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

CWP No.25134 of 2023

Date of decision: 07.05.2024

Hardev Singh

..... Petitioner

versus

Financial Commissioner, Revenue, Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Lupil Gupta, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. B. S. Khaira, Advocate
for respondent No.5.

RAJESH BHARDWAJ J.

1. Present writ petition has been filed for quashing the impugned orders dated 11.09.2023 (Annexure P-12) passed by respondent No.1; order dated 13.02.2023 (Annexure P-4) passed by the learned Collector, Bathinda as well as order dated 23.08.2022 (Annexure P-3) passed by respondent No.3 as well as Sanad Takseem dated 28.03.2023 (Annexure P-8) issued by respondent No.3 being illegal, sketchy, cryptic, none speaking as well as in violation of principles of natural justice. Further prayer has been made for staying the dispossession of the petitioner from the land in his possession and the parties may kindly be



directed to maintain status quo with regard to the possession during the pendency of the present writ petition.

2. It has been submitted by learned counsel for the petitioner that the petitioner and private respondents are the joint owners of the land situated in village Bhaini Kalan, Tehsil Nathana, District Bathinda. He has submitted that respondent No.5, namely, Malkit Singh filed four different applications for partition of the land in question and respondent No.3 prepared Naksha Bey and directed the parties to file the objections if any. He has submitted that the petitioner filed the objections against Naksha Bey and specifically stated that he is in possession over the land bearing Khasra No.42//6 (9-16), 7(7-8), 8/1 (5-15.5), which has been given to respondent No.5 by disturbing his possession whereas he had installed the tube well in the said khasra number. He has submitted that Naksha Bey had not been prepared as per the provisions of mode of partition. He submits that respondent No.3 i.e. Assistant Collector Ist Grade-cum-Tehsildar, Nathana without considering the objections filed by the petitioner, passed the order dated 23.08.2022. He submits that the order passed by respondent No.3 is self contradictory from its perusal and thus, the objections filed by the petitioner have not been considered. He submits that being aggrieved by the same, the petitioner filed an appeal before the learned Collector, however the learned Collector has also fallen in error in misreading the evidence on record and thus, illegally dismissed the same vide his order dated 13.02.2023. Still being aggrieved, the petitioner filed the revision petition bearing ROR No.288 of 2023 against the same before respondent No.1. He submits that as no order was passed on the stay



application filed along with the ROR, hence the petitioner filed the application before the Tehsildar and also to the Deputy Commissioner on 01.06.2023. He submits that without waiting for the final outcome of ROR, the Assistant Collector 1st Grade issued the Sanad Takseem on 28.03.2023. Hence, the petitioner filed CWP No.14529 of 2023 and this Court granted *status quo* vide order dated 11.07.2023. He submits that thereafter on 03.08.2023, this Court had disposed of the petition by directing respondent No.1 to decide the application on the date fixed i.e. 11.09.2023 and till then, status quo was directed to be maintained. However respondent No.1 instead of deciding the stay application on the date fixed, dismissed the revision petition on 11.09.2023 itself. He has submitted that the impugned order has been passed without taking into consideration that objections filed by the petitioner have not been considered and thus, the same being unsustainable in the eyes of law, deserves to be set aside.

3. Notice of motion.

4. On asking of the Court, Mr. Navneet Singh, Sr. DAG, Punjab appears and accepts notice on behalf of respondents No.1 to 4-State. At this stage, Mr. B. S. Khaira, Advocate has appeared on behalf of respondent No.5.

5. Per contra, learned counsel for respondent No.5 has opposed the submissions made by learned counsel for the petitioner. He has submitted that the partition applications were filed by respondent No.5 and due notices were also issued to all the co-sharers including the petitioner. He has submitted that the petitioner duly filed his objections



which were dismissed after providing the due opportunity of hearing to the petitioner. He has submitted that the petitioner assailed the order passed by the Assistant Collector dated 23.08.2022 before the learned Collector. The learned Collector heard both the sides and finding no merit in the same, dismissed the appeal filed by the petitioner vide his order dated 13.02.2023. He submits that the revision petition was filed by the petitioner before the learned Financial Commissioner. The learned Financial Commissioner duly heard both the sides and appreciated the record. However, finding no infirmity in the partition proceedings, the same was also dismissed. He submits that there was no violation of the mode of partition as contended by learned counsel for the petitioner. He submits that sanad takseem had already been issued and the present petition has been filed only in order to prolong the partition proceedings. He submits that there being no merit in the present petition, the same deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is evident that the partition proceedings were initiated at the behest of respondent No.5. As deciphered from the facts of the case, four different partition applications were filed and the same were clubbed. The Assistant Collector 1st Grade issued the notice to the co-sharers including the petitioner and the objections were invited against the mode of partition. Thereafter Naksha Bey was approved. Objections filed by the petitioner was sent to the Area Kanungo and the amended Naksha Bey was called from the Kanungo. The objections were invited to the amended



Naksha Bey as well. As no objection was raised to the amended Naksha Bey, the same was approved without any further amendment. Resultantly, Naksha Zeam was called and finally the sanad takseem was issued on 28.03.2023. The appeal filed by the petitioner before the learned Collector was also dismissed vide order dated 13.02.2023. Thereafter the petitioner filed the revision petition bearing ROR No.288 of 2023 before the learned Financial Commissioner. He approached this Court by way of filing the writ petition bearing CWP No.14529 of 2023, which was disposed of by this Court vide order dated 11.09.2023 wherein *status quo* was granted till the decision of stay application. The learned Financial Commissioner heard both the sides. It was observed that the land has been partitioned among the co-sharers as per the terms and conditions of mode of partition. Accordingly, the partition has been carried out as per the quality of the land.

8. Once it is agreed in the mode of partition that land is to be partitioned as per quality of the land, then needless to say the possession of the co-sharers is bound to get disturbed so as to allot the land as per the quality of the land in accordance with their entitlement. Learned counsel for the petitioner has argued before this Court that as per the order passed by this Court on 03.08.2023, the writ petition was disposed of with direction to learned Financial Commissioner to decide the stay application on 11.09.2023 but the learned Financial Commissioner has decided the main revision petition itself on the date fixed which is not legally sustainable. The Court does not find any force in this argument. As per the directions given by this Court *status quo* was to be maintained till



11.09.2023. He was well within his jurisdiction to decide the main case itself on the date fixed i.e. 11.09.2023.

9. Thus in the over all appraisal of the partition proceedings carried out, this Court finds no infirmity in the partition proceedings carried out and thus, there being no material illegality, the present petition being devoid of any merit is hereby dismissed.

07.05.2024

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(RAJESH BHARDWAJ)
JUDGE

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