

120

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

CWP No.5497 of 2024

Date of decision: 19.03.2024

Ajit Singh

..... Petitioner

versus

Commissioner, Rohtak Division, Rohtak and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Arun Jindal, Advocate
for the petitioner.

RAJESH BHARDWAJ J.

Present writ petition has been filed for setting aside the order dated 24.08.2023 (Annexure P-6) passed by the Commissioner, Rohtak Division in partition case No.302/NT situated at village Hansapur, Sub Tehsil Rai, District Sonapat. Further prayer has been made that the order dated 06.01.2023 (Annexure P-4) and order dated 02.12.2022 (Annexure P-3) passed by the AC IInd Grade, Rai in the partition case No.302/NT may kindly be up-held and for staying the proceedings before the AC IInd Grade, Rai and operation of impugned order dated 24.08.2023 (Annexure P-6) during the pendency of the petition.

It has been submitted by learned counsel for the petitioner that the petitioner filed an application dated 11.06.2019 for partition of the land measuring 82 kanals 16 marlas situated within the revenue estate of village Hansapur, Sub Tehsil Rai, District Sonapat. The Assistant

Collector 1st Grade, Rai issued the notice to the respondents, who appeared and contested the application for partition. He submits that the private respondents filed an application dated 18.03.2021 for dismissal of the application filed by the petitioner for partition. Thus, the Assistant Collector 1st Grade, Rai vide order dated 22.03.2022 granted last opportunity to the respondents to file the reply, which was later on filed on 05.04.2022. He submits that the private respondents intentionally did not attend the proceedings in order to delay the partition proceedings. He has submitted that the petitioner, Ajit Singh got recorded his statement on 09.09.2022 for the proposed mode of partition, however the respondents did not raise any objection to the same. Thus, the mode of partition was approved on 16.09.2022 by the Assistant Collector 1st Grade, Rai and the Field Staff was directed to prepare the Naksha “Kha” as per the mode of partition. The Naksha “Kha” was submitted on 04.11.2022 and the same was approved by the Assistant Collector 2nd Grade, Rai on 02.12.2022. As the respondents failed to appear, they were proceeded *ex parte* in the partition proceedings however, the respondents filed the application for setting aside the *ex parte* proceedings. The Assistant Collector 1st Grade vide order dated 06.01.2023 allowed the prayer for setting aside the order of *ex parte* proceedings and allowed the respondents to join at that stage in the partition proceedings and thus, dismissed the application. He has submitted that the learned Assistant Collector 2nd Grade had rightly dismissed the application filed by the respondents while allowing them to join from that stage. He submits that there was no justification in allowing the respondents to file their objection to the Naksha “Kha” at the later stage which was claimed in the petition. He submits that the private

respondents filed the revision petition dated 19.01.2023 before the learned Commissioner, Rohtak Division, Rohtak against the order dated 06.01.2023 passed by Assistant Collector 2nd Grade. He submits that the respondents only assailed the order dated 06.01.2023 before the learned Commissioner and not the Naksha “Kha” dated 02.12.2022 and order dated 16.09.2022 when mode of partition was issued. However the learned Commissioner failed to appreciate the same and thus, passed the impugned order dated 24.08.2023 totally in violation of the evidence on record. He submits that the impugned order passed is totally cryptic and non speaking. He submits that the respondents filed their reply and thereafter they intentionally did not appear in the partition proceedings but the learned Commissioner failed to appreciate the same and thus, has illegally set aside the well reasoned order passed by the Revenue Authorities by remanding the case to the Assistant Collector 1st Grade for decision afresh. He submits that the petition be allowed by setting aside the impugned order.

Heard.

On hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner had filed the application for initiating the partition proceedings for land measuring 82 kanals 16 marlas situated in the revenue estate of village Hansapur, District Sonapat. It is evident from the record that on approving the mode of partition, the naksha “Kha” was prepared. However no opportunity for filing the objections to the respondents was found to have been given. The *ex parte* proceedings initiated against the respondents were challenged, however the same was declined by the Assistant Collector 2nd Grade by allowing

them to join the partition proceedings from that very stage and thus, the respondents were not allowed to file their objections to naksha “Kha”. This order was challenged before the learned Commissioner, who found the partition proceedings carried out having been vitiated on account of principles of natural justice. The partition proceedings are carried out among the co-sharers, who are the essential parties to the partition proceedings and are to be provided fair opportunities to file their objections. As the same is found not to have been complied with in the present case, the learned Commissioner has set aside the order of AC IInd Grade by remanding the case to the Assistant Collector 2nd Grade for a decision afresh.

This Court on perusal of the impugned order does not find any infirmity in the same as on remand, all the parties would be granted equal opportunity to raise their objections and the order would be passed afresh by complying with the principles of natural justice.

Thus, there being no infirmity in the impugned order passed, the petition is hereby dismissed. However in the facts and circumstances of the case, the learned Assistant Collector IInd Grade, Rai is directed to decide the case afresh in accordance with law expeditiously on hearing all the necessary parties to the partition proceedings.

(RAJESH BHARDWAJ)
JUDGE

19.03.2024

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