this Court for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the final partition is contrary to the mode of partition inasmuch as that in the mode of partition it was provided that 7 khewats would be carved out whereas in reality, 9 khewats have been carved out. It is stated that 9th khewat has been carved out for Indian National Highway without impleading the Government as a party. It is further submitted that the petitioner has been granted less land to the extent of one marla and his brother Lal Singh (proforma respondent No. 13) has been allotted 2 marla less area than his entitlement. It is next submitted that no adequate opportunity was afforded to the petitioner to file his objections to Naksha 'Bey'. It is still further submitted that the petitioner has laid underground pipelines for irrigation purposes in the land under their possession, however, the said aspect has not been considered by the revenue authority below. With the aforesaid submissions, learned counsel for petitioner prayed for setting aside the impugned orders and for remanding the matter to the Assistant Collector for fresh decision.

5. Heard.

6. In the present partition case, the following mode of partition was prepared :-

“Mode of Partition

Above-mentioned case partition Singh Ram versus Parmanand etc. regarding Khewat no. 137 and Khatoni no. 189 total kitta 23 measuring 142 Kanal 0 Marla situated at Village Dhamlawas Sub Tehsil Manethi,

District Rewari. Mode of Partition is proposed as follows:-

- 1. That 7 Khewats will be created of the land under partition. First Khewat of the petitioner, Second Khewat of respondent no. 1, Third Khewat of respondent no. 3, Fourth Khewat of respondent no. 4 and Fifth Khewat of respondent no. 5, Sixth Khewat of respondent no. 7, Seventh Khewat will be created joint of rest of the respondents.*
- 2. During partition the possession and cultivation will be considered.*
- 3. The party who has done pakki construction/made tubewell from his expense that construcion/tubewell be given to that party, if it is joint then will be kept joint.*
- 4. Consideration will be given to Pathway channel pipe conduit water resource.*
- 5. Distribution of the trees will be aligned with the land.*
- 6. The area abutting village and road will be given to all the parties as per their share.*
- 7. Shortage and surplus of 2 marla will not be worth considering.”*

7. Thereafter, Naksha 'Bey' was received from the field staff, upon which objections of the co-sharers were called, however, since none of the co-sharers raised any objection, accordingly, Naksha 'Bey' was sanctioned, vide order dated 05.12.2022 (Annexure P-4). Subsequently, Naksha 'Zeem' came to be sanctioned, vide order dated 23.01.2023 (Annexure P-6) and even the sanad takseem (instrument of partition) was issued.

8. The first objection raised by the petitioner is that while partitioning the joint land, 9 separate khewats have been carved out,

whereas according to mode of partition, only 7 khewats were to be carved out. Second objection raised is that 9th khewat has been carved out for Indian National Highway without impleading the Government as a party.

8.1. I have considered the aforesaid submissions, however, I do not find any merit in the same. A perusal of mode of partition would clearly indicate that 7 khewats for the co-sharers were to be carved out. The 8th khewat comprising of area utilized for providing passages etc., has been carved out by keeping the said area as joint. As regards the 9th khewat for Indian National Highway, learned counsel for petitioner has conceded that a small portion of national highway (shown in black colour in triangular shape in Annexure P-5) forming part of land comprised in Rect. No. 8 Killa No. 1; passes through the joint land. It is also conceded that all the co-sharers have been allocated land falling on the said national highway. Learned counsel for petitioner has been unable to show that the co-sharers of joint land have not received any compensation for the area which has come under the National Highway. Further, it is not shown as to what prejudice has been caused to the petitioner by carving out the 9th khewat as by not impleading Government as a party. Once the land stood acquired for national highway out of joint land under partition, it was appropriate for the revenue officer to carve out a separate khewat for the acquired land so as to bring the revenue records in consonance with factual position regarding land under partition and also to avoid any uncertainty and avoidable litigations in future. Rather, in my view, the value of the joint land falling on the national highway must have increased. Accordingly, finding no merit in the aforesaid submissions of the petitioner, the same are rejected.

8.2 The other submission raised by the petitioner is that he and his brother have been allocated less land to the extent of 1 marla and 2 marla, respectively. There is no merit in the said plea as well, as according to clause 7 of the mode of partition, kami-beshi (shortage-excess) to the extent of 2 marlas is liable to be ignored.

8.3 As regards the objection that the petitioner has laid underground pipes for irrigation purposes and the said aspect has not been considered while partitioning the land, it is observed that clause 4 of the mode of partition clearly provides for consideration of path way, channel, pipe conduit water resource. Learned counsel for petitioner has failed to show as to how the aforesaid clause 4 of the mode of partition has been violated.

9. That apart, from perusal of Annexure P-5 (Akshajra/Naksha 'Bey'), the partition appears to be fair, equitable and justified and the same does not call for any interference by this Court.

10. In view of the aforementioned facts and circumstances, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

13.09.2024
sjks

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