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

CWP-25467-2024 (O&M)
Date of Decision: 04.10.2024

Balraj and others

....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajit Singh Lamba, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG, Haryana.

HARSH BUNGER, J. (Oral)

1. 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 setting aside the entire partition proceedings in case No.97/Partition/N.T. (Old case No.178/Partition/TEH.) including subsequent orders/proceedings and *Sanad Taksim* dated 25.04.2023 (Annexure P-1).

1.1 A further prayer has been made for setting aside the impugned order dated 21.09.2023 (Annexure P-2) passed by the learned Financial Commissioner, Haryana whereby the revision petition filed by the

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petitioners against the partition proceedings/orders as well as the *Sanad Taksim*, has been dismissed.

1.2 Another prayer has been made for issuing a writ in the nature of Mandamus for directing the Assistant Collector 2nd Grade, Hisar for conducting *de novo* partition proceedings in a time bound manner.

2. Briefly, respondents No.3 to 5 filed an application seeking partition of joint land comprised in Khewat No.701 (Jamabandi 2006-07) of Village Raipur, Tehsil and District Hisar. It transpires that the present petitioners No.1, 3 and 4 were proceeded against ex parte in the aforesaid partition proceedings. The mode of partition was initially approved vide order dated 09.11.2015 (Annexure P-6) passed by the Assistant Collector, however on appeal, the same was set aside and the matter was remanded by the Collector vide its order dated 08.04.2016 (Annexure P-7).

2.1 Upon remand, the mode of partition was again approved vide order dated 28.11.2019 (Annexure P-8), passed by the Assistant Collector. Thereafter, *Naksha Bey* was called from the field staff. Upon receipt of *Naksha Bey*, objections were invited from the co-sharers. Thereafter, *Naksha Bey* was approved vide order dated 16.01.2023 (Annexure P-13A) and subsequently, *Naksha Zeem* was also approved and *Sanad Taksim* came to be issued on 25.04.2023 (Annexure P-1).

2.2 The petitioners challenged the aforesaid partition proceedings/orders as well as the *Sanad Taksim* by filing a Revision Petition bearing ROR No.295 of 2023 before the learned Financial Commissioner, Haryana which was dismissed vide order dated 21.09.2023 (Annexure P-2).

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3. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition before this Court for the reliefs as noticed above.

4. Learned counsel for the petitioners submits that the partition in question has been carried out without following the proper procedure. It is submitted that the final partition is not in consonance with the sanctioned mode of partition. It is further submitted that the possession of the petitioners has been disturbed which has caused them serious prejudice. It is next submitted that proper passages and water channels have not been provided to the petitioners and they have been allocated land which is less valuable. With the aforesaid submissions, learned counsel for the petitioners submitted that entire partition proceedings as well as the *Sanad Taksim* be set aside and the matter be remanded to the Assistant Collector for denovo partition proceedings.

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

6. In the present partition case, the petitioners No.1, 3 and 4 were proceeded against ex parte, although petitioner No.2 had appeared/participated in the partition proceedings. It is not shown that petitioners No.1, 3 and 4 were wrongly proceeded against ex parte.

7. Be that as it may, the mode of partition came to be finally approved vide order dated 28.11.2019 (Annexure P-8) passed by the learned Assistant Collector 2nd Grade, Hisar, which reads as under:

“1. That total land measuring 253 Kanals 15 Marlas bearing Khewat No. 701 Khatoni No. 978 to 982 as per Jamabandi for the year 2006-07 situated in village

Raipur, Tehsil and District Hisar, out of which, the land measuring 4 Kanals 11 Marlas is Gair Mumkin, therefore the land measuring 249 Kanals 4 Marlas is available for partition.

2. *That the land in this Khewat is situated in three Taks. At the time of partition of land, four Kuras of the land be made, first Kura to the applicants and second Kura to the respondent No. 1 to 5, third Kura to respondent No. 6 to 9 and fourth Kura be given to respondents No. 10 to 13. The land as per share will be given to each Kura from three Taks and the land situated adjoining to the Raipur-Kharad road will be given in length to all four Kuras as per the share of parties. The facility of water course and passage will be given to each Kura.*

3. *The Gair Mumkin land will be remain joint between the parties and the trees in this land will be given as per partition/share.*

4. *That the Kambi-Beshi (shortage etc.) of 2 Marlas of land will be avoided (ignored).*

5. *That the land will be partitioned through Circle Girdawar and the fee of circle Girdawar is hereby fixed as Rs.3500/-, which will be paid by the applicants and later on same will be taken by the applicant from the respondents as per rules.”*

8. Thereafter, *Naksha Bey* was approved on 16.01.2023 (Annexure P-13A) followed by *Naksha Zeem* and ultimately *Sanad Taksim* was issued on 25.04.2023 (Annexure P-1).

9. A perusal of the site plan (Annexure P-14) would show that the land under partition is comprised in three separate parcels of land and one of the land parcel falls on the main Raipur – Kharad road, where the land

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value would be more than the other two parcels of land. It is not disputed before this court that all the co-sharers have been allocated land in this parcel of land falling on the main Raipur – Kharad road and that too with frontage on the road as per their proportionate share.

9.1 Further, site plan (Annexure P-14) clearly depicts the passages and water channels provided in the land under partition.

10. Although the learned counsel for the petitioners have stressed that their possession has been disturbed, however I do not find any merit in the said submission. If we have a glance at Annexure P-3, which is a site plan indicating position existing prior to partition, it is seen that the petitioners were having possession with maximum frontage on land parcel falling on the main Raipur – Kharad road, whereas clause 2 of the Mode of partition provided that the land falling on Raipur – Kharar road will be given in length to all the blocks of co-sharers as envisaged under Mode of Partition, which has been done in this case. Therefore, in terms of said clause 2 of Mode of partition, disturbing possession was inevitable so as to accommodate all co-sharers on the main Raipur – Kharad road.

11. Learned counsel for the petitioners has further failed to show any procedural infirmity in the partition proceedings. It has also not been shown that as to how the final partition is contrary to the sanctioned Mode of partition or what prejudice has been caused to the petitioners with the final partition, which is sought to be challenged by them.

12. Considering the totality of circumstances, in my considered view, the final partition carried out in the instant case is fair, just and equitable, which does not call for any interference by this court in exercise

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of its writ jurisdiction.

13. Keeping in view the above discussion, I do not find any merit in this petition and the same is accordingly dismissed.

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

04.10.2024
Himani

(HARSH BUNGER)
JUDGE

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