

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21268-2024 (O/M)

Date of decision : 09.09.2024

Ami Chand and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sarvjit Singh Khurana, Advocate
for the petitioners.

Mr. Rajneesh Chadwal, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Ami Chand 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 12.07.2022 (Annexure P-7), order dated 02.06.2023 (Annexure P-12) and order dated 16.06.2023 (Annexure P-14), passed by Assistant Collector 1st Grade, Tauru. A further prayer has been made for setting aside order dated 10.05.2023 (Annexure P-9), passed by the learned Collector, Tauru, District Nuh and also the order dated 24.07.2024 (Annexure P-15), passed by learned Commissioner, Faridabad Division, Faridabad (in short 'Divisional Commissioner').

1.1 Another prayer has been made by the petitioners for directing respondent No. 4 to prepare fresh Naksha 'Bey' according to sanctioned mode of partition and to decide the partition proceedings afresh.

2. Briefly, respondent No. 5 moved an application for partition of joint land, comprised in Khewat/Khata No. 92/111, situated at village Jhamuwas, Tehsil Tauru, District Nuh. The petitioners appeared in the said partition proceedings and submitted their reply. The mode of partition (Annexure P-3) was prepared and thereafter, Naksha “Bey” was called from the field staff.

2.1 Upon receipt of Naksha “Bey”, objections were called from the parties, whereupon the petitioners submitted their objections.

2.2 It appears that thereafter an amended Naksha “Bey” was received, to which the parties submitted no objection and accordingly, Naksha “Bey” was approved, vide order dated 12.07.2022 (Annexure P-7) and Naksha “Zeem” or Naksha “Ga” was called for.

2.3 The petitioners challenged the order dated 12.07.2022 (Annexure P-7) by filing an appeal before the learned Collector, Tauru, District Nuh, which was dismissed, vide order dated 10.05.2023 (Annexure P-9).

2.4 Being aggrieved against the order dated 10.05.2023 (Annexure P-9), the petitioners preferred a revision petition before the learned Divisional Commissioner, wherein an interim stay was granted, vide order dated 05.06.2023 (Annexure P-11).

2.5 It appears that on 02.06.2023 (Annexure P-12), learned Assistant Collector 1st Grade, Tauru, approved Naksha “Zeem”.

2.6 That thereafter, the aforesaid revision petition filed by the petitioners against order dated 10.05.2023 (Annexure P-9) was also dismissed by the learned Divisional Commissioner, vide order dated 24.07.2024 (Annexure P-15).

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 revenue authorities below have erred in law and fact in passing the impugned orders, without considering the objections raised by the petitioners. It is submitted that the petitioners had raised specific objection that they have been allocated uneven and slanting land as compared to the land allocated to respondent No. 5, however, no heed was paid to the said objection. It is further submitted that in future if green belt along the road is expanded then the same shall prejudice both the parties. It is next submitted that the petitioners have not been given the valuable land situated on the main road i.e. in Killa No. 22/1 and, therefore, mode of partition has been violated. It is also submitted that the partition has been carried out in an illegal manner, which cannot be sustained. Accordingly, it is prayed that the impugned orders be set aside and the matter be remanded to the learned Assistant Collector 1st Grade, Tauru, for preparing fresh Naksha “Bey” and conduct the partition proceedings afresh.

5. Heard.

6. In the present case, the petitioners have impugned the orders passed in the proceedings regarding partition of joint land. Upon filing of application for partition by respondent No. 5, the petitioners appeared before the concerned authority and submitted their reply. Thereafter, the mode of partition was approved and Naksha “Bey” was called from the field staff. Upon receipt of Naksha “Bey”, objections from the parties were called, whereupon the petitioners submitted their objections, which can be summed up as under :-

- a) *Naksha “Bey” is against the site and facts ;*
- b) *While preparing Naksha “Bey”, their cultivation and price of land has not been kept in view ;*
- c) *Principles of consolidation have not been considered ;*
- d) *Naksha “Bey” is against the mode of partition ;*
- e) *While preparing Naksha “Bey”, possession of the petitioners has not been kept in view and private respondent herein (Satish Kumar) has been allocated more valuable land and even the area allotted to him is in the shape of square whereas the petitioners have been allocated inferior and dissymmetrical land ;*
- f) *Petitioners' claimed that they be allocated land of same value i.e. good for good and they also claimed equal frontage ;*
- g) *Petitioners' claimed that they have been allocated land in pieces at different places, which would make cultivation difficult and even the tubewell etc. of the petitioners have not been take care of.*

6.1 It transpires that thereafter, an amended Naksha “Bey” was called and the same was approved, vide order dated 12.07.2022 (Annexure P-7). The said order dated 12.07.2022 was challenged by the petitioners before the learned Collector, Tauru, District Nuh, by way of an appeal, which was dismissed, vide order dated 10.05.2023 (Annexure P-9) by holding as under :-

“ After hearing the arguments of both the sides and inspecting the evidence available on the record, I have reached to this conclusion that after recording of evidence of the parties on record, by considering the mode of partition, Naksha “Khey” was received on 08.02.2022 after receiving objection on which from now appellant Dharam Bir and respondent Satish, while deciding their objections amended Naksha “Khey” has been called for wherein they by creating one joint Chak

of the appellants by granting whole area on the main road, partition has been done. 174 Karam front has been made on the main road of the appellants. There seems to be no force in the statement of the appellants that no consideration has been given to their objections and they have not been heard. The partition has been done by the lower court by creating lesser chaks. The statement of the appellants that if in future if there is extension of the green belt then the area which is left out will not be useful, is merit less because if so happens then it will affect both the parties. Whereas the objection regarding not giving area to the appellants in Killa No. 22/1 situated at the main road going towards Jhamuwas, regarding this 3 Kanal 2 Marla area of 22/1 has been given to the respondent Satish while considering the objections of the parties on Naksha "Khey" earlier received in the lower court and Possession and cultivation. The partition has been done by lower court by considering the provisions of chakbandi, considering possession, quality, value, after granting complete opportunity of hearing to the parties. Therefore finding the appeal of the appellants as meritless, by not finding any necessity of any interference in the order passed by the lower court, the appeal of the appellant is dismissed.

Order is pronounced today dated 10.05.2023 in the open court. A copy of the order along with original record be sent to the Tehsildar Tauru for completing further required proceedings of the partition.

Date: 10.05.2023

Sd/-

*Collector Sub Division
Nuh. 10.05.2023."*

6.1 A further revision petition against the aforesaid order dated 10.05.2023 (Annexure P-9) was dismissed by learned Divisional

Commissioner, vide order dated 24.07.2024 (Annexure P-15) by observing as under :-

“ After hearing counsel for both the sides and perusing the record of lower court, I have come to the conclusion that Assistant Collector has got prepared updated Naksha “Khey” after considering the objections of the revisionist, the number on which the revisionist has objection that number 22/1 was given to them which has been given to the opposite party afterwards from which it seems that revisionists do not want to let the partition complete, want to keep pending partition proceedings by raising absurd objection. The land of partition is similar. By not finding any error in the orders passed by the lower courts and by considering the partition proceedings to be right and by finding the revision of the revisionist as merit less it is being dismissed. Order has been pronounced. By sending the copy of order along with record of lower court, record be consigned to record room after verification and necessary compliance.”

6.2 A perusal of the above extracted findings returned by learned Collector as well as learned Divisional Commissioner would show that the objections raised by the petitioners to the Naksha “Bey” were duly considered and dealt with and a finding has been returned that the partition has been carried out by creating lesser blocks (chaks). As regards the objection of petitioners regarding expansion of the green belt along the road in future, was also considered by holding that the same would affect both the parties. As regards the objection regarding non allocation of land to the petitioners, adjacent to the road in Killa No. 22/1, it has been held that 3 Kanal-2 Marla area of Killa No. 22/1 has been allocated to respondent No. 5 after considering their earlier

objections to Naksha “Bey” and considering their cultivating possession.

It has further been held that the partition has been carried out by keeping in view the principles of consolidation, possession, nature and value of land and after affording due opportunity of hearing to the parties.

6.3 That apart, learned Divisional Commissioner has further observed that the land under partition is similar and there is no illegality in the orders passed by the revenue authorities below.

7. Learned counsel appearing for the petitioners has failed to dislodge the aforesaid observations made by the learned Collector as well as learned Divisional Commissioner. It has not been shown as to which clause of mode of partition has been violated or as to what prejudice has been caused to the petitioners by the manner in which the partition has been carried out.

7.1 I have also carefully perused Annexure P-4, which is a site plan indicating the manner in which the partition was earlier proposed in Naksha “Bey”. In this site plan (Annexure P-4), the land allocated to the petitioners is shown in orange colour. It is clearly evident that earlier the petitioners were allocated land in two separate parcels shown in orange colour. However, from a perusal of Annexure P-6, which is a site plan indicating the manner in which the land has been allocated to the petitioners and respondent No. 5 after approval of amended Naksha “Bey”, it is clear that now the petitioners have been allocated contiguous land (in red colour) and it is respondent No. 5, who has been allocated land in two separate parcels shown (in green colour).

7.2 Considering the location and layout of the land under partition (as evident from Annexure P-6), in my view, the manner in

which the partition has been carried out while preparing Naksha “Bey” is fair, equitable and justified.

8. In view of the aforementioned facts and circumstances, there is no scope for any interference by this Court in the impugned orders. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

09.09.2024
sjks

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