

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1931-2025 (O/M)

Date of decision : 24.07.2025

Ramesh alias Ramesh Chander and another

..... Petitioners

Versus

Jai Bhagwan and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Nihal Chand Kinra, Ms. Apoorva Kinra, Advocates
for the petitioners.

Mr. Himanshu Arora, Mr. Amit Arora,
Mr. Vijay Sheoran, Advocates
for caveators-respondent No. 1.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 10.09.2024 (Annexure P-15), passed by Financial Commissioner, Haryana (in short 'Financial Commissioner').

2. Briefly, respondent No. 1-Jai Bhagwan sought partition of joint land. In the partition proceedings, mode of partition came to prepared on 10.10.2011 and thereafter, Naksha 'Kha' was called from the field staff. Upon receipt of Naksha 'Kha', objections thereto were called. The objections submitted by petitioners on Naksha 'Kha' were rejected and Naksha 'Kha' was approved on 22.11.2011 (Annexure P-5).

2.1 It appears that on 23.12.2011, petitioners preferred an appeal against order dated 22.11.2011 (Annexure P-5) before learned Collector, Rohtak (in short 'Collector'). In the meantime, on 30.12.2011, sanad takseem (instrument of partition) came to be issued.

2.2 It transpires that learned Collector, vide order dated 30.04.2012 (Annexure P-9), allowed the appeal of the petitioners and remanded the matter back to Assistant Collector 1st Grade, Sampla (in short 'Assistant Collector') with a direction to him to visit the spot and determine as to on which portion of kila No. 84/13, petitioner No. 2 (Dharam Raj) has his possession and water connection.

2.3 It further transpires that the petitioners preferred a further appeal before learned Commissioner, Rohtak Division, Rohtak (in short 'Divisional Commissioner') on the plea that the case has been remanded only on one ground, whereas other issues raised in the appeal were not accepted. The aforesaid appeal filed by petitioners came to be allowed by learned Divisional Commissioner, vide order dated 07.12.2016 (Annexure P-11), by holding as under :-

“5. I have heard the arguments of both sides. The documents brought on the file have been carefully perused. In this case, the appellants have raised the main argument that the Assistant Collector has prepared Naksha Be after breaking the possession of the land because Ramesh appellant used to cultivate killa No. 53//3 and 53//4 but this land has been divided into two parts and out of these, one kuraha has been allotted to Jai Bhagwan respondent. The appellants have their tubewell in the north-western corner of killa No. 53//4 but this area has wrongly been allotted to the respondent. Ramesh appellant has wrongly been given 0-19

Marla area in east of killa No. 53//4. Dharam Raj appellant used to cultivate killa No. 53//4 and 53/5 but the land of the appellants has been divided into three parts. The area abutting the road is of higher value and all the co-sharers ought to have been given the front in proportion to their respective shares. From a perusal of Naksha Be available on the file it reveals that the area as given to Ramesh and Dharam Raj comprised of killa Nos. 53//3 and 53//4/2/1, 53//4/2/2 and the midst of it, the area of Killa No. 53//4/1 has been allotted to Jai Bhagwan respondent. As a result, the land stands divided into three parts. It can be consolidated. The area along the road does not appear to be allotted to the co-sharers in proportion to their respective shares. Therefore, finding force in the appeal of the appellants, it is accepted and this case is remitted to the Assistant Collector 1st Grade, Sampla with the direction that while keeping in view the facts as given by the appellants, visit the land subject matter of the partition and this case be decided on the basis of merits and demerits. The file after due compliance be consigned to the record room.”

2.4 Feeling aggrieved against aforesaid order dated 07.12.2016 (Annexure P-11), respondent No. 1 (Jai Bhagwan) preferred a revision petition (ROR-495/2016-17) before learned Financial Commissioner, which has been allowed, vide impugned order dated 10.09.2024 (Annexure P-15), whereby the impugned order dated 07.12.2016 (Annexure P-11), passed by learned Divisional Commissioner as well as order dated 30.04.2012 (Annexure P-9), passed by learned Collector, have been set aside and sanad takseem (instrument of partition) has been upheld.

3. In the aforementioned circumstances, the petitioners have filed this writ petition before this Court for the relief(s), as noticed hereinabove.

4. Heard.

5. Apparently, in the partition proceedings initiated at the instance of respondent No. 1 (Jai Bhagwan), Naksha 'Bey' came to be approved on 22.11.2011 (Annexure P-5). The said order (Annexure P-5) came to be challenged by the petitioners by filing an appeal before learned Collector on 23.12.2011 and before any effective hearing could be held on the said appeal, partition proceedings culminated with the drawing of sanad takseem (instrument of partition) dated 30.12.2011.

6. It is well settled that after issuance of sanad takseem (instrument of partition), learned Collector as well as learned Divisional Commissioner have no jurisdiction to deal with the matter as the only remedy available to aggrieved party is to file a revision petition before learned Financial Commissioner or to file a writ petition before this Court.

6.1 In '***Amar Khan and others Versus State of Punjab and others***', **2009 (1) RCR (Civil) 741**, a Division Bench of this Court held as under :-

“Even otherwise in our considered opinion. the provisions of the Act do not envisage the filing of an appeal against the preparation of the Sanad Takseem. This however would not bar an aggrieved person from invoking the jurisdiction of the Court under Articles 226/227 of the Constitution of India or that of the Financial Commissioner under Section 16(i) of the Act, which reads as follows :-

"16. Power to call for examine and revise proceedings of Revenue-officers. - (1) The Financial Commissioner may at any time call for the record of any may case pending before or disposed of by any Revenue-officer subordinate to him."

7. In this case, despite the fact that sanad takseem came to be issued on 30.12.2011, learned Collector exceeded his jurisdiction and decided the appeal filed by the petitioners, vide order dated 30.04.2012 (Annexure P-9). Not only that, the petitioners preferred an appeal against order dated 30.04.2012 (Annexure P-9) before learned Divisional Commissioner, which was also allowed, vide order dated 07.12.2016 (Annexure P-11), as noticed hereinabove.

8. Feeling aggrieved against aforesaid order dated 07.12.2016 (Annexure P-11), passed by learned Divisional Commissioner, respondent No. 1 (Jai Bhagwan) preferred a revision petition (ROR-495/2016-17) before learned Financial Commissioner.

8.1 It appears that during the pendency of aforesaid revision petition (ROR-495/2016-17), petitioners also preferred a revision petition (ROR-337/2023-24) before learned Financial Commissioner. Both the aforesaid revision petitions came to be decided by learned Financial Commissioner, vide a common order dated 10.09.2024 (Annexure P-15), whereby the revision petition (ROR-337/2023-24) preferred by the petitioners was dismissed and revision petition (ROR-495/2016-17) preferred by respondent No. 1 (Jai Bhagwan) was allowed. The operative part of order dated 10.09.2024 (Annexure P-15) reads as under :-

" The case was received by transfer and listed for the first time before this Court on 05.12.2022. Since the two

RORs are cross revisions in the same partition proceedings, hence the two RORs are being disposed of by this common order.

Petitioner and Respondent referred to in this Order will be as per ROR No. 337 of 2023-24. In brief, the Ld. Counsel for Petitioners in ROR No. 337 has taken the following objections against the impugned Sanad Takseem :-

- (i) That a pucca khal running to the north of khasra nos. 53//3, 4/1, 4/2 is not depicted in the Sanad Takseem. As per the 2007-08 Jamabandi, the following khasra nos. 53//3 (7-11), 4/1 (4-14), 4/2 (2-17) are part of khewat no. 175 and have been fully partitioned amongst the three brothers. If the pucca khal is not part of the joint land, it cannot be partitioned. The objection is thus mischievous, without merits and is dismissed.*
- (ii) That Khasra no. 84//13 (7-2) is more valuable being close to the abadi deh, but not allotted to the Petitioners. The objection is factually incorrect. As per the impugned Sanad Takseem, Khasra no. 84//13 is divided into three parts as follows :-*

Petitioner no. 1: 84//13/2 (1-19)

Petitioner no. 2: 84//13/1 (1-19)

Respondent: 84//13/3 (3- 04)

The Ld. Counsel for Petitioners submits that the Petitioners should be allotted the eastern part of khasra no. 84//13. This is strongly rebutted by the other Counsel, who says the eastern side was always in the possession of the Respondent. The objection is without merits and is hereby dismissed.

- (iii) The third objection is that there were two roads and the Petitioners have been given lesser road-front. This is rebutted by the Counsel for Respondent, who submits that the land is*

comprised in two Khewats: Khewat No. 175 of area 128M—13M and Khewat No. 278 of area 22K-10M. The share of the Respondent in Khewat No. 278 is $\frac{2}{3}^{\text{rd}}$, whereas that of the Petitioners is $\frac{1}{6}^{\text{th}}$ each. The road running from South-East to North-West direction falls in Khewat no. 278. The Respondent is entitled to $\frac{2}{3}^{\text{rd}}$ share of the road-front falling in Khewat No. 278 and $\frac{1}{3}^{\text{rd}}$ share of the road-front falling in Khewat No. 175. Hence, the Respondent is rightly allotted his correct share of road-front when calculated on pro-rata basis for each of the two khewats separately. The objection is thus devoid of merits and is hereby rejected.

- (iv) The fourth objection taken by the Ld. Counsel for the Petitioners is that the Assistant Collector could not have issued the Sanad Takseem during the pendency of an appeal before the Collector. It is submitted by the Ld. Counsel for Petitioners that there was an automatic Stay during the pendency of appeal/revision before higher authorities. An appeal against the Naksha-kha was instituted by the Petitioners before the Collector on 23.12.2011. The argument by the Ld. Counsel for Petitioners of an automatic Stay coming into effect on the filing of an appeal before the Collector is not supported by statutory provision, hence the same cannot be accepted and is hereby rejected. Moreover, all the objections of the Ld. Counsel for Petitioners against the Sanad Takseem have been considered and dealt with at length in the present Order.*

The impugned Sanad Takseem is hereby upheld. The partition proceedings come to end with the issue of the Sanad Takseem. Since it was not competent for the Collector or the Commissioner to decide appeal/revision

after the finalization of the partition proceedings, the impugned Order dated 07.12.2016 of the Commissioner, Rohtak, including the Order dated 30.04.2012 of the Collector Rohtak, cannot survive and are hereby set aside.”

9. I have gone through the order passed by learned Financial Commissioner and I do not find any illegality or perversity therein. Rather, the order dated 10.09.2024 (Annexure P-15), passed by learned Financial Commissioner is in consonance with the law settled by a Division Bench of this Court in **Amar Khan's** case (supra). Resultantly, finding no merit in this writ petition, same is dismissed.

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

(HARSH BUNGER)
JUDGE

24.07.2025
sjks

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