

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

CWP-8884-2017 (O&M)
Date of decision : 09.12.2024

JAGDISH AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajay Jain, Advocate
for the petitioners.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Anurag Jain, Advocate
and Mr. Ajay Kamboj, Advocate
for respondents No.4 and 5.

HARSH BUNGER, J.

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for quashing/modifying the orders dated 13.07.2011, 05.06.2013, 16.07.2013, 05.02.2015 and 16.03.2017 (Annexures P-5, P-10, P-12 to P-15, respectively) passed in partition proceedings.

A further prayer has been made for issuing a writ of *mandamus* for directing the learned Assistant Collector 2nd Grade, Hisar to decide the objections dated 06.05.2012, filed by the petitioners to the amended *Naksha Kha*, afresh.

2. Briefly, respondent No.5 (Abhimanyu) filed an application seeking partition of joint land comprised in *Khewat No.81*, measuring *131 Kanal-13 Marlas*, situate at Village Dhansu, Tehsil and District Hisar.

In the said partition proceedings, a 'Mode of Partition' dated 30.08.2006 (Annexure P-1) was prepared, which reads as under :-

"1. That agricultural land measuring 131 Kanals and 13 Marlas comprised in Khewat No.81, Khatauni No.198 as per Jamabandi for the year 1999-2000, situated in the Revenue Estate of Village Dahnsu, Tehsil and District Hisar would be partible. If there is any Gair Mumkin area, that would remain joint with the parties.

2. That three parcels would be carved out of the land under partition; one parcel for the applicant, one parcel for respondents No.1 and 3 and one parcel for respondent No.2.

3. That the land would be partitioned keeping in view the shares, possession and type of the land; if there is any House, Tube-well etc. that would be allocated to the parcel of the previous owner. Possession would be kept intact.

4. That the shortage or excess of the area upto two Marlas would be liable to be ignored.

5. That the facility of passage and water-course would be provided to every parcel.

6. That the trees would be kept along with the area.

7. That partition of the land would be carried out by the Girdawar Halqa. The fees of the Girdawar is fixed at Rs.1000/- which would be paid initially by the first party which would be entitled to recover the same from the other co-sharers."

2.1 On the basis of afore-said 'Mode of Partition', *Naksha kha* was called for from the Field Staff, which was placed on record and objections thereto were called.

2.2 It transpires that respondent No.5-Abhimanyu submitted his objections to the *Naksha kha* and likewise, respondent No.4-Raje Ram also submitted his objections to *Naksha kha*.

2.3 The learned Assistant Collector, vide his order dated 13.07.2011 (Annexure P-5) allowed the objections raised by respondents No.4 and 5 and a direction was issued for preparation of amended *Naksha kha*. It would be apposite to state here that the predecessors-in-interest of the present petitioners namely, Sohan Lal and Smt. Parvati, did not raise any challenge to the afore-said order dated 13.07.2011 (Annexure P-5).

2.4 During the pendency of the afore-said partition proceedings, the present petitioners purchased the entire share of Sh. Sohan Lal and Smt. Parvati. It is noticed that the present petitioners are the sons of Sohan Lal and Smt. Parvati is their paternal aunt. After purchasing the land, the petitioners sought impleadment in the partition proceedings by moving an application dated 18.04.2013, which was allowed and they were impleaded as party to the partition proceedings.

2.5 Thereafter, the petitioners submitted their objections to the amended *Naksha kha*, which came to be dismissed by the learned Assistant Collector, vide order dated 05.06.2013 (Annexure P-10).

2.6 Being dissatisfied, the petitioners preferred an appeal against order dated 05.06.2013 (Annexure P-10); however, on 16.07.2013 (Annexure P-12), a final order of partition was passed. Subsequently, the appeal filed by the petitioners was also dismissed by the learned Collector vide its order dated 05.02.2015 (Annexure P-13). It appears that the petitioners had preferred another appeal before the learned Collector, Hisar challenging the final order of partition dated 16.07.2013 and orders dated 13.07.2011 and 30.08.2010; however, the said appeal was also dismissed by the learned Collector vide order dated 05.02.2015 (Annexure P-14).

2.7 Still aggrieved, the petitioners preferred a Revision Petition (***ROR No.320 of 2014-15***) before the learned Financial Commissioner,

Haryana, which came to be disposed of vide order dated 16.03.2017 (Annexure P-15); whereby the partition in respect of land parcel Nos.2 and 3 was upheld; however, in respect of parcel No.1, the matter was remanded to the learned Assistant Collector with a direction to re-partition the land comprised in parcel No.1 on pro-rata basis as per the respective shares of the parties by carving out contiguous and rectangular blocks/shares of the co-sharers. A further direction has been issued to the learned Assistant Collector, to assess the true value of the permanent structures existing on the land and the party to whom the possession of the structures is to be given, shall compensate the other co-sharers in monetary terms, as per their shares.

3. In the afore-mentioned facts and circumstances, the present writ petition has been filed before this Court, for the relief/s, as sought here-in-above.

4. Learned counsel for the petitioners submits that the learned Financial Commissioner has erred in law and fact in remanding the matter only in respect of land parcel No.1, whereas, the entire matter was required to be remanded for a fresh decision. It is submitted that in the partition, under challenge, the petitioners have been allocated land in fragments, which shall make the cultivation of their allocated lands difficult. It is stated that the partition proceedings have not been carried out in accordance with law; therefore, the impugned order passed by the learned Financial Commissioner, to the extent whereby the partition of parcel Nos.2 and 3 have been maintained, be set-aside and the entire matter be remitted to the learned Assistant Collector, for carrying out partition proceedings afresh.

4.1 Per contra, learned counsel appearing for respondent No.5 has opposed the submissions made on behalf of the petitioners by submitting

that the order passed by the learned Financial Commissioner, is well-reasoned and justified, in the peculiar facts and circumstances of the case and same does not call for any interference by this Court. It is further submitted that the direction to partition land parcel No.1 afresh has been passed, considering the fact that the petitioners had been allocated land in a shape similar to Letter 'T' and accordingly, learned Financial Commissioner, had further directed the learned Assistant Collector, to carve out contiguous and rectangular blocks of land of all the co-sharers as per their shares in land parcel No.1. It is also submitted that as regards land parcel Nos.2 and 3 is concerned, all the co-sharers have been allocated land in these land parcels as per their shares and no prejudice has been caused to any of the parties in the manner by which the said two parcels of the land has been partitioned. Accordingly, prayer for dismissal of the writ petition has been made.

5. Heard.
6. In the present case, learned Financial Commissioner, vide order dated 16.03.2017 (Annexure P-15) has held as under :-

The arguments of both the parties were heard at length on 20.10.2016 and again on 9.3.2017. To better appreciate the contentions raised by the two counsels, the joint land holding consisting of three parcels is hereby numbered as follows:-

Parcel No.	Khasra Nos. (Pre-partition)	Comments
1	40//21, 22, 23, 24/1 44//1,2. 3. 4. 10/1	
2	44//16, 17, 18	Not fertile (Kankar)
3	112//16, 17/1, 24/2, 25 125//4, 5, 7/2/2	Abutting metalled road leading from Vill. Dhansu to Vill. Sulkhani

The Ld. Counsel for respondent No.2 argued that the land in parcel No.3 adjoining the metalled road leading from village Dhansu to village Sulkhani is relatively more valuable than other lands. He further argued that the land in parcel No.2 is not fertile, being mostly ‘Kankar’. In the original “Naksha Kha”, the more valuable land abutting the metalled road was divided between petitioners and respondent No.1, to the complete exclusion of respondent No.2, whereas land of lower value in parcel No.2 was divided amongst the two respondents and the petitioners were kept out it. In the amended “Naksha Kha”, land comprised in each of the three parcels is divided on pro rata basis as per share in joint land holding amongst the petitioners and the two respondents.

On the Court’s asking, the petitioners produced a report from the Tehsildar, Hisar, regarding existing structures on land. There are two pucca Kothas and three tubewells located in Khasra Nos. shown as under:-

<i>Kind of Structure</i>	<i>Khasra Nos.</i>
<i>Kothas (2)</i>	<i>40//24/1 and 112//24/2</i>
<i>Tubewells (3)</i>	<i>44//3, 44//4 and 112//25</i>

I have gone through the records and the arguments advanced by both the counsels. The Ld. Counsel for petitioners argued that the Instrument of Partition issued on 16.07.2013 divested him of the pucca structures on land previously in his possession before partition. He further argued that once the appeal was filed in the Court of Collector on 03.07.2014 against the order dated 05.06.2013 of the AC2G dismissing the objections of the petitioners to the amended “Naksha Kha” and the factum of filing of the appeal certified, it became incumbent upon the AC2G to stay further proceedings awaiting the decision in appeal. A copy of certification of filing appeal was filed

in the court of AC2G on 16.07.2013, that is, the date the Instrument of Partition was issued. As per Section 118 (2) of the Punjab Land Revenue Act, 1887, the institution of the appeal is to be certified by the appellate authority which in the instant case was Collector, Hisar. No such certificate of the Collector was presented to the AC2G before the finalisation of the Instrument of Partition on 16.07.2013. A certificate from the appellants to the Court of AC2G on the date the Instrument of Partition was finalised cannot substitute for the statutory requirement of a certificate from the Collector for the stay to come into statutory operation. When the statute prescribes certificate from appellate authority, a certificate from the party cannot substitute for the certificate from appellate authority. The technical challenge relying upon S.118 of the Punjab Land Revenue Act, therefore, cannot succeed.

The joint land consists of three distinct parcels, where each parcel is of a different valuation. The original “Naksha Kha” favoured the petitioners, who were kept out of parcel No.2, being of lower value, but along with respondent No.1 were allotted more valuable land abutting the metalled road in parcel No.3 to the complete exclusion of respondent No.2. The amended “Naksha Kha” is a more fair partition, where pro rata share is allotted to each party in each of the three parcels, as well as land abutting the road in parcel No.3. However, partition of parcel No. 1 has left the petitioners in a relatively disadvantageous position, where his share after partition is in the form of a “T”.

Regarding existing structures on the land, the Ld. Counsel for respondent No.2 claimed that these structures date back to the 1960s and are jointly owned, but the Ld. Counsel for the petitioners vociferously claimed that the Kothas and tubewells were constructed/installed by them in the lands under their

possession before partition and hence the Khasra numbers on which these structures stood should be allotted to them. The ownership of permanent structures on land is a disputed question of fact and cannot be settled in a revision petition.

Taking into account the circumstances as described above, the partition of the joint land holding comprising parcel No.1 is ordered to be set aside. The partition of joint land holding comprising parcels No.2 and 3 is upheld. The case is remanded to the Assistant Collector 2nd Grade, Hisar with the direction that the joint land holding comprising parcel No.1 only shall be re-partitioned amongst the parties on pro rata basis as per their respective shares, so that each share after partition is contiguous and rectangular. Further, the AC2G is directed to assess the true value of the permanent structures existing on land. The party given possession of the permanent structures on land shall compensate in money terms other co-owners as per their actual shares, if any, in the ownership of these structures before partition. The “Naksha Kha” and Instrument of Partition qua land comprising parcel No.1 i.e. Khasra No.40//21, 22, 23, 24/1, 44//1, 2, 3, 4, 10/1 shall be amended accordingly. The parties are directed to appear before the AC2G Hisar on 15th May, 2017.”

7. When the afore-said observations are seen in the context of Annexure P-7 (site plan), it would manifest that infact, the petitioners had been allocated land in a manner that it gives a reflection of Letter 'T'. Further, the said land is separated by a passage thereby, rendering the said block of land to be non-contiguous and of irregular shape. Even the other co-sharers in the said land parcel No.1 have been allocated land, which is not contiguous but of irregular shape. On the other hand, as regards land parcel Nos.2 and 3 is concerned, all the co-sharers have been allocated land

in all the land parcels, primarily on account of un-disputed fact that the value of land comprised in three parcels of land under partition, is different.

8. In my considered view, no interference is required to be made as regards the manner in which the land parcels No.2 and 3 have been partitioned amongst the parties. I also agree with the reasoning rendered by the learned Financial Commissioner, while remanding the matter to the learned Assistant Collector, to re-partition the land comprised in land Parcel No.1 by carving out contiguous and rectangular blocks as the same shall be in the interest of better cultivation and also to rule out any prejudice to any of the co-sharers therein.

9. Considering the totality of circumstances, I do not find any merit in the present writ petition and the same is, accordingly, dismissed. However, considering the fact that the partition proceedings have been pending for last almost 20 years, it is directed that the partition of land parcel No.1 be concluded preferably within a period of six months from the date of appearance of parties before him. The parties are directed to appear before the concerned Assistant Collector, on 19.12.2024 or any other date as may be fixed by the Assistant Collector, himself.

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

December 09, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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