

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

CWP-8759-2025 (O&M)
Date of decision :02.05.2025

VIJAY SINGH YADAV AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Amandeep Vashisth, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is for setting aside the order dated 16.08.2018 (Annexure P-1) passed by the learned Financial Commissioner, Haryana, Chandigarh.

2. Briefly, respondents No.5 and 6 sought partition of joint land comprised in *khewat No.261/251, 272/262, 238/228, 248/238, 233/223 and 228/218* (as per jamabandi for the year 2003-04) situated at village Gopalpur, Tehsil and District Gurgaon.

2.1 In the afore-said partition proceedings, the predecessor-in-interest of the petitioners namely, Sh. Bahadur Singh was impleaded as respondent No.3, who appeared and participated in the partition proceedings. It transpires that in the afore-said partition proceedings, the following mode of partition was prepared :-

“1. Total agricultural land to be divided is 74 Kanals and 4 Marlas located in Village Gopalpur Tehsil and District Gurgaon is under the joint ownership of both the parties.

2. *That four Khewats shall be made in the agricultural land to be divided. One Khewat of the petitioner, 2nd Khewat of the Respondent No.1, 3rd Khewat of Respondent No.2 and 4th Khewat of Respondent No.3 will be made.*
3. *That the agricultural land will be divided by restoring the possession of the possessor. The possession can be broken of in case of fluctuation.*
4. *That if there is any tree on the divided agricultural land it shall remain in the land only.*
5. *That if there is a need to give approach to while dividing the property then approach to will be given. The portion of land going in the approach to shall be deducted from the total land.*
6. *That if a road is going in front of the land to be divided then all the parties will be given road front as per their share and the type of land and its price shall also be considered while doing so.*
7. *That the demand for the division of agricultural land is minor. The observation of the division of agricultural land shall be done by the Patwari of the area. The cost of Rs.700/- is being fixed and shall be borne equally by both the parties.”*

2.2 On the basis of afore-said mode of partition, *naksha 'kha'* was prepared and objections thereto were called; whereupon, Smt. Maya Devi (respondent No.7, herein) submitted her objections. Similarly, proforma respondent No.8 (Kalu Ram) also submitted his objections, primarily on the ground that during the pendency of the partition proceedings, *10 kanal-19 marla* area out of *khewat No.228* and *238* stood acquired by the government and therefore, the said area should be excluded from the partition and fresh *naksha 'kha'* be prepared. Sh. Bahadur Singh (predecessor of the petitioners) submitted reply to the afore-said objections to *naksha 'kha'*.

2.3 The learned Assistant Collector Ist Grade, Gurgaon vide order

dated 13.05.2010 (Annexure P-9) decided the objections, by observing as under :-

“The file was taken into consideration. The Ld. Counsels of both the sides were heard. Map was observed. The map has not been prepared correctly as per the record. In addition to this I approve the application given by the Respondent Kalu Ram regarding deduction of acquired acre from the divisible acre and pass this order that the acre that has been acquired be deducted from the divisible acre and to divide the remaining acres and the patwari/Girdawar of the area are being passed the orders to go to the spot and to prepare documents and map B related to the division again in abedience of the orders, and to present the file containing the documents and map on dated 02.06.2010.”

2.4 Feeling aggrieved, Sh. Bahadur Singh (predecessor of the petitioners) challenged order dated 13.05.2010 (Annexure P-9) by filing an appeal before the learned Collector, who vide its order dated 10.02.2011 (Annexure P-11) dismissed the same.

2.5 Thereafter, a fresh *naksha 'kha'* was prepared and the learned Assistant Collector vide order dated 28.05.2012 (Annexure P-15) approved the same.

2.6 Being dissatisfied, the present petitioners challenged order dated 28.05.2012 (Annexure P-15) by filing an appeal before the learned Collector, Gurgaon which came to be allowed vide order dated 03.01.2013 (Annexure P-17) and the matter was remanded to the learned Assistant Collector to conduct the partition after inspecting the spot and upon recording the statement of the parties.

2.7 Apparently, respondents No.5 to 7 herein challenged the order dated 03.01.2013 (Annexure P-17) by filing a revision before the learned

Commissioner, Gurgaon Division, Gurgaon, which came to be dismissed vide order dated 06.02.2014 (Annexure P-18).

2.8 Thereafter, respondents No.5 to 7 preferred a revision petition (**ROR No.304 of 2013-14**) before the learned Financial Commissioner, Haryana which came to be partly allowed vide impugned order dated 16.08.2018 (Annexure P-1).

2.9 In the afore-mentioned circumstances, the present petition has been filed by the petitioners before this Court for the relief, as noticed here-in-above.

3. Heard.

4. In the present case, it is noticed that the partition proceedings are pending for the last more than 15 years and the case is still at the stage of *naksha 'kha'*, inasmuch as that learned Financial Commissioner vide impugned order dated 16.08.2018 (Annexure P-1) has again remanded the matter to the learned Assistant Collector by permitting Kalu Ram (proforma respondent No.8) to submit his objections to *naksha 'kha'*. The relevant extract of order dated 16.08.2018 (Annexure P-1) reads as under :-

“...Counsel for the petitioner vehemently contended that the Collector as well as Commissioner wrongly passed impugned orders, therein, the case was remanded to the AC with the directions that the partition be made as per existing possession of the shareholders. It was submitted that respondent Nos.1 to 4 claimed that they were in exclusive possession of the land abutting road in rectangle No.52 and 53 and their claim is against the specific clause No.6 of the mode of partition. Counsel for the petitioner argued that the revenue court of the commissioner as well as Collector have failed to appreciate that if partition is affected maintaining existing possession of the parties the very purpose of partition would stand frustrated. The basic object of partition is always to

allocate the joint holding to all the co-sharers quantity wise and quality wise as per their share therein. He further submitted that the quality and value of land cannot be ignored in order to maintain the existing possession. Therefore, the impugned orders of the Collector as well as Commissioner are not sustainable in the eyes of law. Counsel finally prayed that the impugned order dated 03.01.2013 passed by the Collector and the order dated 06.02.2014 passed by the Commissioner Gurgaon may kindly be set aside.

On the other hand, counsel for the respondents submitted that order dated 03.01.2013 passed by the Collector and the order dated 06.02.2014 passed by the Commissioner, Gurgaon are perfectly legal and proper. Counsel for the respondents further submitted that the AC Ist Grade, Gurgaon did not consider the existing possession of the respondents in the land in question. He further argued that the respondents were in exclusive possession of the land abutting on the road of rectangle No.52 and 53 and the same should have been allocated to them in partition and therefore Commissioner as well as Collector have rightly passed the order dated 06.02.2014 and 03.01.2013 respectively. Counsel further argued that a civil suit bearing nos.184 dated 17.01.2011 has been decided on 16.05.2017 in respect of title between Kalu Ram respondent No.5 (herein), and petitioner No.3 Smt. Mayadevi (herein), in the aforesaid Civil Suit the share of the respondent no.5 has been increased and appeal against the judgment and decree dated 16.05.2017 is also pending. He further argued that it is settled principles that the land cannot be partitioned, if the title of land in question is disputed and pending for adjudication before the competent court. Therefore, the present revision petition is frivolous. Counsel for the respondents further prayed that the order dated 03.01.2013 passed by the Collector and the order dated 06.02.2014 passed by the Commissioner Gurgaon are perfectly legal and proper and the same may kindly be upheld and revision petition be dismissed devoid of any merits.

I have heard the arguments put-forth by counsels of both the parties and perused the impugned orders as well as the record of the present case. Counsel for the petitioners argued that the mode of partition was prepared on 16.02.2009, and the partition has been affected according to clauses of the mode of partition. He further submitted that the Assistant Collector while passing the order dated 28.05.2012 properly considered the value of the land and has rightly allocated the share to the shareholders in proportionate to their share in land abutted on the road. The Collector has wrongly set aside the well-reasoned order dated 28.05.2012 passed by the Assistant Collector Ist Grade, Gurgaon and the Commissioner has also wrongly affirmed the order of the Collector. From perusal of the clause No.6 of the mode of partition, it appears that the Assistant Collector has passed proper and speaking order dated 28.05.2012. From perusal of the mode of partition of clause No.6 reveals that a condition was imposed that while making partition, the nature and value of the land would be considered and the front portion of the land adjoining the metalled road would be given proportionately to all the co-sharers. It is well settled principles that the mode of partition is the backbone of the process of partition and the same cannot be violated. Mode of partition provides that the partition be made in keeping in view the quality of land and the possession at the spot. In this case the land abutting the road which was in possession of the respondents, has been equally divided among the co-sharers by the Assistant Collector 1st Grade, Gurgaon vide order dated 28.05.2012. This court is of the view that merely because the respondent were in possession of the said land, they cannot be given the entire land on the road as per the mode of partition. It seems that the order dated 03.01.2013 passed by the Collector and the order dated 06.02.2014 passed by the Commissioner Gurgaon did not properly consider the mode of partition while passing above said impugned order. During the pendency of appeal/revision, a share of the respondent no. has been increased by the

judgment of the Civil Court. Therefore, this Court of the view that the opportunity of filing objections may also be provided to the respondent no.5.

As a sequel of finding above, I find infirmity and illegality in the impugned order dated 03.01.2013 and 06.02.2014. Therefore, I set aside the impugned orders dated 03.01.2013 and 06.02.2014. Hence, the present revision petition is partly accepted. However, the liberty is granted to the respondent no.5 to file objection against the order dated 28.05.2012 i.e. Naksha 'Bey'. Both the parties are directed to appear before the Assistant Collector 1st Grade Gurgaon on 27.11.2018 and the Assistant Collector is also directed to decide the case within 3 months from receiving of the order."

5. Learned counsel for the petitioners has failed to point out any illegality or perversity in the afore-said order dated 16.08.2018 (Annexure P-1), except contending that the partition be carried out by considering the existing possession of the parties.

5.1 I have considered the afore-said contention raised on behalf of the petitioners and after going through the above extracted order dated 16.08.2018 (Annexure P-1), I am of the considered view that the learned Financial Commissioner has rightly set aside the orders passed by the learned Collector as well as the learned Commissioner, who had observed that the partition be carried out as per the possession of the parties. As per Clause 6 of the mode of partition, the area falling on the road is to be partitioned amongst the parties as per their share and even otherwise, the partition is to be carried out keeping in view the nature and value of the land. If the afore-said Clause 6 is to be implemented, in that eventuality, it cannot be held that the partition should be carried out as per the possession of the parties as it is not disputed by learned counsel for the petitioners that the major area falling adjacent to the road is with the petitioners herein.

6. In the attending circumstances, the partition should be carried out strictly in compliance with the mode of partition (Annexure P-5) and I find no error in the order dated 16.08.2018 (Annexure P-1) passed by the learned Financial Commissioner.
7. Resultantly, the instant writ petition fails and the same is, accordingly, dismissed.
8. All pending applications (if any) shall also stand closed.

May 02, 2025
gurpreet

(HARSH BUNGER)
JUDGE

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