

2024:PHHC:132500



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

CWP-26050-2024 (O&M)
Date of decision :04.10.2024

SURAJ BHAN

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Radhe Shyam Sharma, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioner (Suraj Bhan) has 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 setting aside the order dated 15.07.2019 (Annexure P-2) passed by the learned Assistant Collector IInd Grade, Bhiwani (in short 'the Assistant Collector'), whereby he approved the *Naksha Bey*.

A further prayer has been made by the petitioner for setting aside the order dated 10.09.2019 (Annexure P-3) passed by the learned Assistant Collector IInd Grade, Bhiwani, whereby, *Sanad Takseem* has been issued.

Another prayer has been made for setting aside an order dated 12.08.2024 (Annexure P-6) passed by the learned Financial Commissioner,

Haryana, whereby, the revision petition filed by the petitioner, challenging the partition orders/*Sanad Takseem*, has been dismissed.

2. Briefly, one Sh. Hari Singh son of Sheo Dutt along with Balbir son of Hari Singh, Chander Bhan @ Ramphal son of Hari Singh and Jiwani (since deceased) wife of Hari Singh, filed an application seeking partition of joint land. During the course of the partition proceedings, a mode of partition dated 27.02.2006 (Annexure P-1) was sanctioned. Thereafter, *Naksha Bey* was called for from the Field Staff. Upon receipt of *Naksha Bey* from the Field Staff, objections were called thereto.

2.1 Learned Assistant Collector, vide order dated 15.07.2019 (Annexure P-2), dismissed the objections of the parties and approved *Naksha Bey*.

2.3 It transpires that the petitioner challenged the afore-said order dated 15.07.2019 (Annexure P-2) by filing an appeal before the learned Collector, Bhiwani, however, during the pendency of the above referred appeal, the Assistant Collector, issued *Sanad Takseem* (Instrument of partition) dated 10.09.2019 (Annexure P-3).

2.4 The present petitioner challenged the partition proceedings/orders, including *Sanad Takseem*, by filing a revision petition (ROR-96-2019-20) before the learned Financial Commissioner, Haryana.

2.5 It is noticed that during the pendency of the above-referred revision petition before the learned Financial Commissioner, the earlier appeal filed by the petitioner against the order dated 15.07.2019 (Annexure P-2) was dismissed by the learned Collector, vide its order dated 16.02.2023 (Annexure P-5) by observing that after the issuance of *Sanad Takseem*, the said Court had no jurisdiction.

2.6 The learned Financial Commissioner, Haryana, vide its order dated 12.08.2024 (Annexure P-6) dismissed the revision petition filed by the petitioner.

2.7 In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court.

3. Learned counsel for the petitioner, *inter alia*, submits that the Revenue Authorities below had not conducted the partition in a fair and equitable manner, inasmuch as that the entire salty/inferior land has been allotted to the petitioner and the land has also been wasted in the paths. In support of his submission that the entire inferior land has been allotted to the petitioner, he has placed reliance upon Annexure P-7, which is a report from Chaudhary Charan Singh Haryana Agriculture University, Hisar, indicating the salt content in the soil of the area, which has been allocated to the petitioner. It is further submitted that the petitioner and other co-sharers are having possession of Killa No.40//20, whereas, during partition, the said area has been given to respondents No.8 to 10.

4. With the afore-said submissions, learned counsel for the petitioner prays that the impugned partition proceedings as well as the *Sanad Takseem* be set aside and the matter be remanded to the learned Assistant Collector, for fresh decision, in accordance with law.

5. Heard.

6. In the present partition case, the learned Assistant Collector, framed the mode of partition on 27.02.2006 (Annexure P-1) and *Naksha Bey* came to be approved on 15.07.2019 (Annexure P-2) i.e. after a period of almost 13 years. Thereafter, the learned Assistant Collector had issued *Sanad Takseem*, vide order dated 10.09.2019 (Annexure P-3), which

was challenged by the petitioner before the learned Financial Commissioner in a revision petition (ROR-96-2019-20), however, the same was dismissed vide impugned order dated 12.08.2024 (Annexure P-6), by holding as under :-

“The ground of challenge to the impugned Sanad Takseem is that the petitioner and others had constructed their houses in khasra nos.29//25, 39//5, 2//21 & 40//1, but the above khasra numbers are not allotted to them. A perusal of the impugned Sanad Takseem shows that the khasra nos.29//25, 39//5, 40//1 are allotted to the petitioner and others in kurra no.2 of the Sanad Takseem. Khasra no.2//21 is not comprised in the khewat under partition. The objection is frivolous and devoid of any merit and is hereby rejected. The claim of the petitioner for allotment of killa no.40//20/1 [7-0] is also without merits and is rejected.

2. *The other ground of challenge is that the petitioner and others are allotted khasra nos.53//4/2, 5 & 54//1, which is salty, uncultivable and of lower value. Per contra, the Ld. Counsel for Respondents no.6 to 8 submits that the petitioner has come with unclean hands. The petitioner has profited by digging out soil up to a depth of 3 feet from khasra no.53//5 (8-0) and he cannot be allowed to profit from his own wrong.*

3. *Having considered the rival submissions, the ends of justice will be served if the petitioner levels the land in khasra no.53//5 at his own cost. Accordingly, an opportunity is given to the petitioner to level the land in khasra no.53//5(8-0) to the level of the land in adjacent khasra nos.53//4/2 and 54//1. The Ld. Counsel for petitioner seeks a time of three months to level the land in khasra no.53//5 at his cost. The same is allowed.*

4. *Accordingly, it is directed that the Assistant Collector shall visit the spot after 90 days from today and satisfy himself that the land comprising khasra*

no.53//5(8-0) is raised up to the level of the adjacent khasra nos.53//4/2 on the western side and khasra no.54//1 on the eastern side. In case the compliance has been made to the satisfaction of the Assistant Collector, the Sanad Takseem shall be modified as follows :

(i) A straight-line running mid-way from west to east shall divide khasra nos.53//4/2(4-14), 5(8-0), 54//1(8-0), 2(8-0). The northern part shall be allotted to the contesting respondents [kurra no.1 of the Sanad Takseem] and the southern part to the petitioner and the proforma respondents [kurra no.2 of the Sanad Takseem].

(ii) The difference shall be compensated to the petitioner and the proforma respondents [that is, kurra no.2 of the Sanad Takseem] from khasra nos.54//8, 13 by dividing the khasra nos.54//8, 13 by a line running north-south. The western part shall be transferred to kurra no.2 and the eastern part shall remain with kurra no.1.

5. In case the land in khasra no.53//5 is not levelled within three months from today by the petitioner, the impugned Sanad Takseem shall become final without any modification. At this stage, the Ld. Counsel for Respondents no.6 to 8 submits that the petitioner is holding excess share of land and the possession of their share may be delivered to them expeditiously. It is directed that the Sanad Takseem, with or without modification as the case may be, shall be executed immediately after the harvest of the current Rabi-2024 crop.

Revision disposed of accordingly.”

6.1 A perusal of the above extracted order passed by the learned Financial Commissioner, would clearly indicate that the objections raised

by the petitioner were found to be frivolous, however, the learned Financial Commissioner had granted one indulgence to the petitioner, as indicated in para No.3 of the above extracted order dated 12.08.2024 (Annexure P-6). Evidently, it has come on record that the petitioner had removed soil from *Khasra No.53//5(8-0)* up to the depth of 3 ft. and the learned Financial Commissioner has permitted adjustment in the block of petitioner and the private respondents, subject to the condition that the petitioner raises level of *Khasra No.53//5 (8-0)* upto the level of *Khasra No.53//4/2* and *54//1*. Although, the petitioner has sought to contend that the case set up by the private respondents, as regards the removal of soil by the petitioner, is concocted, however, no material has been placed on record to controvert the observations made by the learned Financial Commissioner, in the above extracted order.

6.2 As regards the objection of the petitioner that the salty/inferior land has been allotted to him, I have considered the report Annexure P-7 attached by the petitioner, however, a perusal thereof would reveal that majority of the land under partition is reflected as salty, although the levels of salt are different in different Khasra nos.

6.3 As regards the other submission of the petitioner that the land has been wasted in the path, suffice it to say that each co-sharer has to be provided with a passage to his block of land so as to enable him to utilize and enjoy his share of land. Accordingly, the said objection of the petitioner is rejected.

6.4 Furthermore, it is apparent from Annexure P-4 (Site Plan/*Naksha Bey*) that the manner in which the partition has been carried out, appears to be fair, equitable and justified.

7. Taking into consideration the totality of circumstances, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.
8. All pending applications (if any) shall also stand closed.

October 04, 2024	(HARSH BUNGER)
gurpreet	JUDGE
Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No