

227 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-7272-2017

Date of Decision: 30.04.2024

Rupinderpal Singh and others

..... Petitioners

Versus

The Financial Commissioner and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Sunny K. Singla, Advocate, for the petitioners.

Mr. Rajeev K. Takkar, Deputy Advocate General, Punjab.

Mr. Harsh Aggarwal, Advocate, for respondents No.5 and 6.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the impugned order dated 20.12.2016 passed by respondent No.1 (Annexure P-8), order dated 02.09.2014 passed by respondent No.2 (Annexure P-7) and order dated 06.06.2014 passed by respondent No.3 as well as orders dated 21.03.2014, 27.12.2013, 23.12.2013 & 19.09.2013 passed by respondent No.4 (Annexure P-2) vide which *Sanad Takseem, Naksha Zeem, Naksha Bey* and mode of partition have been issued/sanctioned in a partition case bearing No.40/Tehsildar, titled as Paramjit Singh and another vs. Santokh Singh Lal and others being contrary to the provisions of Punjab Land Revenue Act and settled proposition of law.

2. It has been submitted by learned counsel for the petitioners that the respondents No.5 and 6 filed an application for partition of the land measuring 42 Kanals 01 Marla situated at Village Aggarwarh Laddai, Tehsil Jagroan, District Ludhiana before respondent No.4 i.e. Assistant Collector Ist Grade on the basis of *Jamabandi* for the year 2004-05. He has submitted that respondent No.4 without complying with the provisions Section 20 of

the Punjab Land Revenue Act, 1887 (for short, 'the Act') has wrongly proceeded *ex parte* on 16.08.2013 qua the co-sharers, petitioner No.1 and performa respondents. He has submitted that without following the due process, respondent No.4 sanctioned mode of partition vide order dated 19.09.2013. He has submitted that *Naksha Bey/Arra* was wrongly sanctioned by respondent No.4 on 23.12.2013. It is submitted that *Naksha Bey/Arra* was received by respondent No.4 on 10.12.2013 and the same was sanctioned on 23.12.2013 in the absence of the petitioners and other co-sharers and only respondents No.5 and 6 were present at the time of sanctioning of *Naksha Bey*. He has submitted that thereafter, respondent No.4 sanctioned *Naksha Zeem* on 27.12.2013, wherein, the entire land abutting to the main road was allotted to respondents No.5 to 11 and the petitioners were not allotted land abutting to the main road. He submits that thereafter, in violation of settled proposition of law, respondent No.4 sanctioned *Sanad Takseem* vide order dated 21.03.2014. He has submitted that aggrieved by the same, petitioners No.1 and 2 filed appeal before respondent No.3 i.e. the Collector-cum- SDM, who illegally dismissed the same vide his order dated 06.06.2014. He has further submitted that aggrieved by the same, petitioners No.1 and 2 filed revision petition before respondent No.2, which was also dismissed vide order dated 02.09.2014 on the ground of maintainability as the *Sanad Takseem* had already been issued. He has submitted that again aggrieved by the same, the petitioners and others filed ROR No.88 of 2015 assailing the order dated 02.09.2014 before respondent No.1 i.e. the Financial Commissioner, however, respondent No.1 has illegally dismissed the same vide his order dated 20.12.2016 on the ground that the petitioners had not challenged the mode

of partition. Learned counsel for the petitioners has further submitted that respondent No.1 has failed to appreciate that partition proceedings were carried out in a highly illegal manner and thus, the impugned orders are not sustainable in the eyes of law. He submits that as evident from the facts and circumstances of the case, all the *Nakshas* in the partition proceedings were passed by respondent No.4 at the back of the petitioners and the co-sharers. He submits that inadvertently, petitioners No.1 and 2 had failed to file appeal before respondents No.2 and 3 after issuance of *Sanad Takseem* and thus, the same were dismissed on the ground of maintainability. It is submitted that it is evident from the facts and circumstances of the case that partition proceedings were carried out totally in violation of the settled principles of law and thus, the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

3. Per contra, learned counsel for respondents No.5 & 6 has vehemently opposed the submissions made by counsel for the petitioners. He has submitted that the partition proceedings were initiated at the behest of respondents No.5 & 6 for partition of land measuring 43 Kanals 01 Marla. He has submitted that some of the respondents died and their LRs were duly impleaded. It is submitted that petitioners No.1 & 3 are the LRs of Gurdev Singh and all the LRs were served from time to time and they appeared before learned Assistant Collector Ist Grade. He submits that they also got their statements recorded regarding their no objection to the mode of partition. He submits that petitioner No.2 made his statement before learned Assistant Collector Ist Grade on 19.07.2013 and deposed that partition be carried out by keeping the possession intact. He further submits that joint statement was made by petitioners No.3 & 4, wherein they

deposed that they have no objection if the partition proceedings are carried out by keeping the possession intact and their *tak* be made separate. He submits that thereafter spot was inspected and mode of partition was approved on 19.09.2013, as no objection was raised by any of the parties. It is submitted that *Naksha Arra* was produced on 10.12.2013, and approved on 23.12.2013, as no objection was raised by any of the parties. It is further submitted that *Naksha Irri* was produced on 27.12.2013 and as there was no objection to this also, hence, the same was approved on the very same day, i.e. 27.12.2013. Resultantly, as there was no objection raised by any of the parties, learned Assistant Collector Ist Grade issued *Sanad Takseem* on 21.03.2014. He submits that surprisingly, thereafter, petitioners No.1 & 2 challenged the order dated 27.12.2013 by filing an appeal before respondent No.3, which was dismissed on 06.06.2014. This order was further challenged before respondent No.2 by way of revision, which was also dismissed vide order dated 02.09.2014, and, thereafter, ROR No.88 of 2015 was filed before respondent No.1. It is submitted that by misleading the Financial Commissioner, the petitioners got order of stay on 07.10.2015. However, when respondents No.5 & 6 brought the true facts of the case to the notice of the Court, the stay was vacated on 20.01.2016, and the ROR filed by the petitioners was dismissed on 20.12.2016. He has submitted that during the demarcation proceedings as is evident from the report of the Kanungo, dated 19.03.2015, the petitioners had prayed that they be given time upto 25th April, 2015 so that they may harvest the wheat crop from this land and the possession of the land in dispute would be given to Inderjeet Kaur etc. after 25.04.2015 and, thus, it was observed by the Kanungo in his report that possession of the land in dispute would be given to Inderjeet

Kaur after 25.04.2015 and nobody would have any objection. He submits that only in order to prolong the partition proceedings, which are already finalized, the petitioners have initiated frivolous litigation. He submits that it is evident that the petitioners were duly served and they intentionally chose not to appear and file their objections at any stage and, hence, there was no illegality whatsoever in carrying out the partition proceedings. Hence, the petition being totally without any merit deserves to be dismissed.

4. The Court has heard counsel for the parties and perused the record with their able assistance. It is deciphered from the hearing of the case that the partition proceedings in the present case were initiated at the behest of respondents No.5 & 6. LRs of the deceased co-sharers were impleaded and notices were issued and service on all the co-sharers including the LRs of deceased co-sharers was effected. As apparent from the record, mode of partition was approved on 19.09.2013. *Naksha Arra* and *Naksha Irri* were sanctioned on 23.12.2013 & 27.12.2013, respectively. Thereafter, *Sanad Takseem* was issued on 21.03.2014.

5. As submitted by learned counsel for respondents No.5 & 6, petitioners No.2, 3 & 4 gave their statements before learned Assistant Collector Ist Grade regarding their no objection for partition of land, which are as follows:-

“Statement of Sh. Karam Singh s/o S. Mukhtiar Singh, r/o Agwar Ladai, Jagraon on S.A.

Stated that I have come present today in partition case 'Paramjit Singh Vs. Santokh Singh etc. The land be partitioned by keeping the possession intact in the partition case.

Sd/-ACI

1. Statement of Smt. Kuljinder Kaur wd/o Gurdev Singh s/o Mukhtiar Singh, r/o Jagraon for herself and for Rupinder Pal Singh son and Kulvir Singh son:

2. Nirmal Singh s/o Mukhtiar Singh s/o Uttam Singh, r/o Jagraon;
3. Darshan Kaur wd/o Jagdev Singh s/o Mukhtiar Singh, r/o Jagraon for herself and for minor children Jeevan Jot Singh son, Kulwinder Kaur daughter, r/o Jagraon on S.A.

Stated that the partition of land in partition case Paramjit Singh Vs. Santokh Singh etc.' be made by keeping the possession intact. We have no objection if the land is partition by keeping the possession intact. Our tak be made separate.”

Sd/-ACI

6. From the statements made by the petitioners, it is apparent that it was agreed at the time of approval of mode of partition that partition proceedings would be carried out keeping the possession intact. But the contention raised by counsel for the petitioners, is regarding the allotment of land which is not of their choice. However, once it was agreed that possession would remain intact, the impugned orders passed in partition proceedings cannot be held to be illegal, as the same were carried out in terms of the mode of partition where maintaining the possession was priority.

7. As submitted by learned counsel for respondents No.5 & 6, it is evident from the report dated 19.03.2016 of the Kanungo, wherein the petitioners already undertaken to handover the possession of the land in dispute to Inderjeet Kaur and others after harvesting the wheat crop up to 25.04.2015. Thus, it is evident that the petitioners had themselves given the statement to hand over the possession of the land in question after harvesting of the crop. However, after making statements they clandestinely initiated the litigation so as to restrain the private respondents from seeking possession of their land. It is also evident that the petitioners themselves had

given statement before Kanungo in the report dated 19.03.2015 agreeing to handover the possession after harvesting the crop.

8. Needless to say that the petitioners were duly served and at any stage filed no objections. It is only after the issuance of *Sanad Takseem* the petitioners filed appeal before the Collector, which was rightly dismissed being not maintainable. On the appreciation of the partition proceedings carried out by the revenue authorities on the anvil of law settled, this Court does not find any scope of interference in the same and hence the present petition being devoid of any merit is hereby dismissed.

30.04.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No