

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19484-2024 (O/M)

Date of decision : 12.08.2024

Rambeer and others

..... Petitioners

Versus

Financial Commissioner, Revenue, Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Virender Kumar, Advocate
for the petitioners.

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HARSH BUNGER, J.

1. Petitioners (Rambeer 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 11.06.2024 (Annexure P-5), passed by learned Financial Commissioner, Revenue, Haryana (in short 'Financial Commissioner') whereby the partition proceedings after the finalization of mode of partition including sanad taksim dated 09.08.2018 were set aside and the matter was remanded to the Assistant Collector 1st Grade, Gannaur (in short 'Assistant Collector') for concluding the partition proceedings by following the mode of partition in letter and spirit.

2. Briefly, the petitioners filed an application seeking partition of joint land situated at Pipli Khera, Tehsil Gannaur, District Sonapat. In the partition proceedings, some of respondents in the partition application were proceeded against ex-parte and the mode of partition was finalized, vide order dated 14.02.2017. Subsequently, Naksha 'kh' and Naksha 'ga'

were approved and finally, sanad takseem (instrument of partition) was issued, vide order dated 09/10.08.2018 (Annexure P-4).

2.1 The aforesaid partition proceedings including sanad takseem were challenged by the private respondents herein by filing a revision petition (ROR-2-2023) before the learned Financial Commissioner, who vide its order dated 11.06.2024 (Annexure P-5), set aside the partition proceedings after the stage when the mode of partition was finalized including the sanad takseem and the matter was remanded to the Assistant Collector for concluding the partition proceedings by strictly following the mode of partition within a period of four months.

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

4. Learned counsel for petitioners submits that the partition proceedings were carried out after following due procedure and in accordance with law and the sanad takseem was also drawn, however, private respondents challenged the partition proceedings after more than four years of the issuance of sanad takseem by filing a revision petition, which has been wrongly allowed by the learned Financial Commissioner, vide impugned order dated 11.06.2024 (Annexure P-5). It is submitted that the matter has been wrongly remanded on the ground that Killa No. 44/19 is situated on the GT Road, therefore, all the parties should be given their share in this valuable piece of land; whereas it is the contention of petitioners that Killa No. 44/19 is non cultivable land wherein houses of petitioners and respondent No. 14 have been constructed. It is further submitted that as per the sanctioned mode of partition, the partition is to be carried out by maintaining the possession,

however, it is nowhere mentioned that houses/constructed area is to be given to all co-sharers. Petitioners place reliance upon a photograph (Annexure P-7) to contend that Killa No. 44/19 is non cultivable land wherein houses/shops of petitioners and respondents are constructed. Accordingly, it is prayed that the impugned order be set aside and the finalized partition proceedings as well as sanad takseem be upheld.

5. I have heard learned counsel for petitioners and have also perused the paperbook with his able assistance.

6. In the present case, the learned Financial Commissioner, while allowing the revision petition, filed by private respondents, vide its order dated 11.06.2024 (Annexure P-5), observed as under :-

“5. I have heard the counsels for the parties and have gone through the record available on file. In the application dated 19.11.2014, the addresses of all the parties were mentioned as residents of village Pipli Khera, Tehsil Gannaur, District Sonapat. The notices were sent at the given address, however, there was a report of the Chowkidar of the village that respondents No. 2 to 8 therein were not residing in the village. Thereafter, an application dated 06.08.2015 was moved for giving the correct addresses of the respondents. The registered AD were sent to these addresses, however, these respondents did not come present in partition proceedings before the Assistant Collector 1st Grade. When these parties did not turn up for participation, the Assistant Collector 1st Grade proceeded such respondents as exparte. So, at this stage, it could not be said that the service was not proper. So, there is no force in the arguments that there has been violation of principle of natural justice at level of Assistant Collector 1st Grade.

However, the perusal of the record would reveal that a written reply was submitted before Assistant Collector 1st Grade at level of respondent No. 7 to 10 and 11 (a), respondents therein, averring that Killa No. 44/19 is situated on GT Road, therefore, all the parties should be given their share in this valuable place of land. The mode of partition was finalized vide order dated 14.02.2017 of Assistant Collector 1st Grade and at point No. 2 a specific mode of point has been framed that the land abutting GT Road shall be allocated to all the four kurras. Further, there is merit in the contention of the petitioners that the valuable piece of land has not been allocated to four kurras as per the mode of partition. So, the mode of partition has not been followed in the further partition proceedings. The record would reveal that Naksha 'kh' was submitted before Assistant Collector 1st Grade on 02.01.2018 and on 16.01.2018 and 23.01.2018 none came present on behalf of respondents. On 23.01.2018, the respondents, who were earlier represented through Counsel, were also proceeded ex-parte and further proceedings i.e. finalization of Naksha 'kh' on 23.01.2018 and Sanad Taksim on 09/10.08.2018 were finalized in their absence. So, there seems to be merit in the contention of the petitioners that they remained unaware, due to their Counsel, of partition proceedings and on coming into their notice of the partition proceedings, they have filed the revision petition before this Court, challenging the Sanad Taksim.

6. *In view of this, the matter needs to be remanded to the Assistant Collector 1st Grade with a direction to follow the mode of partition in letter and spirit. As such, the partition proceedings after the finalization of*

mode of partition is hereby set aside. Further, the Assistant Collector 1st Grade is directed to conclude further partition proceedings (i.e. after the mode of partition) within a period of four months positively.”

6.2 A perusal of the aforesaid finding would manifest that the partition proceedings have been set aside beyond the stage of finalization of mode of partition, primarily on the ground that the partition is not in consonance with the sanctioned mode of partition wherein it was clearly recorded in Clause 2 that land abutting GT Road shall be allocated to all the four kurras (blocks). Accordingly, learned Financial Commissioner has held that the valuable piece of land has not been allocated to the four kurras (blocks) as per the mode of partition.

6.3 Learned counsel for petitioners is unable to dislodge the aforesaid observations made by the learned Financial Commissioner by referring to any material/document to indicate that the land abutting the GT Road has been allocated to all the co-sharers as per their proportionate share in the joint khewat. Concededly, Clause 2 of the sanctioned mode of partition clearly envisages that the land abutting GT Road shall be allocated to all the four kurras (blocks), which was evidently not forthcoming in this case. As regards the plea of the petitioners that Killa No. 44/19 is non cultivable land wherein houses/shops of petitioners and respondent No. 14 have been constructed, therefore, said area cannot be the subject of partition, it is observed that although the gair mumkin area cannot be partitioned by the revenue authorities unless all the co-sharers consent for the same, however, in the instant case, a perusal of the Naksha 'zeem' (Annexure P-3) would indicate that Khasra No. 44/19 has also been subjected to partition. It

requires to be seen as to whether on the date when the partition application was filed, was there any construction on Killa No. 44/19 or not. In case, on the date of filing of partition application, there was no construction on the joint land, then the said land is to be partitioned equally amongst the co-sharers as the said khasra number 44/19 is stated to be more valuable being situated on GT Road. Any construction made subsequent to the filing of the partition application is liable to be ignored. However, in case there was any construction on the date when the partition application was filed then in that eventuality, the gair mumkin area/constructed area is to be kept out of partition being beyond the jurisdiction of the revenue authorities, unless all the co-sharers consent for partitioning the gair mumkin area.

7. In view of the aforementioned facts and circumstances, I do not find any merit in the writ petition and the same is accordingly dismissed subject to the observations made hereinabove.

8. No other argument has been raised.

9 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