

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-32279-2024 (O/M)

Date of decision : 18.12.2024

Balkar Singh

..... Petitioner

Versus

Financial Commissioner (Appeals) Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sherry K. Singla, Advocate
for applicant-petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

CM-20497-CWP-2024

This is an application filed under Section 151 CPC for placing on record copy of site plan as Annexure P-18.

For the reasons mentioned in application, same is allowed and copy of site plan (Annexure P-18) is taken on record subject to all just exceptions.

Application is accordingly disposed of.

CWP-32279-2024 (O/M)

1. Petitioner (Balkar Singh) has filed the present civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 29.08.2018 (Annexure P-6), passed by the learned Assistant Collector 1st Grade, Nabha, sanctioning Naksha 'Bey'; order

dated 03.10.2018 (Annexure P-7), sanctioning Naksha 'Zeem'; order dated 10.06.2022 (Annexure P-10), passed by learned Commissioner, Patiala Division, Patiala (in short 'Divisional Commissioner') and order dated 25.04.2024 (Annexure P-12), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner').

1.1 A further prayer has been for setting aside the sanad takseem dated 18.08.2022 (Annexure P-12 A).

2. Briefly, respondent No. 5 (Prem Kumar) filed an application seeking partition of joint land measuring 9 kanal 12 marla, situated at village Manakpur, Tehsil Rajpura, District Patiala, as per jamabandi for the year 2013-14.

2.1 In the partition proceedings, the mode of partition came to be sanctioned by the Assistant Collector, vide order dated 14.11.2017 (Annexure P-4) and Naksha 'Bey' was called from the field staff. Upon receipt of Naksha 'Bey', objections of the co-sharers were invited thereto.

2.2 It appears that the petitioner submitted his objections to Naksha 'Bey', however, the same were rejected, vide order dated 29.08.2018 (Annexure P-6), passed by learned Assistant Collector. Apparently, none of the co-sharers laid any challenge to the order dated 29.08.2018 (Annexure P-6), sanctioning Naksha 'Bey'. Thereafter, Naksha 'Zeem' was received on the case file and since no objection to Naksha 'Zeem' was also raised, the same was also approved, vide order dated 03.10.2018 (Annexure P-7).

2.3 It transpires that later on the petitioner preferred an appeal (Annexure P-8) before learned Collector, Mohali, challenging the order dated 29.08.2018 (Annexure P-6), whereby Naksha 'Bey' was approved

and also the order dated 03.10.2018 (Annexure P-7), whereby the Naksha 'Zeem' was approved.

2.4 The learned Collector, Mohali, allowed the appeal filed by the petitioner, vide order dated 03.02.2020 (Annexure P-9) and remanded the case back to Assistant Collector, by observing as under :-

“After the arguments of the Ld. Counsels for both the parties were heard and the record available on the file was perused, from which it is found that the appellant party has filed the appeal against the order dated 03.10.2018 passed by the Court of Assistant Collector 1st Grade, Nabha. The appellant party is stating that they are owner in possession of the land in dispute. The order dated 03.10.2018 passed by the Lower Court is hereby set aside. The case is remanded back to the Court of Assistant Collector 1st Grade, Nabha with the direction that they shall visit the spot and thereafter, the partition shall be carried out as per the principle no. 1. Good out of good and bad out of bad quality of the land. 2. Only one of the party shall not be allotted the entire good out of good quality of the land. 3. All the separate-separate tuck of all the parties be prepared. Equity and Fair justice shall also be taken into consideration at the time of partition. The order is announced. The file be consigned to record room after the compliance.”

2.5 Feeling aggrieved against aforesaid order dated 03.02.2020 (Annexure P-9), respondent No. 5 (Prem Kumar) preferred an appeal before the learned Divisional Commissioner, which came to be allowed, vide order dated 10.06.2022 (Annexure P-10), by observing as under :-

“ After perusing all the facts of the case, I am of the considered opinion that the Collector has overlooked some aspects of this case as the AC-Ist has passed Naksha Arra on 29.08.2018. Then Naksha Erri was passed

on 03.10.2018 after a gap of almost more than one month. No appeal has been filed by any party/person against Naksha Arra within prescribed period as provided under Punjab Land Revenue Act. It is a well settled law that if no appeal is filed against the approval of Naksha Arra, the appeal against approval of Naksha Erri is not maintainable. In view of the above, the appeal filed is hereby accepted. The impugned order dated 03.02.2020 passed by the Collector (SDM), Mohali is set aside and the order dated 03.10.2018 passed by the AC-Ist Grade, Nabha is upheld.”

2.6 Thereafter, the petitioner challenged order dated 10.06.2022 (Annexure P-10) by filing a revision petition (ROR-489-2022) before the learned Financial Commissioner, however, the same was dismissed, vide order dated 25.04.2024 (Annexure P-12).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as notice hereinabove.

4. Learned counsel for petitioner has primarily raised three objections; firstly that the Assistant Collector has wrongly proceeded with the partition proceedings of the land in question despite the fact that most of the area under partition had shops/houses. Second submission made by learned counsel for petitioner is that the Assistant Collector has partitioned the land in violation of sanctioned mode of partition as the entire land abutting the road has been given to respondent No. 5 in a compact block and the share of the petitioner has been kept joint with other parties. The third submission is that the partition was to be carried out by keeping in view the existing possession of the parties, however, possession of the petitioner over area comprised in Khasra No. 85//24/2 has been disturbed.

4.1 It is further contended that the learned Collector, Mohali, vide his order dated 03.02.2020 (Annexure P-9), had rightly remanded the matter back to Assistant Collector for preparing the partition papers afresh, however, the said order has been wrongly set aside by the learned Divisional Commissioner. With the aforesaid submissions, it is prayed that the impugned orders be set aside and the order dated 03.02.2020 (Annexure P-9), passed by learned Collector, Mohali, be maintained.

5. Heard.

6. Here it would appropriate to mention that in ***Swaran Singh Versus Punjab State, 2014(5) RCR (Civil) 3***; this court, while dealing with a case concerning partition proceedings in reference to the provisions of the Punjab Land Revenue Act existing prior to 2010; had explained the scheme of partition as under:-

“16. As per the scheme of the Act, after the application for partition is filed, any of the co-sharers who have been joined as respondent can file objection regarding question of title which may be decided by the Revenue Officer himself or direct the parties to get it decided from the Civil Court and keep the partition proceedings in abeyance until such question of title is decided but if the Revenue Officer comes to the conclusion that no question of title is involved, he will ask the Patwari to prepare a Naksha of the land to be partitioned and the share of the persons asking partition called Naksha Alif. It would contain details of the possession of the co-sharers asking for partition, excess or less area cultivated by that co-sharer. Naksha Alif can be objected to by the parties concerned and after disposing of those objections, mode of partition is framed which can be challenged by any parties to the partition proceedings by way of appeal under Section 118(2) of the Act. If the mode of

partition is not challenged, it becomes final and Revenue Officer would get the share separated of the joint holding according to the mode of partition and a Naksha is prepared called Naksha- Be, which can still further be challenged by way of appeal on the ground that it is not in accordance with the mode of partition. However, when Naksha-Be becomes final, it is deemed to be sanctioned and the order of sanction is known as Naksha 'Zeem' which is communicated to the Patwari, Kanoongo and the parties and after the expiry of the period of limitation, instrument of partition is drawn on the stamp paper by the Revenue Officer. The Revenue Officer puts the parties into possession according to the instrument of partition within 3 years from the date of its preparation. In terms of Section 122 of the Act, which clearly says that if an owner is allotted land in partition proceedings, he is entitled to possession and can make an application in this regard to the revenue officer within 3 years for this purpose which shall be extended from the date of the instrument of partition and given effect to that instrument so far it concerns the said applicant as it will be a decree for immovable property. Meaning thereby the Sanad Taqsim (instrument of partition) can be executed by the revenue authorities as a decree for the purpose of delivery of possession, resorting to the provisions of the Code of Civil Procedure, 1908, which relates to a decree for possession..."

7. It is noticeable that vide Punjab Act No. 15 of 2011, the earlier Section 118 of the Punjab Land Revenue Act was substituted with a new Section 118 and the same are given in a tabulated form as under:-

Section 118 prior to Punjab Act No. 15 of 2011	Section 118 post Punjab Act No. 15 of 2011
118. Disposal of other questions- (1) When there is a question as to property to be divided, or the mode of making a partition, the Revenue-officer shall, after	118. Disposal of other questions- (1) When there is a question as to property to be divided, or the mode of making a partition, the Revenue-officer shall, after

such inquiry as he deems necessary, record an order stating his decision on the question and the reasons for the decision.	such inquiry as he deems necessary, record an order stating his decision on the question and the reasons for the decision.
(2) An appeal may be preferred [-] from an order under subsection (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue-officer by the [authority to whom the appeal has been preferred] the Revenue-officer shall stay proceedings pending the disposal of the appeal.	(2) No appeal shall lie against the decision referred to in subsection (1).
(3) If the applicant for partition is dissatisfied with an original or appellate order under this section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue-officer thinks fit.	
(4) When an applicant withdraws under the last foregoing subsection the Revenue-officer may where the other applicants if any desire the continuance of the proceedings, continue them in so far they relate to the partition of the shares of those other applicants.	

7.1 From the provisions of Section 118 post Punjab Act No. 15 of 2011, it is apparent that the provision to file appeal against order determining the question as to the property to be divided or the mode of making a partition, has been taken away.

7.2 Infact, even the power of revision as envisaged under Section 16 of the Punjab Land Revenue Act was taken away vide Punjab

Act No. 5 of 2013 (w.e.f. 28.01.2013). The provisions of Section 16 of the Punjab Land Revenue Act prior to enforcement of Punjab Act No. 5 of 2013 and post Punjab Act No. 5 of 2013 (w.e.f. 28.01.2013) read as under:-

Section 16 prior to Punjab Act No. 5 of 2013	Section 16 post Punjab Act No. 5 of 2013
16. Power to call for examine and revise proceedings of Revenue Officers. - (1) A Commissioner may call for the record of any case pending before, or disposed of by any Revenue Officer under his control and pass such orders, as he thinks fit. (2) A Collector may also call for the record of any case pending before, or disposed of by any Revenue Officer under his control, and if he is of the opinion that proceedings taken or order made, should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner whose decision shall be final. Provided that he shall not pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer, and affecting any question of right between private persons without giving them an	16. Power to call for examine and revise proceedings of Revenue Officers. - (1) Except a case pertaining to question of division of property or the mode of making a partition under Section 118, - (i) The Financial Commissioner may, at any time, call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him; and (ii) A Commissioner or Collector may call for the record of any case pending before or disposed of by any Revenue Officer under his control. (2) If any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner whose decision shall be final.

opportunity of being heard.] [(3) Notwithstanding anything contained in this section, the cases called for by the Financial Commissioner under sub-section (1) as it existed prior to the commencement of the Punjab Land Revenue (Amendment) Act, 2011 (Punjab Act No. 15 of 2011), shall be decided by him as heretofore. Provided that any case, out of the aforesaid cases, decided by the Financial Commissioner after such commencement, shall be deemed to have been decided by him under the powers vested under this sub-section and accordingly no such decision shall be called into question on the ground that no such power was available to him.]	(3) The Financial Commissioner or Commissioner may, in any case called for by himself under sub-section (1) or under sub-section (2). as the case may be, pass such orders as he thinks fit. Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard. (4) Notwithstanding anything contained in this section, the cases called for by the Commissioner or Collector, as the case may be, under sub-section (1) and (2) as it existed prior to the commencement of the Punjab Land Revenue (Amendment) Act, 2012, shall be decided by them as heretofore.]
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7.3 It is thus clear that with effect from 28.01.2013, an order passed under Section 118 of the Punjab Land Revenue Act determining the question as to the property to be divided or the mode of making a partition were neither appealable nor revisable. Although the said order passed under Section 118 could have been challenged by any party aggrieved therefrom by filing a writ petition before this Court.

8. In the instant case, neither the Mode of partition providing for partition of 9 Kanals – 12 Marla area nor the order dated 29.08.2018 (Annexure P-6) sanctioning Naksha 'Bey' was challenged by the petitioner by filing a writ petition before this Court, therefore, the same attained finality. Subsequently, Naksha 'Zeem' was approved, vide order dated 03.10.2018 (Annexure P-7). At that stage, the petitioner chose to prefer an appeal before the learned Collector, Mohali, wherein the order dated 29.08.2018 (Annexure P-6) sanctioning Naksha 'Bey' and also the order dated 03.10.2018 (Annexure P-7) approving Naksha 'Zeem', were challenged. Although neither an appeal nor a revision was maintainable against order dated 29.08.2018 (Annexure P-6) sanctioning Naksha 'Bey', still learned Collector, Mohali, vide its order dated 03.02.2020 (Annexure P-9), wrongly assumed jurisdiction in the matter and allowed the appeal of petitioner by setting aside order dated 29.08.2018 (Annexure P-6) sanctioning Naksha 'Bey'. However, on a further revision being filed by respondent No. 5 (Prem Kumar) before the learned Divisional Commissioner, the Collector's order dated 03.02.2020 (Annexure P-9) was set aside, vide order dated 10.06.2022 (Annexure P-10). The learned Divisional Commissioner's order dated 10.06.2022 (Annexure P-10) was upheld by learned Financial Commissioner, vide order dated 25.04.2024 (Annexure P-12).

9. In the aforesaid backdrop, now I proceed to deal with the submissions raised by learned counsel for petitioner. At the outset, it is observed that the petitioner has raised mutually destructive pleas inasmuch as; on the one hand, the petitioner is stating that the Assistant Collector had no jurisdiction to partition the land in question, as the same

consisted of shops/houses and on the other hand, learned counsel for petitioner has raised the plea that the partition has been carried out in violation of the sanctioned mode of partition.

9.1 Be that as it may, as regards the first submission the petitioner was called upon to substantiate his plea that the land under partition consists of shops/houses, however, he has failed to refer to any material whatsoever, either in the form of photographs or any other document to indicate that there is any construction of shops/houses on the land under partition. Furthermore, in case there was any substance in the said submissions, the petitioner would have availed his legal remedies before appropriate Forum by raising the issue of jurisdictional error, however, no such course was adopted by the petitioner.

9.2 Further, even as per Jamabandi 2013-14, on the basis of which partition application was filed, the nature of land under partition is as under :-

Khasra No.	Area and Type of land
85//24/2	1-9 Chahi Awal
85//25/1/2	0-5 Gair Mumkin Plot
85//25/2	3-7 Gair Mumkin Plot
95//4/2	0-11 Chahi Awal
95//5/1	1-16 Chahi Awal
95//26/1/2	1-11 Chahi Awal
95//26/2/2	0-13 Chahi Awal

A perusal of above chart would show that nature of land under partition is “Chahi” and some area is in the form of Plots. There is no indication/entry regarding any construction on any part of land under partition.

9.3 Still further, it appears that the petitioner did not challenge the sanctioned mode of partition, which provided for partitioning of 9 kanal 12 marla area (which included Gair Mumkin Plots as well). In ***Umed Singh v. State of Haryana, 2019(4) RCR (Civil) 499***; a co-ordinate bench of this court considered and rejected a similar objection regarding jurisdiction that Gair Mumkin area could not have been partitioned by revenue authorities; by observing as under:-

“2. It is the contention of learned counsel for the petitioner that the gair mumkin ruri could not be a subject of partition in the light of Section 4 of the Punjab Land Revenue Act, 1887, as it is not accessible to land revenue and, therefore, has to be exempted and rightly so it has been so done by the Assistant Collector Ist Grade, Charkhi Dadri. He contends that the orders passed by the authorities below, which are impugned herein, cannot sustain.

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the records of the case as also the impugned orders.

4. The mode of partition, which has been finalized between the parties by the Assistant Collector IInd Grade, Charkhi Dadri, dated 10.06.2003 (Annexure P-8) includes the total land, including the manure pit i.e. Gair Mumkin Rori. It is not in dispute that the manure pit was in possession of the petitioner but keeping in view the fact that no exception was carved out in the mode of partition with regard to the said manure pit and the fact that the said land is a subject matter of partition, it could not have been exempted from the partition proceedings. Merely because it is asserted by counsel for the petitioner that the manure pit is not accessible to the provisions of the Punjab Land Revenue Act, 1887, therefore, cannot be included in the partition, cannot be accepted. The sacrosanct document is the mode of

partition, which admittedly has attained finality and there being no exception carved with regard to any piece of land, the land has also to be included in the partition. The order as passed by the authorities below, therefore, on this count cannot be faulted with...”

9.4 It is further noticed that although in the objections submitted by the petitioner to the proposed Naksha 'Bey', such plea of construction of shops/houses on the land under partition was raised, however, after the objection to Naksha 'Bey' was rejected by the Assistant Collector, vide order dated 29.08.2018 (Annexure P-6), the petitioner did not challenge the same before this Court and on the basis of Naksha 'Bey', Naksha 'Zeem' was affirmed.

10. Keeping in view the above discussion, I find no substance in the plea of the petitioner that there were shops/houses on the land under partition and the same is rejected.

10.1 As regards the second and third submission, it is observed that the learned counsel for petitioner has failed to substantiate the said pleas by referring to any material. It has not been shown as to how the partition is contrary to sanctioned Mode of Partition or that petitioner was in possession over Khasra No. 85//24/2. As per Jamabandi for the year 2013-14 (Annexure P-2), the entry in the cultivation column as against all the khasra numbers under partition is “Makbuja Malkan” i.e. joint possession of all the co-sharers. Accordingly, both the above noticed submissions are also rejected.

11. Considering the totality of circumstances, I find no merit in the present writ petition and the same is accordingly dismissed.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

18.12.2024
sjks

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