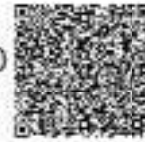


2024:PHHC:135490



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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-4224-2013 (O&M)
Date of Decision: 16.10.2024**

Harchand Singh and another

..... Petitioners

Versus

Financial Commissioner, Revenue, Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Amit Jain, Senior Advocate assisted by
Mr. Chetan Slathia, Advocate
for the petitioners.

Mr. Nirmaljit Singh Diwana, Senior DAG, Punjab
assisted by Ms. Inderjit Kaur, Naib Tehsildar, Tarn Taran..

Mr. Rai Singh Chauhan, Advocate and
Mr. Rohit Sapchiya, Advocate
for respondent No.5.

HARSH BUNGER J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 18.05.2007 (Annexure P-2) passed by the learned Assistant Collector, 1st Grade, Tarn Taran; order dated 31.03.2008 (Annexure P-3) passed by the learned Collector, Tarn Taran and order dated 11.10.2012 (Annexure P-7) passed by the learned Financial

Commissioner, Punjab.

2. Briefly, in the year 2004 respondent No. 5 (Darshan Singh) submitted an application under Section 111 of the Punjab Land Revenue Act, 1887 (in short 'the 1887 Act') seeking partition of joint land comprised in Khewat No.138 (as per *Jamabandi* for the years 1999-2000), situated in the area of Village Pididi, Tehsil and District Tarn Taran.

2.1 In the aforesaid partition proceedings, the present petitioners were duly served and they appeared before the revenue authorities, however, it transpires from a perusal of the writ petition that the petitioners herein were proceeded against *ex parte* on 17.02.2006.

2.2 Apparently, the Mode of Partition came to be approved on 04.10.2006, which, *inter alia*, provided that the partition shall be done by disturbing possession and also that the valuable area adjoining road shall be allocated as per shares and the balance area shall also be distributed according to shares.

2.3 The final order of partition/*Sanad Takseem* (Instrument of Partition) came to be issued on dated 18.05.2007 by the learned Assistant Collector, 1st Grade, Tarn Taran.

2.4 An appeal filed by the petitioners against the final order of partition dated 18.05.2007 was dismissed by the learned Collector, Tarn Taran on 31.03.2008 (Annexure P-3); however, a further revision petition filed by petitioners came to be allowed by the learned Commissioner, Jalandhar Division, Jalandhar, vide its order dated 29.04.2008 (Annexure P-4) and the matter was remanded to the Assistant Collector with a direction to carry out partition by keeping the possession of the parties intact.

2.5 It transpires that the aforesaid order dated 29.04.2008

(Annexure P-4) was challenged by respondent No. 5 (Darshan Singh) by filing a revision petition (ROR No.474 of 2008) before the learned Financial Commissioner (Revenue), Punjab; which was allowed vide order dated 30.03.2010 (Annexure P-5) and the Commissioner's order dated 29.04.2008 (Annexure P-4) was set aside.

2.6 It transpires that the present petitioners preferred a writ petition (CWP No. 12425 of 2010) before this Court, which was disposed of vide order dated 03.07.2012 (Annexure P-6). The relevant extract thereof reads as under:-

“ - x - x -

Apparently, the petitioner had wrongly invoked jurisdiction of the Collector by filing the appeal. Even as per the judgment noticed above, the appeal against the partition of the land over Sanad Takseem issued is not maintainable. The Commissioner has not kept the legal position in view that as per the law laid down in the case of Amar Khan (supra) and Balbir Kaur (supra) the revision was not maintainable before him. The appropriate remedy for the petitioners was to approach the Financial Commissioner by way of revision.

Once the petitioners had a remedy to file revision before the Financial Commissioner, the Financial Commissioner could even have invoked the suo motu jurisdiction under Section 16(1) of the Act to see the legality and validity of the order, which was subject matter of challenge before him. The manner in which the case has been disposed of has left the petitioner without a remedy. It would, therefore, be appropriate to remand this case back to the Financial Commissioner. The petitioners would be at liberty to file a fresh revision petition if so advised. The respondents would also be at liberty to raise all the relevant pleas before the Financial Commissioner who may then decide the case in accordance with law. Since the instrument of partition has been issued in this case long ago, it would be just for the

Financial Commissioner to decide this case within a time bound period. It would be appreciable if Financial Commissioner decide this case within a period of three months from the date of receipt of copy of this order.

The parties through their counsel are directed to appear before the Financial Commissioner on 25.07.2012. Any observation made by the Financial Commissioner earlier may not influence the Financial Commissioner while now deciding the case. Since Section 16 of the Act was available on the statute on the date, the Financial Commissioner had passed an order, he in this case, would have valid jurisdiction to deal with the revision.

The writ petition is accordingly disposed of.”

2.7 Thereafter, the learned Financial Commissioner, Punjab, again decided the revision petition (ROR No. 474 of 2008) filed by respondent No.5 (Darshan Singh) vide order dated 11.10.2012 (Annexure P-7); whereby the Commissioner's order dated 29.04.2008 (Annexure P-4) was set aside and the order passed by the Assistant Collector was upheld.

3. In the aforementioned circumstances, the petitioners have filed the present writ petition before this Court, seeking relief(s) as noticed above.

4. Learned senior counsel appearing on behalf of the petitioners has raised the following arguments:-

(i) That while partitioning the joint land, possession of the parties have been disturbed in as much as that the land comprised in Khasra Nos.1138 and 1141, which was under the possession of petitioners, has not been allocated to them and Khasra No.1137, which was claimed by Darshan Singh (respondent No.5), has also not been given to him.

(ii) That in the *Sanad Takseem*, respondent No.5 has been

allocated more land than his due entitlement.

- (iii) That the *Naksha Jeem* as well as *Sanad Takseem* are not in consonance with *Naksha Bey*.

5. On the other hand, learned counsel for respondent No.5 (Darshan Singh) has opposed the submissions made on behalf of the petitioners that they are in possession of Khasra Nos.1138 and 1141. It is stated that there is no material on record in support of the said assertion of the petitioners and even if the same is assumed to be correct then also, as per Mode of partition, the partition was to be carried out by disturbing the possession and *Kurrahs* (blocks) of the respective co-sharers have been carved out keeping in view the Mode of Partition and as per the position of land existing at the spot.

5.1 However, learned counsel for respondent No.5 has fairly admitted that in the *Sanad Takseem*, respondent No.5 (Darshan Singh) has been allocated more land. It is further admitted that *Naksha Jeem* and *Sanad Takseem* are not in consonance with the *Naksha Bey*. Learned counsel submits that respondent No.5 (Darshan Singh) has been allocated his due entitlement under *Naksha Bey*, therefore, respondent No.5 (Darshan Singh) would have no objection if appropriate directions are issued for amending *Naksha Jeem* and *Sanad Takseem* in consonance with the *Naksha Bey*.

5.2 Accordingly, it is contended that no interference is required to be made in the partition proceedings except to the extent as indicated above.

6. Heard.

7. As regards the contention raised on behalf of the petitioners that while partitioning the land, petitioners' possession over Khasra Nos.1138 and 1141 has been disturbed and given to respondent No.5; it is observed that learned senior counsel for the petitioners has failed to place on record

any document(s) indicating that petitioners were in actual possession of Khasra Nos.1138 and 1141. Therefore, this contention raised on behalf of the petitioners is rejected.

8. As regards the contention that respondent No.5 had claimed possession over Khasra No.1137, however, he has not been given the said area; it is observed from the site plan (Annexure R-5/3) that a compact block has been carved out for respondent No.5 (Darshan Singh), by allocating him some frontage on the road.

8.1 In case, Khasra No.1137 is to be allocated to the share of respondent No.5 (Darshan Singh) then he would be deprived of frontage on the main road and considering the shape of joint land, the balance area left in Khasra No.1136, would be a narrow strip of land.

8.2 Apparently, the block of respondent No.5 has been carved out in a manner so as to make a contiguous block of land with some frontage on the main road, which, in my considered view, is just and equitable and does not call for any interference.

9. However, since learned counsel for respondent No.5 has conceded that the entries reflected in *Sanad Takseem* and *Naksha Jeem* are not in consonance with the entries made in *Naksha Bey*; inasmuch as that in *Naksha Bey*, the land comprised in Khasra No.437 was not allocated to Darshan Singh (respondent No.5 herein), whereas in *Sanad Takseem*, the said area is shown to have been allocated to him and also considering that Darshan Singh had made a statement (Annexure P-11) before the learned Assistant Collector, 2nd Grade, Tarn Taran, stating that he relinquishes the possession of Khasra No.437 (4-14) and Khasra No.438/1 (2-16); consequently, *Naksha Jeem* and *Sanad Takseem* in question are set aside.

Further, the concerned Assistant Collector is directed to prepare fresh

Naksha Jeem and issue fresh *Sanad Takseem* in consonance with *Naksha Bey*; within a period of four months from the date of receipt/production of the certified copy of this order.

10. The present writ petition is accordingly, partly allowed and disposed of in the aforestated terms.

11. All the pending application(s), if any, shall also stand closed.

16.10.2024

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No