

2024:PHHC:135179



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

CWP-21499-2024 (O&M)
Date of decision : 14.10.2024

GIAN SINGH AND OTHERS

...Petitioners

Versus

FINANCIAL COMMISSIONER (APPEALS), PUNJAB,
CIVIL SECRETARIAT, PUNJAB AT CHANDIGARH
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kanwaljeet Singh Derabassi, Advocate
for the petitioners.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for quashing the impugned order dated 07.02.2023 (Annexure P-8) passed by the learned Assistant Collector Ist Grade, Ghanaur; whereby Naksha 'Eiri' was approved; order dated 06.04.2023 (Annexure P-9); whereby the Instrument of Partition (*Sanad Taksim*) has been issued and also the order dated 02.05.2024 (Annexure P-19) passed by the learned Financial Commissioner (Appeals), Punjab in ***ROR No.170 of 2024***.

2. Briefly, respondents No.3 to 7 filed an application (Annexure P-1) seeking partition of joint land, measuring 40 Bighas – 16 Biswas, comprised in *Khewat No.11/11/18* to 21 (as per jamabandi for the

year 2017-18), situate at village Harigarh, Sub Tehsil Ghanaur, Tehsil Rajpura, District Patiala.

2.1 In the afore-said partition proceedings, Naksha 'Urri' was approved, vide order dated 26.11.2020 (Annexure P-25) and the Mode of Partition was sanctioned vide order dated 21.01.2021 (Annexure P-28) as no objection thereto was filed. Thereafter, Naksha 'Arri' was called from the Field Staff. Upon receipt of Naksha 'Arri', objections thereto were called; however, since no objections were filed by any of the parties, Naksha 'Arri' was sanctioned vide order dated 04.05.2021 (Annexure P-38). Thereafter, Naksha 'Eiri' was called for and petitioner No.1 (Gian Singh) submitted the following objections to Naksha 'Eiri' :-

“1) That the case regarding partition of land situated in village Harigarh is pending in this court and I am respondent in said case. The Naksha Eiri has been made regarding this case and I have objection on Naksha Eiri because the land of village Harigarh came under the Drain and the cheques have been issued by the Drainage Department but the entry of land acquired for Drain has not been made in the Jamabandi. Therefore after deducting the land covered under Drain, the Naksha-Eiri be re-prepared and my area be completed.”

2.2 It appears that Naksha 'Eiri' was approved by the learned Assistant Collector vide order dated 07.02.2023 (Annexure P-8). Thereafter, the *Sanad Takseem* (Instrument of Partition) dated 06.04.2023 (Annexure P-9) was issued.

2.3 Thereafter, the present petitioners challenged the partition proceedings as well as the *Sanad Taksim* by filing a Revision Petition (**ROR-170-2024**), which was dismissed by the learned Financial

Commissioner (Appeals) Punjab, vide order dated 02.05.2024 (Annexure P-19). Hence, the present petition.

3. Learned counsel for the petitioners submits that the petitioners were not served in the afore-said partition proceedings in accordance with law. It is further submitted that the objections raised by petitioner No.1- Gian Singh to Naksha 'Eiri' have not been considered. It is still further submitted that the Revenue Authorities have wrongly partitioned the *Gair Mumkin* area. Accordingly, prayer has been made to set aside the partition proceedings/orders, *SanadTaksim* as well as order dated 02.05.2024 (Annexure P-19).

4. I have heard learned counsel for the petitioners and perused the paper-book with his able assistance.

5. In the present case, a perusal of *zimini* order dated 29.10.2020 (Annexure P-23) would show that all the present petitioners had appeared before the learned Assistant Collector and stated that they have no objection regarding the partition. The relevant extract of order dated 29.10.2020 (Annexure P-23) passed by learned Assistant Collector-I, reads as under :-

“File put up, called. The petitioners are present in the court. After conducting MushtariMunadi for respondents by the circle Patwari, the Parwana received back in the court. The Mushtari Munadi was held vide Rapat No.65 dated 28.10.2020. The respondents No.1 to 6 appeared in the court and they said that they have no objection regarding this partition and our land also be partitioned. The respondent No.7, 8, 9, 10 failed to appear in this court. Therefore the exparte proceedings are hereby initiated against the respondents No.7, 8, 9, 10.

If any party has objection regarding the land mentioned in Naksha “Ura” then he can file the

objections in writing. File be put up on 10.11.2020 for objections on Naksha "Ura".

5.1 In view of the above-extracted order dated 29.10.2020 (Annexure P-23), I find no merit in the contention raised by the petitioners that they were not served properly.

6. As regards the contention raised on behalf of the petitioners that the objections to Naksha 'Eiri' were not considered by the learned Assistant Collector, it is observed that the petitioners had failed to give the details of the land coming under drain, as claimed by the petitioners and in the absence of the same, the objection of the petitioners could not have been appreciated. Even otherwise, in case, the petitioners had any such objection as regards the alleged drain, then the said objection was required to be taken at the stage when Naksha 'Arra' was received from the Field Staff and objections thereto, were called. Since the petitioners failed to raise any objection to Naksha 'Arra' at the relevant time, they could not have raised any objection to Naksha 'Eiri'.

7. As regards the contention of the petitioners that the Revenue Authorities have wrongly partitioned the *Gair Mumkin* area, it is observed that in the present case, the following mode of partition was sanctioned :-

"1. The land will be partitioned after deducting the area of Gair Mumkin Roori/Abadi from the land measuring 40 Bigha 16 Biswas bearing Khewat Khatoni no.11/11/18 to 21 situated at village Harigarh, Sub Tehsil Ghanaur, Tehsil Rajpura, District Patiala as per Jamabandi for the year 2017-18.

2. The partition will be made according to the nature of land at the site.

3. The partition will be done between the parties as per the detail given below :-

- i) *Separate Tak of the applicant or as same has been demanded.*
- ii) *Separate Taks of the respondents.*

4. The partition will be done in view of the possession, the good out of good and bad out of bad land will be partitioned to the parties according to the nature of land and if some change is required for adjustment of Taks on the basis of nature of land, then it will not be considered as disturbance of possession.

5. The party which is not in possession at anywhere the good out of good and bad out of bad land will be given to the said party as per his share in Jamabandi.

6. The owner/Mushtri who will not be co-sharer in the Khewat, no area will be allotted to him in the said Khewat at the time of partition and at the time of implementation of this principle, if the Mushtri is found to be purchaser of area more than share then the land will be given to the Mustari from other Khewat of owner/seller.

7. The efforts will be made to make minimum Tak of the parties.

8. The Kami-Beshi of 03 Marlas will be overlooked.

9. The passage and water course/Khal etc. will be given from the common land as per requirement and the trees will be partitioned according to the land.

10. The land will be given to the Mushtari according to the sellers and the land will be given to the purchaser out of the land to be given to the owners/seller at the time of partition.

11. If any co-sharer has sold or mortgaged the land more than his share then ultimately it will affect the Mushtari/Murthin.

12. The burden of mortgage will be on the mortgagor and right of the bank/Murtahin will be protected and if any party has mortgaged the land then at the time of partition, said land will be allotted to the same party on the basis of nature of land or if he is in possession in the area more

than of his share and area came out from the possession of mortgagee in this partition, then the area which is with the mortgagee or more new area is allotted to him vide partition, then Murtahin will have charge over said land prior to the owners.

13. If any party has constructed house, Kothi or any other structure in the land under his possession then efforts will be made to allot this land to the said party and being in possession, if he has to leave the structure during partition, then the suitable compensation will be given to him from the opposite party.

14. If the parties entered into mutual compromise, then the partition will be done according to compromise.

15. Prior to submission of NakshaAara to the Field Kanugo if any party wants to make his separate Tak then said party can make request to make separate Tak by filing application in this court.”

7.1 Apparently, the above-extracted mode of partition was approved as there was no objection raised by any of the parties. As per Clause 13 of the afore-said mode of partition, the constructed house/kothi or any other structure was to be partitioned by allocating the same to the person who had raised such construction/house or other structure. It was also provided that if any co-sharer had to leave any structure during partition then suitable compensation will be given to him.

7.2 A perusal of Naksha 'Eiri' would reflect that *Gair Mumkin* areas have been allocated to both the parties. However, since the petitioners did not raise any objection regarding allocation of such *Gair Mumkin* areas to both the parties at the time of raising objections to Naksha 'Arra', therefore, they are precluded from raising any such challenge at this stage.

8. Considering the totality of circumstances, I find no reason to interfere in the concluded partition proceedings; moreso, when the

petitioners have failed to show as to what prejudice has been caused to them with the manner in which the partition has been carried out.

9. In view of the above discussion, the instant writ petition fails and the same is hereby dismissed.

10. All pending application/s, if any, shall also stand closed.

October 14, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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