

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18397-2022 (O/M)

Date of decision : 01.08.2024

Rani Memorial Charitable Trust Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Rajesh Hooda, Advocate
for the petitioner.
Mr. Randhir Singh, Additional A.G. Haryana.
Mr. Shiv Raj Malik, Advocate
for respondents No 5 and 6.

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HARSH BUNGER, J.

1. Petitioner (Rani Memorial Charitable Trust) 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 order dated 02.02.2022 (Annexur P-11), passed by the learned Divisional Commissioner, Rohtak, whereby order dated 22.11.2019 (Annexure P-6), passed by learned Collector, Sub Division, Meham, District Rohtak and order dated 30.11.2018 (Annexure P-3), passed by the learned Assistant Collector 1st Grade, Meham have been set aside and the matter has been remanded to the Assistant Collector 1st Grade, Meham.

2. Briefly, on 30.03.2015, the petitioner being co-owner of agriculture land, measuring 6 Kanal 15 Marla, comprised in Khewat No. 56//49, Khatauni No. 61, Killa No. 222//9, situated at village Chandi, Tehsil Meham, District Rohtak (as per Jamabandi 2010-11), submitted an application seeking partition of joint land, before the learned Assistant Collector 1st Grade, Meham. It appears that subsequent to the filing of

partition application, the petitioner purchased 1 kanal-2 marla of land from one of the co-sharers in the aforesaid land, namely, Mangat Ram, vide sale deed dated 30.06.2015. Accordingly, the partition proceedings continued with respondents No. 5 and 6 herein, namely, Ravinder and Attar Singh. It is stated that in March 2016, Meham Tehsil records were burnt in Jat Aarkshan Aandolan, thereby forcing the petitioner to submit fresh partition application, which came to be registered as partition case No. 30/T dated 26.05.2017 before the Court of learned Assistant Collector 1st Grade, Meham. It is stated that the aforesaid case, respondents No. 5 and 6 were duly served and on 19.06.2017, they appeared before the concerned Assistant Collector 1st Grade, Meham through their counsel Shri Ravinder Panwar, Advocate and on 30.06.2017, Shri Rajesh Panwar and Shri Sushil Thakur, Advocate appeared on behalf of respondents No. 5 and 6 and filed their respective power of attorneys. It is submitted that when the proceedings were pending at the stage of mode of partition, respondents No. 5 and 6 were proceeded against ex-parte, however, learned counsel for respondents No. 5 and 6 appeared subsequently on various dates. It is stated that when the proceedings reached the stage of 'Naksha Kha', then on 30.07.2018, no objection was given by both the parties and 'Naksha Kha' was accepted by the Assistant Collector 1st Grade, Meham. Thereafter, 'Naksha Ga' was received and the partition was completed.

2.1 It transpires that before the issuance of Sanad Takseem (instrument of partition), respondent No. 6 challenged the order dated 30.11.2018 (whereby 'Naksha Kha' was approved), before the learned Collector-cum-SDM, Meham by filing an appeal, however, the same was

dismissed by the learned Collector, Meham, vide order dated 22.11.2019 (Annexure P-6).

2.2 On 09.01.2020, Sanad Takseem (instrument of partition) was issued.

2.3 It appears that thereafter, respondents No. 5 and 6 filed a revision petition before the learned Divisional Commissioner, Rohtak, challenging the order dated 30.11.2018, whereby 'Naksha Kha' was approved and also the order dated 22.11.2019 (Annexure P-6), passed by the learned Collector, Meham.

2.4 The learned Divisional Commissioner, Rohtak, vide order dated 02.02.2022 (Annexure P-11), partially allowed the revision petition, filed by respondents No. 5 and 6, by setting aside the order dated 30.11.2018 as well as the order dated 22.11.2019 (Annexure P-6) and the matter was remitted to the Assistant Collector 1st Grade, Meham with the direction to hear the parties afresh and prepare 'Naksha Kha' and 'Naksha Ga' again.

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

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

5. In the instant case, the learned Divisional Commissioner, while passing the order dated 02.02.2022 (Annexure P-11), held as under :-

“ I have come to the conclusion that the first point in the case is regarding hearing of the Petitioners. According to the basic principle of natural justice, it is necessary that all the necessary parties to the land under partition should be made parties in the case and all of them should be informed as per the provisions of

Section 20 of the Punjab Land Revenue Act, 1887. In this case, the summons sent to the Petitioners were received with the report that they do not live in the village and live somewhere outside. After that as per rules, after taking the correct address of the petitioners, the information was supposed to be given to the Revision Petitioners, although this process was not adopted by the lower court. As a result of which the partition proceedings of the lower court become defective. The Petitioners are actually residing in the states outside Haryana. In this case, the benefit is given to the Revisionists at this point. In the present circumstances, the first priority is the hearing of the parties, which is more important. Apart from this, on behalf of the respondent trust, Shri Rajinder Singh President has been authorized by his trustees for this partition, so the case law presented by the petitioners in this regard were not found meaningful. Apart from this, it is worth mentioning that after the issue of Sanad Takshim, the appeal is not maintainable in the case, although Revision can be instituted in this regard before the Divisional Commissioner's Court. In this case, this option has been exercised by the Revisionists.

In view of the above, the Revision petition dated 08.01.2019 is found to be appropriate, balanced and justified and is partially accepted. In view of the above, the lower court is directed to hear the parties afresh and prepare the Naksha (kha) and (Ga) again. Besides this I find the order 22.11.2019 passed by the Collector, Meham and order dated 30.11.2018 passed by Assistant Collector Grade-I, Meham to be unreasonable, without any grounds and unjustified and hence the same are set aside. Accordingly, the parties are directed to appear either themselves or through

their legal representatives, for further proceedings and arguments in the case, before the court of Assistant Collector, Grade-I, Meham on 28.04.2022. After compliance, the complete file be consigned to records. Order passed and pronounced.”

6. During the course of the hearing, learned counsel for the petitioner has referred to the order dated 22.11.2019 (Annexure P-6), passed by the learned Collector, Meham, the relevant extract of which reads as under:-

“ Being aggrieved with the order dated 30.11.2018 passed by the Assistant Collector, Grade-I (Tehsildar) Meham, vide which he has approved the Naksha 'Kha', the appellant has filed this appeal in this Court and has requested that they had filed objections on Naksha 'Kha', which have been ignored by approving the Naksha 'Kha', which is wrong and illegal. Site was not even inspected before approving the Naksha 'Kha'. Land measuring 11x5 whose total area is 6 Marla has been given to the respondent in front of land of appellant. The total area of land in question is 6 Kanal 15 Marla, whereas the partition was done for 6 Kanal 16 Marla. Appeal of the appellant may kindly be accepted and the order dated 30.11.2018 of the lower court be set aside.”

6.1 A perusal of the above extracted para would clearly indicate that respondents No. 5 and 6 have appeared before the Assistant Collector 1st Grade, Meham and allegedly submitted their objections to 'Naksha Kha'.

7. Learned counsel representing respondents No. 5 and 6 could not dispute the observations made by the learned Collector in the above extracted para of the order dated 22.11.2019 (Annexure P-6). Evidently, respondents No. 5 and 6 had appeared before the learned Assistant Collector 1st Grade,

Meham in the partition proceedings and had allegedly submitted their objections to 'Naksha Kha', therefore, it cannot be accepted that respondents No. 5 and 6 were not served in terms of Section 20 of Punjab Land Revenue Act and/or that they were not aware of the partition proceedings and on account, the partition proceedings were defective.

8. At this stage, learned counsel(s) for the respective parties are ad idem that the impugned order dated 02.02.2022 (Annexure P-11) be set aside and the matter be remanded to the learned Divisional Commissioner, Rohtak, for fresh decision as regards the challenge to 'Naksha Kha' is concerned.

9. In view of the aforementioned facts and circumstances and also the stand taken by the learned counsel(s) for the respective parties, the impugned order dated 02.02.2022 (Annexure P-11) is set aside. Accordingly, the instant civil writ petition is partly allowed and the matter is remitted to the learned Divisional Commissioner, Rohtak, to decide the revision petition, filed by respondents No. 5 and 6 afresh, after affording due opportunity of hearing to all concerned parties. The parties are directed to appear before the learned Divisional Commissioner, Rohtak on 27.08.2024.

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

(HARSH BUNGER)
JUDGE

01.08.2024

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No