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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9163-2012 (O&M)

Date of Decision: May 03, 2024

Mahender Singh

.....Petitioner

Versus

The Assistant Collector, IInd Grade, Loharu and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ashok Kumar Verma, Advocate
for the petitioner.

Ms.Upasana Dhawan, AAG, Haryana.

Mr.Ajit Sihag, Advocate and
Mr.Sumit Sangwan, Advocate and
Ms.Malika, Advocate
for respondents No.5 to 9.

None for respondents No.11, 14 to 18, 20 to 22, 24, 26 and 27.

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RAJESH BHARDWAJ, J.(ORAL)

1. Petitioner has approached this Court praying for quashing the order dated 03.03.2010, Annexure P-2, passed by Assistant Collector IInd Grade, Loharu (respondent No.1), order dated 26.11.2010, Annexure P-6, passed by the Commissioner, Hisar Division, Hisar, (respondent No.3), and the order dated 30.08.2011, Annexure P-7 passed by the Financial Commissioner, (respondent No.4).

2. As deciphered from hearing the learned counsel for the parties and perusing the record with their able assistance, the partition application,



(hereinafter to be referred as 'the Act') for partition of the land measuring 334 kanals and 15 marlas situated in the revenue Estate of village Barwas, Tehsil Loharu, District Bhiwani, was filed by respondent No.10, namely, Ramesh son of Nand Kishore. The amended mode of partition, Annexure P-1, was approved on 27.07.2006 by the learned Assistant Collector IInd Grade, Loharu. As per condition No.2 of the Mode of partition, partition was to be carried out keeping in view the possession and quality of the land. The amended *Naksha Kh* was accepted on 14.09.2011. The same was challenged by the petitioner by way of filing an appeal before the Collector, who allowed the appeal vide its order dated 30.07.2010. The said order was assailed by respondents No.5 to 9 by way of filing an appeal before the learned Commissioner who accepted the same vide its order dated 26.11.2010 and order of Assistant Collector, Loharu, dated 03.03.2010 was maintained.. This order was assailed by the petitioner by way of filing a revision petition before the learned Financial Commissioner, who finding no merit in the same dismissed it vide its order dated 30.08.2011. Hence, being aggrieved petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that petitioner and respondents No.5 to 31 were the joint owners and in joint possession of the agricultural land measuring 334 kanals 15 marlas. On filing the application under Section 111 of the Act, dated 22.07.2003, the partition proceedings were commenced. On approving the mode of partition, dated 27.07.2006, *Naksha Be* was called for by the learned Assistant Collector. He submits that in this *Naksha Be* prepared by the Kanungo, the land in old possession of the petitioners situated in Rect.No.47



Killa No.2/3 (0-2), 3/1 (2-3), 3/2 (1-13), 8/1 (6-8), 9/1/1 (0-3) and Rect.No.47 Killa No.8/3 (1-18), 9/1/2 (0-1), 12/2/1 (0-3), 13/1 (6-0) and 14/1 (2-10) total measuring 21 kanals 1 marla was proposed to be given to the petitioner, which was allegedly situated near the village abadi. It is submitted that respondents No.5 to 9 filed the objections dated 03.11.2006 to this *Naksha Be* contending therein that they be given land measuring 21 kanal 9 marla of Rectangle No.40 which is situated on the south of the road and which is known as 'Talwala Field' and they be also given land measuring 21 kanals 1 marla of Rect. No.47 which was situated near abadi and known as 'Khera'. This was contested by respondent No.10 and the petitioner on the ground that area of Rectangle No.47 was in the old possession of the petitioner and as per condition No.2 of the Mode of partition, old possession of the parties was to be kept intact. He has submitted that area of Rectangle No.47 had sand dunes and he had got removed all the sand dunes by spending huge amount and made the same cultivable. He has submitted that the petitioner had also constructed his residential house therein and he was living in that house with his family and his tubewell was also installed in the same. He has submitted that the objector/respondents were allotted the land near abadi as per their share comprised in Rectangle No.73, Killa No.4/1/2 (1-16) and 4/1/1/ (0-14). He has submitted that hence respondents were not entitled to any more land near abadi. He submits that the Assistant Collector decided and accepted the objections filed by respondents No.5 to 9 vide its order dated 03.03.2010 and ordered for preparation of *Naksha Be*. Accordingly, the Kanungo prepared amended *Naksha Be* in violation of the conditions enumerated in



the Mode of partition. He has submitted that the land in Rectangle No.47 measuring 21 kanal 1 marla which was in the old possession of the petitioner was allotted to the respondents. It is submitted that the water courses and the paths were provided in a haphazard manner leading to a lot of wastage of land. Aggrieved by the order, dated 03.03.2010, the petitioner filed appeal before the learned Collector, Loharu on the basis of the grounds, as mentioned therein. On hearing both the sides, the learned Collector allowed the appeal filed by the petitioner vide its order, dated 30.07.2010 and it was held that the petitioner had constructed a pacca house and installed a tubewell in the area of his share comprised in Rectangle No.47. It was observed that the area of about 1 and ½ acre in the abadi of the village had already been given to the objectors/respondents No.5 to 9 as per their share and hence their demand for more land near abadi was not justified. Thus, he directed that further proceedings be taken after sanctioning the earlier Naksha Be and directed the parties to appear before the Assistant Collector 2nd Grade, Loharu, for further proceedings. Respondents No.5 to 9 assailed order, dated 30.07.2010 by way of filing an appeal before learned Commissioner, Hisar Division. He submits that learned Commissioner in a highly illegal manner accepted the appeal filed by respondents No.5 to 9 and thus fallen in error in setting aside the same by virtue of impugned order dated 26.11.2010. Being aggrieved the petitioner assailed the order dated 26.11.2010 by way of filing a revision petition before learned Financial Commissioner, however, learned Financial Commissioner had again fallen in error in dismissing the same on wholly irrelevant considerations and without appreciating the evidence on record.



4. It has been submitted by learned counsel for the petitioner that the impugned orders are based on totally misreading of the evidence on record and thus are against the principles of partition proceedings. He has submitted that rights of the parties were finalised in accordance with the mode of partition. He has submitted that as per the settled principles of law, the revenue authorities cannot deviate from the terms and conditions of the sanctioned mode of partition but the same has been done in the present case. He has reiterated his arguments that as per condition No.2 of the mode of partition, possession of the parties was to be maintained but the same has been grossly violated by allotting the area of 21k 1m of Rectangle No.47 which was in possession of the petitioner to respondents No.5 to 9. He has vehemently contended that area of Rectangle No.47 had sand dunes and the petitioner by spending a huge amount on the same had made it cultivable but the same has been ignored by the respondent/revenue authorities. He has submitted that the respondents had already been allotted the land near the abadi as per their share and hence they were not entitled for any more land near abadi. It is submitted that except respondents No.5 to 9, no other respondents from 10 to 31 raised any objection regarding the same. It is reiterated that the petitioner has his residential house in Rectangle No.47 and his tubewell is also existing in the same. He has submitted that the impugned orders are grossly cryptic and non-speaking and thus have been passed without assigning any reason. It is submitted that in view of the submissions made above, the impugned orders, being wholly arbitrary and cryptic, deserve to be set aside.

5. Per contra, learned counsel for respondents No.5 to 9 have



vehemently opposed the submissions made by learned counsel for the petitioner. It has been submitted that the petitioner has not approached this Court with clean hands. It is vehemently denied that the land measuring 21k 1m was in possession of the petitioner rather the same was in possession of respondents No.5 to 9. It is submitted that the petitioner was serving in police department, who in collusion with Kanungo, succeeded in getting the proposed allotment in his favour out of total land measuring 58k 16m comprised in Rectangles No.47 and 49. This entire land is situated near abadi. It is submitted that the total land near abadi was 83k-10m out of which 58k-6m was proposed to be given to the petitioner and remaining land was proposed to be given to respondent No.10, who is brother of the petitioner. Thus, they submitted that the land near the abadi, which was in possession of respondents No.5 to 9, was not given to them rather the land which was situated far away from the village and was banjar had been given to them. Thus he contends that Naksha Be was prepared by the kanungo against the mode of partition. He submits that as per mode of partition, partition proceedings were to be carried out by keeping in view the possession and nature of the land but nature of the land was totally ignored. Hence, aggrieved respondents No.5 to 9 filed objections on 03.11.2006 against the *Naksha Be*. He has contended that the petitioner tried to keep the forcible possession of 21k 1m of land, which was near abadi and was in their possession. Faced with the situation, respondents no.5 to 9 filed an application and on the basis of the same, proceedings under Section 145 Cr.P.C. were initiated and Receiver was appointed by learned SDM, Loharu vide its order dated 12.09.2007. Resultantly, the Assistant Collector, IInd



Grade, Loharu adjourned the partition proceedings sine die vide its order dated 29.05.2009 till the decision of the proceedings initiated under Section 145 Cr.P.C. Respondents No.5 to 9 filed appeal against the said order before the learned SDO, Civil, Loharu, who accepted the same and directed the Assistant Collector, IInd Grade, Loharu to decide the partition proceedings on merits vide its order dated 09.12.2009. Thus, on the commencement of partition proceedings, objection were filed by respondents No.5 to 9 which were allowed by the Assistant Collector IInd Grade vide its order dated 03.03.2010 wherein it was ordered that respondents No.5 to 9 be given land in Rectangle No.40 which is on the road and Rectangle No.47 which was near Abadi as per their share. He has submitted that the appeal filed by the petitioner, as evident, was illegally accepted by the learned Collector vide its order dated 30.07.2010, which was assailed by respondents No.5 to 9 by way of filing appeal and the same was allowed by learned Commissioner vide order dated 26.11.2010 and thus the order passed by the Collector, dated 30.07.2010 was set aside. Thereafter the Assistant Collector IInd Grade prepared the *Naksha Be* as per direction issued by the learned Commissioner and respondents No.5 to 9 were allotted the land in Rectangles No.40 and 47 as per their share in terms of the conditions enumerated in mode of partition. The revision petition filed by the petitioner against the order passed by the learned Commissioner, dated 26.11.2010, was also dismissed by the learned Financial Commissioner vide its order dated 30.08.2011. It has been submitted by learned counsel for the respondents that land under partition proceedings is the ancestral land and the partition proceedings commenced in the year 2003 and the same were



completed on 04.11.2011 when instrument of partition (Sanad Taksim) was issued. He has submitted that execution was filed by respondents No.5 to 9 on 04.11.2011 for getting the possession and warrants of possession were also issued on 27.03.2012. He has submitted that notice for delivery of possession was issued and the date to deliver the possession was fixed for 11.05.2012, however, Kanungo did not come on the date fixed for delivery of the possession and thus, the petitioner filed the present petition wherein interim was granted on 16.05.2012 on the basis of exchange of the land made by the petitioner in lieu of the allotment of the property in Rectangle No.47. He submits that the petition has been filed by the petitioner only in order to prolong the partition proceedings which already stand concluded in accordance with law. It is submitted that there being no violation of the partition proceedings whatsoever, the present petition being devoid of any merit, deserves to be dismissed.

6. Although no counsel has put in appearance on behalf of respondents No.11,14 to 18, 20 to 22, 24, 26 and 27 yet as per their reply, they also oppose the submissions made by learned counsel for the petitioner and have supported the arguments raised by learned counsel for respondents No.5 to 9. It has been mentioned that there is no infirmity in *Naksha Be*. It was prepared according to the mode of partition. It is mentioned that the petitioner had raised the construction in the joint land at his own risk knowing that piece of land could be allotted to any other share holder as well in the partition proceedings. It is also mentioned that the impugned orders suffer from no infirmity as the same have been passed in accordance with law and hence the present petition deserves to be dismissed.



7. Learned State counsel also controverted the submissions made by learned counsel for the petitioner. She submits that the impugned orders have been rightly passed. State has also filed a short affidavit, dated 04.03.2024, of Sanjay Kumar, Assistant Collector IInd Grade, Loharu, wherein it has been mentioned that the deponent has examined the office record and visited the site and on the basis of the same it was found that the petitioner was allotted the land near the village (Abadi Deh) comprised in Rectangles No.47 and 49. The total area is 36k 15m and possession of the petitioner was not disturbed.

8. The Court has heard counsel for the parties. In pursuance of the order passed by this Court the petitioner is also present in person. The Court has interacted with the petitioner as well.

9. After hearing learned counsel for the parties and interacting with the petitioner, who is present in person, this Court has appreciated the record as well. As evident from the record, the partition proceedings for the land measuring 334k 15m were initiated at the behest of respondent No.10. In pursuance of the same, notices were issued to the respondents/co-sharers and partition proceedings were initiated. Amended mode of partition was approved on 27.07.2006 wherein the total partable land has been mentioned as 318k 18m. As per condition No.1 of the same, total 7 khewats were to be carved out whereas as per condition No.2, partition was to be carried out keeping in view the possession and quality of the land. A perusal of condition No.6 would further show that paths, nakkas, houses and means of irrigation would be kept in view during partition. Keeping in view the same, *Naksha Be* was approved. A perusal of *Naksha Be* placed on the record

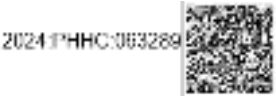


would show that the revenue authorities have carved out the separate khewats for co-sharers as per condition No.1 of the mode of partition. Conditions No.2 and 6 be also appreciated and to be read harmoniously so as to carry out the partition proceedings keeping in view the possession and quality of the land and consideration of the houses etc. as well. On perusal of the impugned orders and nakshas placed on record it is apparent that separate seven khewats, as agreed, were carved out. Once all the co-sharers agreed to carry out the partition proceedings on the basis of the possession and quality of land, it is obvious that every co-sharer is allotted the land not only on the basis of his possession but on the basis of quality of the land as well as per the settled principles of the partition proceedings. To justify the partition proceedings the revenue authorities would have to disturb the possession as well where it is unavoidable. However, as per the facts of the case, the total land under partition was 334k 15m whereas as reflected from the mode of partition, partable land was found to be 318k 18m meaning thereby the area of the houses etc. had already been left out and rest of the land had been put to partition as per entitlement of share of all the shareholders. The objections filed by respondents No.5 to 9 to the Naksha Be, were decided by learned Assistant Collector vide its order dated 03.03.2010, who found it appropriate to amend Naksha Be in the interest of justice and thus Naksha Be was called with the direction that area in Rectangles No.40-47 be allocated to the objectors as per their share. Appeal filed by the petitioner before the learned Collector, dated 30.07.2010, was accepted by him on the ground that their share is insignificant and 1 ½ acre of land has already been allotted to them. However, the observations were



in contravention to the terms and conditions of the mode of partition wherein the land was put to partition keeping in view the possession and the quality of the land. Thus, the appeal filed against the same was allegedly accepted by the Commissioner vide its order dated 26.11.2010 whereby he set aside the unreasonable order passed by the Collector and upheld the order passed by the Assistant Collector dated 03.03.2010. This order passed by the Commissioner was again upheld by the learned Financial Commissioner when he dismissed the revision petition filed by the petitioner assailing the order passed by the Commissioner, dated 26.11.2010. Needless to say that the revenue authorities have to balance the equation by partitioning the land keeping in view the interest of all the co-sharers which is justified on the anvil of the law settled. Hence, it is apparent that some deviations are always unavoidable and thus the complete satisfaction of every individual is not possible. The Court has interacted with the petitioner, who is present in person. Interim order was granted by this Court on the basis of the offer given by the petitioner whereby he agreed to give some of his share of land in Rectangle No.47 to respondents. However, learned counsel for the petitioner has objected to the same and fairly submitted that this would result in further complication of the partition proceedings which already stands concluded.

10. Thus, in the overall facts and circumstances of this case, this Court does not find any perversity or the material illegality in the partition proceedings concluded by the respondent/authorities. Probabilities of partitioning the land could be innumerable. However, every such probability cannot qualify the test of the partition proceedings on the anvil of the law



settled.

11. Thus, this Court finds no infirmity in the impugned orders passed and hence the present petition being devoid of any merit is hereby dismissed.

May 03, 2024
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |