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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9632-2015 (O&M)
Date of Decision: 10.09.2024

Prabhu and others

....Petitioners

Versus

Financial Commissioner & Secretary to Government, Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. G. P. Singh, Advocate
for the petitioners.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. A.K. Yadav, Advocate
for respondent No.2.

Mr. Gulshan Nandwani, Advocate
for respondent No.3.

HARSH BUNGER, J. (Oral)

1. The instant Writ Petition has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside the impugned order dated 26.03.2014 (Annexure P-5) passed by the learned Financial Commissioner, Haryana.

2. Briefly, respondent No.2 (Balbir Singh) filed an application seeking partition of joint land. During the course of partition proceedings,

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the Assistant Collector 1st Grade, Rewari approved *Naksha Bey* vide order dated 31.03.2006. The said order came to be challenged by respondent No.2 by filing an appeal before the learned Collector, Rewari, however, the same was dismissed vide order dated 22.12.2006 (Annexure P-2). Thereafter, respondent No.2 preferred a revision before the Commissioner, Gurgaon Division, Gurgaon (in short 'the Divisional Commissioner'), which was also dismissed vide order dated 25.03.2010 (Annexure P-3). Thereafter, respondent No.2 filed a revision petition (ROR No.1024 of 2010-11) before the learned Financial Commissioner, Haryana, which came to be allowed vide order dated 26.03.2014 (Annexure P-5) whereby the order passed by the learned Assistant Collector, learned Collector and learned Commissioner was set aside and the matter was remanded to the learned Assistant Collector for fresh decision by ensuring proper passage to all the co-sharers and particularly ensuring proper passage to the houses constructed by the sons of respondent No.2 in Killa No.97//25.

3. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition before this Court, for the reliefs as noticed above.

4. Learned counsel for the petitioners submits that the learned Financial Commissioner has erred in law and fact in setting aside the partition proceedings and remanding the matter to the Assistant Collector for deciding the case afresh only to provide passage to the houses constructed by sons of respondent No.2. Learned counsel for the petitioners while referring to Annexure P-6 which is a site plan indicating the passage (shown in brown color) being sought by respondent No.2 (Balbir Singh); contends that in case such passage is provided, the same shall amount to providing two passages to the area of respondent No.2 (Balbir Singh). That apart, the

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proposed passage shown in brown color shall reduce the area of the present petitioners and shall further bifurcate the land allotted to another co-sharer namely Hoshiyar Singh. It is contended that the land which was allocated to the respondent No.2 during the partition proceedings has been duly provided with the passage from the southern side of Killa No.98//21 and the said passage further caters to the areas allotted to other co-sharers in Killa No.106//5 and 106//6. Moreover, it is contended that providing an additional passage to respondent No.2 would lead to wastage of land also, accordingly, it is prayed that the impugned order be set aside and the partition (as finalized) be maintained.

5. Learned counsel appearing for respondent No.2 has opposed the submission made on behalf of the petitioners by submitting that there is no illegality or perversity in the order passed by the learned Financial Commissioner as the matter has only been remanded to the learned Assistant Collector for fresh decision. It is submitted that the passage which was provided to the land allocated to respondent No.2, is not convenient as his sons had built *pakka* houses in Killa No.97//25 and the passage which has been provided, touches the south side of the aforesaid Killa No.97//25 and on its south-east corner, there is a permanent fixture of tubewell, accordingly the space available between the tubewell structure and the constructed houses is insufficient for the passage of any vehicle. With the aforesaid submissions, prayer has been made for dismissal of the instant Writ Petition.

6. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

7. Concededly, the partition proceedings have been conducted and the same culminated with the drawing of the *Sanad Taksim* (instrument of

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partition). The only reasoning rendered by the learned Financial Commissioner for setting aside the partition proceedings and remanding the matter to the learned Assistant Collector for fresh decision is the provisioning of passage as far as the land of respondent No.2 is concerned. It is stated that the space available between the tubewell structure and the constructed houses is very less which would be insufficient for the passage of any vehicle.

8. I have considered the aforesaid reasoning given by the learned Financial Commissioner, however, I am unable to agree with the same. Concededly, the area allotted to respondent No.2 during the partition proceedings [shown in purple color in site plan (Annexure P-6)] has been duly provided with the passage from the southern side of Killa No.98//21/1/1, 98//21/2/1 and 98//21/3/1 and the said passage further leads to the areas allotted to other co-sharers. In case, the passage demanded by respondent No.2 (shown in brown color in Annexure P-6) is to be allowed then the same would indeed bifurcate the area allocated to another co-sharer namely Hoshiyar Singh and would also reduce the area allocated to the present petitioners in Killa No.98//20 and 21/1/1, 21/2/1 and 21/3/1.

9. In my considered view, simply because the sons of the petitioners have raised some construction on the land under partition which is causing obstruction in taking the vehicles into their land, the same cannot be a justified ground for unsettling the whole partition, which has been concededly pending for the last almost 20 years. Apparently, the respondent No.2 (Balbir Singh) permitted raising of construction of houses by his sons on the unpartitioned agricultural land at his own risk and cost in view of the settled position in law that any construction raised on joint land is always

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subject to partition.

10. Accordingly, finding the order dated 26.03.2014, passed by the learned Financial Commissioner as unjustified and unwarranted, the same is set aside. Resultantly, the instant Writ Petition is allowed and the final partition/*Sanad Taksim* is upheld.

11. All pending applications (if any) shall also stand closed.

10.09.2024
Himani

(HARSH BUNGER)
JUDGE

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