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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

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CWP-16647-2024 (O&M)  
Date of Decision: 30.09.2024

Tushar

....Petitioner

Versus

Commissioner, Gurugram Division and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Sudhir Aggarwal, Advocate  
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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**HARSH BUNGER, J. (ORAL)**

**CM-16047-CWP-2024**

The present application has been filed for placing on record the copies of *Naksha Zeem* (Annexure P-4) and site plan (Annexure P-5) and seeking exemption from filing the certified copies of the same.

For the reasons mentioned in the application, the same is allowed as prayed for and Annexures P-4 and P-5 are taken on record, subject to all just exceptions.

**CWP-16647-2024**

Petitioner (Tushar) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for quashing the order dated 20.10.2023 (Annexure P-1) passed by Assistant Collector Ist Grade, Sohna and order dated 04.06.2024 (Annexure P-2) passed by the Commissioner, Gurugram Division, Gurugram.

2. Briefly, respondent No.3 (Yesha Developers L.L.P.) filed an application before the respondent No.2 (Assistant Collector Ist Grade,

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Sohna) seeking partition of joint land measuring 31 *Kanal-8 Marla* situated at Village Mahendwara, Tehsil Sohna, District Gurugram on the basis of *jamabandi* for the year 2017-18.

2.1 It transpires that the Assistant Collector while proceeding with the partition matter issued notices to the co-sharers impleaded in partition application; whereupon one Sh. Pardeep and Sh. Sanjay Sharma appeared. As regards remaining co-sharers, Mushtri Munadi (proclamation) was carried out and even publication was made in newspaper 'Hindustan'. It appears that despite proclamation and publication in newspaper, none of the remaining co-sharers appeared and even Sh. Pardeep and Sh. Sanjay Sharma also absented, accordingly all the respondents in partition application were proceeded against ex parte on 13.09.2023.

2.2 Thereafter, Mode of Partition was sanctioned on 11.10.2023 and Naksha 'Bey' and Naksha 'Zeem' were affirmed and *Sanad Takseem* was issued on dated 20.10.2023.

3. The petitioner along with Sh. Pardeep filed a Revision Petition before the learned Commissioner, Gurugram Division, Gurugram, challenging the partition proceedings as well as the *Sanad Taksim* (instrument of partition), however, the same was dismissed vide order dated 04.06.2024 (Annexure P-2).

4. In the aforementioned facts and circumstances, the petitioner has filed the instant Writ Petition before this Court for the reliefs, as noticed above.

5. Learned counsel for the petitioner submits that the learned Assistant Collector Ist Grade, Sohna has erred in conducting partition proceedings and issuing *Sanad Taksim* (instrument of partition). It is submitted that the learned Divisional Commissioner has also erred in

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dismissing the Revision Petition filed by the petitioner. It is submitted that the petitioner was not properly impleaded as a party to the partition application as he is minor and was required to be impleaded through his natural guardian. It is next submitted that in the partition proceedings, the share of respondent No.3 has been separated out by allocating land falling to its share in one block whereas the land under partition is comprised in two blocks, therefore respondent No.3 should have been allocated land in both the blocks.

6. With the aforesaid submissions, learned counsel for the petitioner submits that the impugned partition proceedings as well as the *Sanad Taksim* (instrument of partition) be set aside and the matter be remanded to the learned Assistant Collector Ist Grade, Sohna for fresh decision.

7. I have heard learned counsel for the petitioner and perused the paper book.

8. At the outset it is noticed that in the instant Writ Petition, the other co-sharers in the partition application as reflected in order dated 20.10.2023 (Annexure P-1) have not been impleaded as party respondents, for the reasons best known to the petitioner.

9. In the present case, respondent No.3 (Yesha Developers L.L.P.) filed a partition application for separating its share out of the joint land. Concededly, the petitioner was impleaded as a party- respondent No.5 in the said partition application.

9.1 In paragraph No. 3 of the Writ Petition, the petitioner has made the following averment :

*“3. That the respondent no.2 after receiving the partition petition issued notice to all the co sharers including petitioner. The petitioner who is a minor was not aware about his legal*

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*rights received notice issued by the respondent no.2. ”*

9.2 A perusal of the above extracted averment/plea of the petitioner clearly reads that the petitioner was served with the notice and he was very well aware of the partition proceedings initiated by respondent No.3, however, the petitioner chose to stay aloof from the partition proceedings and in the meanwhile, the mode of partition came to be sanctioned vide order dated 13.10.2023 passed by the Assistant Collector Ist Grade, Sohna and the partition proceedings culminated upon drawing of Sanad Taksim (instrument of partition).

9.3 In case, any such objection as regards minority of the petitioner was to be raised, he was well within his right to appear before the concerned Assistant Collector to do so, however, no such step was taken by the petitioner and/or his natural guardian.

10. Further, the learned Divisional Commissioner has dismissed the revision petition filed by the petitioner and Sh. Pardeep vide order dated 04.06.2024 (Annexure P-2) by holding as under:

*“13. Therefore, after careful consideration of the arguments advanced by both parties, and a thorough review of the records and facts of the case, it is evident from the records that due process was followed. The interim order dated 20.01.2023 clearly indicates that notice was served to both petitioners. Petitioner No. 2 was present, and Petitioner No. 1 was served personally but failed to appear, leading to ex-parte proceedings. The petitioners and some respondents cited case law to argue procedural irregularities and prejudice against the minor. However, the counter-arguments presented by respondent No.1, supported by various legal precedents, emphasize that the finalization of partition and issuance of Sanad Taksim hold significant weight. The reliance on decisions such as the one reported in 1998(1) RCR (Civil) 647 highlights that an ex-parte partition cannot be set aside unless substantial prejudice to the*

*minor is demonstrated. In this case, no such prejudice has been shown.*

*14. Further, the issuance of Sanad Taksim and subsequent mutation No. 1488 has legally concluded the partition proceedings. The argument that the partition orders are erroneous lacks substantial proof, and the procedural adherence by the Assistant Collector 1st Grade further strengthens the validity of the partition. The claims that the petitioners and certain respondents were not given an opportunity to be heard do not hold, as the records show personal service and multiple opportunities to participate in the proceedings, which were not utilized by the petitioners. The final partition resulted in the creation of two khewats, ensuring fair distribution and no disturbance to the petitioners' possession. The partition was conducted in accordance with the prescribed legal framework, and no procedural irregularities have been found that would justify setting aside the orders.*

*15. In light of the above findings, the revision petition fails to establish any substantial legal or procedural violations that would necessitate overturning the orders of the Assistant Collector 1st Grade, Sohna. Therefore, the revision petition stands dismissed, and the orders dated 11.10.2023, 13.10.2023, 18.10.2023 and 20.10.2023, approving the mode of partition, Naksha 'B', Naksha Zim, and the issuance of Sanad Taksim, respectively, are upheld.*

*16. This order should be communicated to the parties involved."*

11. That apart, it is not disputed before this Court that the petitioner has not laid any challenge to the order dated 13.10.2023 whereby, the mode of partition was sanctioned. Evidently, the partition proceedings have been finalized with the drawing of *Sanad Taksim* (instrument of partition). In the absence of any challenge to the sanctioned mode of partition, the final partition which culminates into drawing of *Sanad Taksim* can be challenged

by showing that the same is contrary to the sanctioned mode of partition.

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However, no such case has been made out by the petitioner. It has also not been shown as to what prejudice has been caused to the petitioner with the final partition as carried out.

12. I have also considered the submission made by learned counsel for the petitioner that respondent No.3 has been allocated land only in one block whereas the land under partition was comprised in two separate blocks, however, I do not find any merit in the same. Respondent No.3 was liable to be allocated land in two separate blocks in case the nature/quality/value of the land comprised in both the blocks was different, which is not the case of the petitioner. It is further borne out that the land comprised in second block comprised in Rectangle No.17, Kila No.21/3 and 22 falls on a passage and the said area has been kept joint of the co-sharers which includes the present petitioner as well.

13. Considering the totality of the facts and circumstances of the case, I do not find any merit in the instant Writ Petition and the same is accordingly dismissed.

14. All pending application(s), if any, shall stand closed.

**30.09.2024***Himani***(HARSH BUNGER)  
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No