207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21253-2022 (O/M)
Date of decision : 12.08.2024

Jarnail Singh and others ...... Petitioners

Versus

State of Punjab and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Ravi Kant Sharma, Advocate
for respondents No. 5 to 19.

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HARSH BUNGER, J.

1. Petitioners (Jarnail Singh and others) have 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 the order dated 12.03.2018 (Annexure P-6), passed by the learned Assistant Collector 1st Grade, Dera Bassi (in short 'Assistant Collector'), whereby Naksha 'Erri' was sanctioned. Petitioners further seek setting aside of order dated 28.05.2018 (Annexure P-7), passed by learned Collector, Sub Division Dera Bassi (in short 'Collector'); whereby the appeal filed by the petitioners against order dated 12.03.2018 (Annexure P-6) was dismissed.

1.1 A further prayer has been made by the petitioners for setting aside the Sanad Takseem (instrument of partition) dated 09.07.2018 (Annexure P-8).

1.2 Another prayer has been made by the petitioners for setting aside the order dated 17.08.2022 (Annexure P-13), passed by learned Financial Commissioner, Revenue, Punjab (in short 'Financial Commissioner') whereby the revision petition (ROR-886-2021) filed by the petitioners was dismissed.

2. Briefly, after a round of litigation between the parties in the matter relating to partition of joint land, the final order of partition by approving Naksha 'Erri' came to be passed by the learned Assistant Collector, vide order dated 12.03.2018 (Annexure P-6). An appeal against the aforesaid order dated 12.03.2018 (Annexure P-6) was dismissed by the learned Collector, vide order dated 28.05.2018 (Annexure P-7) and thereafter Sanad Takseem (instrument of partition) was issued on 09.07.2018 (Annexure P-8).

2.1 It transpires that an appeal filed by the petitioners before the learned Commissioner, Rupnagar Division, Rupnagar (in short 'Divisional Commissioner') against the order dated 28.05.2018 (Annexure P-7) was allowed, vide order dated 29.03.2019 (Annexure P-9) whereby the matter was remanded to the learned Collector for deciding the case after hearing the parties.

2.2 It appears that some of the co-sharers challenged the learned Divisional Commissioner's order dated 29.03.2019 (Annexure P-9) by filing a revision petition (ROR-266-2019) before the learned Financial Commissioner. In the said revision petition (ROR-266-2019), the present petitioners No 1 to 4 and predecessor of petitioners No. 5 and 6, namely, Shri Harnam Singh were impleaded as party respondents. The aforesaid revision petition (ROR-266-2019) came to be allowed by the then learned

Financial Commissioner, vide order dated 04.08.2021 (Annexure P-11), the operative part of which reads as under :-

> *"9. Accordingly, the revision petition is accepted. The order dated 29.03.2019 passed by the Commissioner, Roopnagar Division, Roopnagar is set aside. The order dated 28.05.2018 vide which the Sanad Takseem issued by the Assistant Collector Grade-I, Derabassi is upheld."*

2.3 It further appears that in November, 2021, the present petitioners preferred a revision petition (ROR-886-2021) before the learned Financial Commissioner, seeking setting aside of the order dated 12.03.2018 (Annexure P-6), Sanad Takseem (instrument of partition) dated 09.07.2018 (Annexure P-8) and also the order dated 28.05.2018 (Annexure P-7). The said revision petition (ROR-886-2021) was dismissed by the learned Financial Commissioner, vide its order dated 17.08.2022 (Annexure P-13).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

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

5. Concededly, the Sanad Takseem (instrument of partition) prepared in the present partition proceedings came to be upheld by the learned Financial Commissioner, vide its order dated 04.08.2021 (Annexure P-11). It is not disputed before this Court that the petitioners were party respondents in (ROR-266-2019). It is further not disputed by learned counsel for petitioners that the petitioners have not laid any challenge to the aforesaid order dated 04.08.2021 (Annexure P-11) either by way of a separate writ petition or in the instant writ petition.

Therefore, the order dated 04.08.2021 (Annexure P-11) has attained finality.

5.1 Further, the learned Financial Commissioner, while dismissing ROR-886-2021 filed by the petitioners, observed as under :-

> *"9. I have considered the arguments put forth by the Ld. Counsels for both the parties. This case has the history of protracted litigation. The partition proceedings between the parties were going on for the last more than thirty years, which were ultimately decided by the AC 1st Grade vide order dated 12.03.2018. Against this order, appeal filed by the petitioners was dismissed by the Collector vide order dated 28.05.2018. Instrument of Partition (Sanad Takseem) was subsequently issued on 09.07.2018 by the AC 1st Grade. The petitioners, in the meanwhile, filed a revision petition before Ld. Commissioner, which was accepted vide order date 29.03.2019 and the matter was remanded to Collector for fresh decision. Against the order of Commissioner, the present respondents No. 1-12 filed a revision petition ROR No. 266 of 2019 before this Court, which was accepted by the then Financial Commissioner Revenue vide order dated 04.08.2021 on merits as well as on the ground that no appeal or revision was maintainable before Commissioner after issuance of Sanad Takseem. The then Financial Commissioner Revenue set aside the order of Commissioner and upheld the Sanad Takseem.*
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> *10. Now the petitioners through the instant revision petition, have challenged the Sanad Takseem issued by AC 1st Grade. However, as stated by the Ld. Counsel for the respondents, the present revision is not maintainable as the Sanad Takseem challenged in the instant petition has already been upheld by my*

> *predecessor in this Court, in case ROR No. 266 of 2019. The petitioners were also party to the said revision petition and their pleadings were duly considered by the then Financial Commissioner Revenue before deciding the case. Therefore, once the matter has been decided by this forum by upholding the Sanad Takseem, the instant petition challenging the same Sanad Takseem is not maintainable, being barred by the principle of res-judicata. Hence, the present revision petition is dismissed."*

5.2 From the aforementioned facts and circumstances, it is evident that the Sanad Takseem (instrument of partition) was upheld by the learned Financial Commissioner, vide order dated 04.08.2021 (Annexure P-11), passed in ROR-266/2019 and the said order has attained finality. It has further been brought the notice of this Court that the final partition/sanad takseem already stands reflected in the revenue records by way of mutation No. 2545. In this view of the matter, once the petitioners have not laid any challenge to the order dated 04.08.2021 (Annexure P-11), no relief can be granted to the petitioners nor they can be permitted to reopen the finalized partition proceedings.

6. In view of the above discussion, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

12.08.2024
sjks

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

SANJIV KUMAR SHARMA
2024.08.21 12:05
I attest to the accuracy and
integrity of this document