



CM-18076-CWP-2024 in/and
CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)

-1-

115+203 (2 cases)

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

CM-18076-CWP-2024 in/and
CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)
Date of Decision: 21.01.2025

(I)

CWP-3035-2022 (O&M)

Ashok Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

(II)

CWP-13719-2022 (O&M)

Ashok Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sumit Sangwan, Advocate
for the petitioner(s) in both cases.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Rajesh Dhankar, Advocate
for respondent No.5 (in CWP-3035-2022)
for respondent No.9 (in CWP-13719-2022).

HARSH BUNGER, J. (Oral)

This order shall dispose of two writ petitions, bearing
CWP-3035-2022 and CWP-13719-2022 and for the purpose of passing this



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CWP-3035-2022 (O&M) *along with*
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-2-

order, the facts are being taken from **CWP-3035-2022**.

2. The present petition (CWP-3035-2022) has been filed under Articles 226/227 of the Constitution of India *inter alia* seeking a writ in the nature of Certiorari for setting aside order dated 24.12.2019 (Annexure P-1) passed by the learned Collector, Charkhi Dadri and order dated 12.10.2021 (Annexure P-2) passed by the learned Commissioner, Rohtak Division, Rohtak.

3. Briefly, the petitioner had filed application(s) dated 03.05.2017 (Annexure P-3) seeking partition of joint land comprised in *Khewat* No.263/215, measuring 183 *kanals* 10 *marlas* situated within the revenue estate of Village Dudhwa, Tehsil and District Charkhi Dadri, as per *jamabandi* for the year 2014-15.

4. It transpires that the partition proceedings culminated with the drawing of *Sanad Takseem* (instrument of partition) dated 01.05.2019 (Annexure P-11).

5. The aforesaid partition proceedings came to be challenged by way of two appeals i.e. one filed by Anand Kumar (respondent No.5 in CWP-3035-2022) and another appeal filed by Rajbir Singh and three others (respondents No.5 to 8 in CWP-13719-2022). Both the said appeals were allowed vide order dated 24.12.2019 (Annexure P-1), passed by the learned Collector, Charkhi Dadri, whereby the partition proceedings were set aside and the matter(s) was/were remanded to the learned Assistant Collector 2nd Grade, Charkhi Dadri for fresh decision.

6. Feeling aggrieved against the aforesaid order dated 24.12.2019 (Annexure P-1) passed by the learned Collector, Charkhi Dadri, the



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CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)

-3-

petitioner(s) herein preferred two appeals before the learned Commissioner, Rohtak Division, Rohtak, which came to be dismissed by a common order dated 12.10.2021 (Annexure P-2).

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition(s) before this Court for the reliefs as noticed hereinabove.

8. Learned counsel for the petitioner submits that the learned Collector had wrongly assumed jurisdiction in the matter, as no appeal is maintainable to the learned Collector after the issuance of *Sanad Takseem* and the only remedy available to the party aggrieved is to challenge the same before the learned Commissioner under Section 16 of the Haryana Land Revenue Act or by way of filing a writ petition before this Court.

8.1 In this regard, learned counsel for the petitioner(s) relies upon a judgment rendered by a Division Bench of this Court in the case of ***“Amar Khan and others vs. State of Punjab and others, 2009 (1) R.C.R. (Civil) 741***. Accordingly, it is submitted that the impugned orders are unsustainable in the eyes of law and the same be set aside.

9. Per contra, learned counsel appearing for respondent No.5 (in CWP-3035-2022) and for respondent No.9 (in CWP-13719-2022) submits that the application for partition was submitted by the petitioner on 20.03.2017 and therefore, the petitioner was required to challenge the order passed by learned Collector before the learned Financial Commissioner and not before learned Divisional Commissioner. It is further submitted that in the final partition, the respondent has been allocated land in three separate blocks, which amounted to bifurcation/fragmentation of his land and



CM-18076-CWP-2024 in/and
CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)

-4-

therefore the learned Collector has rightly set aside the partition proceedings and no interference therein is called for. Accordingly, prayer for dismissal of writ petition has been made.

10. Heard.

11. As regards the contention raised by learned counsel for respondent No.5 (in CWP-3035-2022) and for respondent No.9 (in CWP-13719-2022) that the learned Commissioner had no jurisdiction to entertain revision filed by petitioner as the same would lie before learned Financial Commissioner because the application for partition was submitted by the petitioner on 20.03.2017, it is observed from the certified copy of the partition application (which has been produced before this Court) that the application for partition was submitted only on 03.05.2017 and accordingly it has to be held that the same was filed after 10th April 2017, when Haryana Act No.12 of 2017 was enforced whereby the revisional jurisdiction vested with the Financial Commissioner under Section 16 of Haryana Land Revenue Act, 1887 was taken away. Amended Section 16 of 1887 Act reads as under:-

“16. Power to call for, examine and revise proceedings of Revenue officer.

(1) The 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) The 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 the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion



CM-18076-CWP-2024 in/and
CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)

-5-

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 opportunity of being heard.”

In terms of amended Section 16 of Haryana Land Revenue Act, revisional power vests in the Commissioner, therefore, the revision was maintainable before the Divisional Commissioner only.

11.1 As regards the submissions made by learned counsel for respondent No.5 (in CWP-3035-2022) and for respondent No.9 (in CWP-13719-2022) that final partition is bad as it has resulted in fragmentation of his land, it is observed from a perusal of the site plan (Annexure P-8) that the land under partition is situated at four separate places in four separate parcels of land. Sh. Anand Kumar (respondent No.5 in CWP-3035-2022 and respondent No.9 in CWP-13719-2022) has been allocated land in all the four parcels of land as per his/their share and each of the separate parcels of land allotted to him falls on the passage. As per mode of partition (Annexure P-4), the land adjacent to passage/road or *abadi deh* was to be given to every co-sharer as per their share. Therefore there is no infirmity in allocation of land to respondent No.5 (in CWP-3035-2022) and respondent No.9 (in CWP-13719-2022) in form of separate blocks of land.

12. Now coming to the plea raised by learned counsel for the petitioner that the learned Collector had wrongly assumed jurisdiction in the matter and has wrongly set aside the partition/*Sanad Takseem*, it is observed that as per the settled law, after the issuance of *Sanad Takseem*, no appeal lies to the Collector and the only remedy available to the aggrieved person is



CM-18076-CWP-2024 in/and
CWP-3035-2022 (O&M) *along with*
CM-18155-CWP-2024 in/and
CWP-13719-2022 (O&M)

-6-

to challenge the same under Section 16 of the Haryana Land Revenue Act, 1887 or by way of filing the writ petition before this Court.

13. In *Amar Khan v. State of Punjab, 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."

9. Section 16(1) of the aforementioned Act empowers the Financial Commissioner to call for the record of any case pending before or disposed of by any revenue officer subordinate to him. These powers, in our considered opinion would take within their ambit challenge to a Sanad Takseem. We are, therefore of the opinion that the petitioners could have filed an appropriate petition before the Financial Commissioner... ”

14. In the present case, *Sanad Takseem* (instrument of partition) was issued on 01.05.2019 whereas learned Collector passed the order dated 24.12.2019 (Annexure P-1). Apparently, the learned Collector has wrongly assumed jurisdiction in this matter, accordingly the order passed by the learned Collector is unsustainable in the eyes of law. Furthermore, the learned Commissioner has failed to appreciate the aforesaid objections raised by the petitioner(s) and had wrongly dismissed his/their appeal(s),



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CWP-3035-2022 (O&M) *along with*
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CWP-13719-2022 (O&M)**

-7-

accordingly, the order passed by the learned Commissioner is also unsustainable.

15. Considering the totality of circumstances, the writ petitions are allowed and the order dated 24.12.2019 passed by the learned Collector as well as order dated 12.10.2021 passed by learned Commissioner is set aside. As a consequence thereof, the final partition/*Sanad Takseem* dated 01.05.2019 is maintained.

16. All pending applications (if any) shall also stand closed.

17. Photocopy of this order be placed on the file of connected case.

21.01.2025

Himani

**(HARSH BUNGER)
JUDGE**

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