

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6160-2025 (O/M)
Date of decision : 12.03.2025

Umed Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Amit Kohar, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

Mr. Hemant Saini, Ms. Neha H. Monga, Advocates
for respondent No. 5.

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HARSH BUNGER, J. (ORAL)

1. Prayer in the instant civil 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 28.05.2024 (Annexure P-20), passed by Assistant Collector 2nd Grade, Gurugram, whereby the objections dated 09.04.2024, submitted by the petitioners to Naksha 'Bey', prepared in the partition proceedings, were dismissed.

1.1 A further prayer has been made for setting aside the order dated 25.11.2024 (Annexure P-24), passed by learned Collector, Gurugram (in short 'Collector') and also order dated 07.02.2025 (Annexure P-26), passed by learned Commissioner, Gurugram Division,

Gurugram (in short 'Divisional Commissioner'), whereby the appeal and revision, filed by the petitioners, were dismissed, respectively.

2. Briefly, respondent No. 5-M/s Rainbow Properties, submitted an application on 11.01.2023, seeking partition of joint land measuring 7 Kanal – 12 Marla, comprised in Khewat No. 1612/1502, Rect. No. 2, Killa No. 14/1 (7-12), situated in village Choma, Tehsil and District Gurugram.

2.1 As per petitioners' own saying, they were initially proceeded against ex-parte in the aforesaid partition proceedings, however, subsequently, vide order dated 24.04.2023, passed by Assistant Collector, the petitioners were permitted to join the partition proceedings and thereafter, the petitioners submitted reply to the partition application, wherein they claimed that the partition be carried out by retaining the possession.

2.2 On 14.03.2024 (Annexure P-11), the mode of partition was proposed, which was subsequently sanctioned on 28.03.2024, the relevant extracts of which read as under :-

“ 1. That a total of five Khewats will be made in the land of Partition land Khewat No. 1612/1502 Khata No. 1803 Mustil No. 2 Kila No. 14/1 (7-12), total area 7 Kanal 12 Marla situated in place Choma, Tehsil and District Gurugram. The first Khewat will be made of the applicant, the second Khewat of respondent No. 1, the third Khewat of respondent No. 2, the fourth Khewat of respondent No. 3, the fifth Khewat of respondent No. 4.

2. That while dividing, the partition will be done keeping the possession intact. Possession will also be broken as per the need.

3. While dividing, trees, plants, tube wells, tabe land will be kept.

4. While dividing, the rules of consolidation (chakbandi) will be kept in mind.

5. While dividing, rastajaat and front will be made as per the need.

6. The partition is ordinary, under the supervision of Patwari Halka, Girdawar Halka will do the partition.

The cost of partition is fixed at Rs. 2500/- which will be paid by the parties.

Dated: 14.03.2024

Sd/-

Assistant Collector Second Grade
Gurugram

No Objection by

Sd/- Rajender Singh

Sd/- Umed Singh

Sd/- Diwan Singh

Sd/- Surender Singh”

No Objection

Sd/-

Authorized person

2.3 After sanctioning of aforesaid mode of partition, Naksha 'Bey' was called from the field staff. Upon receipt of Naksha 'Bey', objections thereto were called from the parties.

2.4 Thereafter, the petitioners submitted the objections dated 09.04.2024 (Annexure P-13) to the proposed Naksha 'Bey'. Respondent No. 5 submitted its reply to the objections submitted by the petitioners. The aforesaid objections submitted by the petitioners to the proposed Naksha 'Bey' came to be rejected by Assistant Collector, vide order dated 28.05.2024 (Annexure P-20) and Naksha 'Bey' was approved.

2.5 Feeling aggrieved against order dated 28.05.2024 (Annexure P-20), the petitioners as well as respondent No. 6 herein, namely, Rajender Singh, filed their separate appeals before learned Collector, however, the same were dismissed, vide order

dated 25.11.2024 (Annexure P-24), passed by learned Collector. Further, revisions filed by the petitioners as well as respondent No. 6 were also dismissed by learned Divisional Commissioner, vide order dated 07.02.2025 (Annexure P-26).

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

4. Heard.

5. In the present case, petitioners have primarily laid challenge to order dated 28.05.2024 (Annexure P-20), passed by Assistant Collector, whereby the objections submitted by petitioners to Naksha 'Bey' were rejected and Naksha 'Bey' was approved.

5.1 Here it would be relevant to refer to the objections raised by the petitioners to proposed Naksha 'Bey', which read as under :-

“The respondents present the following objections :-

1. That the map has been prepared completely against the proposed method, which is not worth considering. In para no. 2 of the proposed method, it is clearly written that the partition should be done by keeping the possession intact, but the map has been prepared by breaking the possession. The respondents had possession in the north direction of kila No. 14, in which the respondents have also installed a tube well for irrigation. The map is against para no. 4 of the method proposal in which it is clearly written that the partition will be done as per the rules of consolidation (chakbandi). The agricultural land has been divided into very small pieces in the map which is not cultivable.

2. *That the applicant did not tell his possession even while filing the application for partition and later also did not tell in his statement that where the applicant's possession is. The respondents have also shown their possession in their reply claim and statement which is in the north direction of this kila no. 14. Whereas Girdawar Halka in connivance with the applicant has made a wrong map by breaking the possession. Which is amendable in every case.*

3. *That Girdawar Halka has never inspected the spot while making the map, he only prepared the map by sitting in the office and in connivance with the applicant. Therefore, the map is amendable.*

Therefore, it is a request to the sir that in the interest of justice, by rejecting the existing map, please ask for a revised map and the objections of the respondents/objectors should be accepted.”

5.2 A perusal of the above extracted objections would show that the main objections of petitioners was that Naksha 'Bey' has been prepared by breaking the possession inasmuch as that the possession of the petitioners on the northern side of Killa No. 14, in which they have installed a tubewell for irrigation, has been disturbed and that their lands have been fragmented into small pieces, which are not worth cultivation. The aforesaid objection has been considered by Assistant Collector and the same was rejected, vide impugned order dated 28.05.2024 (Annexure P-20), the relevant extracts of which read as under :-

“ I have heard both the parties and have carefully observed the file. After observation, I have come to the conclusion that the objection raised by the counsel for respondents No. 1, 3, 4 that partition should have been done by retaining possession but while preparing map B, possession was broken, this objection is wrong, because

while inspecting the spot, it was compared with the prepared map B and the area given to respondents in map B is the area under cultivation. The respondents have sown vegetable and as far as the objection of the respondents is concerned that the area was given in the north direction of kila no. 14/1 whereas in the north direction of 14/1, about 16 Karam land is without cultivation, hence this objection is absolutely baseless. The objection of the respondents is that the agricultural land for partition has been divided into very small pieces which are not left for cultivation. This statement of them is absolutely wrong and baseless because the partition land is of Kila No. 14/1 area 7-12 in which the applicant company is the owner and occupant of 404/804 share measuring 3-16 and the respondents each of the four brothers Umed Singh and others are the owner and occupant of 100/804 share measuring 0-19 marla and as per the revenue records and on the spot, Kila No. 14/1 is 47 Karam in the north direction, 39 Karam in the east direction, 56 Karam in the west direction and 16 Karam in the south direction which is not rectangular. That is why both the parties have been given land according to their share in their possession and cultivation by making separate Khewat in the land map B. Apart from this, the respondents have an objection that a tubewell has been installed for irrigation in Kila No. 14 whereas on the spot, there is no irrigation means have been installed in the said Kila No. 14, due to which it appears that the respondents are wasting the court's time by raising unnecessary objections. As per Girdawar Halka the prepared map B present on the file has been prepared correctly as per the spot and possession. Therefore, finding no force in the objectionable map B presented by the respondents, the objectionable map B is rejected, accepted

the prepared map B as it is, and partition is approved as per the prepared map B.”

5.3 The appeal as well as revision, filed by petitioners against aforesaid orders, have been dismissed.

6. It is interesting to note that total land under partition measures 7 Kanal – 12 Marla, which is comprised only in one Killa No. 14 of Rect. No. 2. Apparently, the land under partition falls on the road and as per the sanctioned mode of partition, the partition was to be carried out keeping the possession intact, however, if required, the possession could be disturbed as well. Further, it was provided in the mode of partition that rasta as well as the frontage will be provided as per necessity.

7. The attention of counsel for petitioners was drawn towards the site plan (which is attached with the paperbook at page 223) and he was asked to indicate as to what prejudice has been caused to petitioners by the manner in which the blocks (kurrahs) of respective co-sharers have been carved out, however he was unable to do so. In my considered view, the blocks (kurrahs) of the respective co-sharers have been carved out as per the provisions made in the mode of partition.

8. At this stage, it is sought to be contended by learned counsel for petitioners that the land under partition is of different value, however, I do not find any substance in the same as the entire land under partition is comprised in one single Killa No. 14 and there is nothing on record to even suggest that the area comprised in the single khasra number is of different value. Accordingly, the said submission is also found to be baseless and hence rejected.

9. Further, a perusal of the order dated 28.05.2024 (Annexure P-20), passed by Assistant Collector as well as order dated 07.02.2025 (Annexure P-26), passed by learned Divisional Commissioner would show that all the objections raised by the petitioners were duly considered and rightly rejected.

10. Learned counsel for petitioners has also failed to point out any patent illegality or perversity in the impugned orders, which may call for any interference by this Court.

11. Considering the totality of circumstances, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

12.03.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No