

135 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13935-2025 (O/M)
Date of decision : 15.07.2025

Nahar Singh

..... Petitioner

Versus

Financial Commissioner (Appeals) Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

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

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Nahar Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside orders dated 12.03.2020 (Annexure P-6); 31.08.2020 (Annexure P-7) and 05.11.2020 (Annexure P-8), passed by Assistant Collector 1st Grade, Morinda (in short 'Assistant Collector), whereby Naksha 'Bey' Naksha 'Zeem' and sanad takseem have been sanctioned, respectively.

1.1 A further prayer has been made for setting aside the order dated 17.09.2024 (Annexure P-12), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the revision petition (ROR-91-2023), filed by the petitioner against partition proceedings/orders has been dismissed

2. Briefly, respondent No. 3 (Avtar Singh) filed an application (Annexure P-1) seeking partition of joint land measuring 62 Kanal – 17 Marlas, comprised in Khewat No. 155 (as per jamabandi 2013-14),

situated at village Dhianpura, Tehsil Morinda, District Rupnagar. In the said partition application, the petitioner was impleaded as party respondent No. 3. After the sanctioning of Naksha 'Alif' (Annexure P-3), the Assistant Collector proposed the mode of partition (Annexure P-4) and the same was sanctioned, vide order dated 09.07.2018. Thereafter, on 01.10. 2018, the following order was passed :-

“01.10.2018

The file is presented. The case is called. The counsel on behalf of the applicant party is present in the Court. Sh. Jarnail Singh Advocate has appeared on behalf of Respondent No. 4 Shaganpreet Singh S/o Sadhu Singh and submitted objection to naksha bey and one copy of the same is given to the applicant party for the purpose of filing reply and the Presiding Officer has kept the spot inspection for dated 05.10.2018. The parties came present at the spot. The concerned parties related to this case has prayed that they have no objection if separate-separate tuck of Avtar Singh S/o Harchand Singh, Shaganpreet Singh S/o Sadhu Singh, Gurmeet Singh and Nahar Singh S/o Harchand Singh is prepared and while doing so land bearing Mustil No 5 from the western side of the railway line and land bearing killa No. 4 and 10 towards the western side and the passage be provided from the northern side of land bearing Mustil No. 13 and accordingly, if the partition is done in equal share then they have no objection. The patwari Halqa came present at the spot and the revenue record was checked. Considering the consent of the parties, patwari Halqa and field Kanungo is hereby directed that they shall do the partition by providing separate-separate tuck of Avtar Singh S/o Harchand Singh, Shaganpreet Singh S/o Sadhu Singh, Gurmeet Singh and Nahar Singh S/o Harchand Singh and while doing so land bearing Mustil No. 5 from the western

side of the railway line and land bearing killa No. 4 and 10 towards the western side and the passage be provided from the northern side of land bearing Mustil No. 13 and accordingly, the partition be done in equitable manner and thereby, the amended naksha be produced for dated 08.10.2018.

*Sd/-
AC1
Morinda”*

Subsequently, Naksha 'Bey' was approved, vide order dated 29.10.2018.

2.1 It transpires that the partition proceedings came to be finalized by Assistant Collector, vide order dated 03.12.2018, however, the said order dated 03.12.2018 was challenged by respondents No. 5 and 6 by filing an appeal before learned Collector, Morinda (in short 'Collector'), who vide order dated 11.04.2019 (Annexure P-5), partly allowed the appeal by setting aside order dated 03.12.2018 and remanded the case to the Assistant Collector with the direction that partition proceedings be carried out by maintaining existing possession of the parties and as per law.

2.2 Upon remand, the Assistant Collector initiated partition proceedings, wherein Naksha 'Bey' was received on the file. On receipt of Naksha 'Bey', objections thereto were called from the respective co-sharers, vide order dated 20.02.2020, passed by Assistant Collector.

2.3 Thereafter, the matter was adjourned to 27.02.2020, 05.03.2020 and 12.03.2020 for filing objections to Naksha 'Bey'; however, it appears that since no-one filed objections to Naksha 'Bey', the same came to be approved by Assistant Collector, vide order dated 12.03.2020 (Annexure P-6). Thereafter, Naksha 'Zeem' was

approved, vide order dated 31.08.2020 (Annexure P-7) and the partition proceedings concluded with the drawing of sanad takseem (instrument of partition) dated 05.11.2020 (Annexure P-8).

2.4 It appears that the aforesaid partition proceedings/orders and also sanad takseem came to be challenged by the petitioner directly before this Court by filing a civil writ petition (CWP-21992-2022), however, the same was withdrawn with liberty to avail alternate remedy of filing a revision petition, vide order dated 11.10.2022 (Annexure P-9).

2.5 Thereafter, the petitioner filed a revision petition (ROR-91-2023) before learned Financial Commissioner alongwith an application for seeking condonation of delay of 819 days.

2.6 The learned Financial Commissioner, vide impugned order dated 17.09.2024 (Annexure P-12), has dismissed the revision petition (ROR-91-2023), filed by the petitioner.

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

4. Learned counsel for petitioner submits that the Assistant Collector has erred in law and facts in conducting the partition proceedings inasmuch as that the partition proceedings have been conducted at the back of the petitioner. It is submitted that no opportunity was afforded to the petitioner to raise objections during the partition proceedings. It is further submitted that an area of 3 Marla has been wrongly deducted from the holding of the petitioner for providing gair mumkin rasta and that the petitioner has not been allotted land abutting the road as per his due entitlement. It is next submitted that the land

allotted to the petitioner is fragmented and of inferior quality as compared to the land, which has been allotted to other co-sharers. It is contended that the petitioner has been allotted land comprised in Khasra No. 113/1 (0-19), which is a gair mumkin area. It is also contended that the learned Financial Commissioner has failed to consider the issues raised before him and has wrongly dismissed the revision petition (ROR-91-2023), filed by the petitioner, vide impugned order dated 17.09.2024 (Annexure P-12).

5. Heard.

5.1 As regards the first contention of learned counsel for petitioner that the partition has been carried out by the Assistant Collector at the back of the petitioner and no opportunity had been afforded for filing objections in the partition proceedings; it is observed from the order dated 17.09.2024 (Annexure P-12), passed by the learned Financial Commissioner that the petitioner had appeared in the partition proceedings, however, he did not file any objection. It is further borne out from the records that even after the matter was remanded by the learned Collector, vide order dated 11.04.2019 (Annexure P-5), the Assistant Collector, vide order 20.02.2020, had clearly recorded that Naksha 'Bey' has been received and the matter was adjourned to 27.02.2020 for filing objections to Naksha 'Bey'. On 27.02.2020, the matter was again adjourned to 05.03.2020 for inviting objections to Naksha 'Bey' and on 05.03.2020, the matter was adjourned to 12.03.2020 for filing objections to Naksha 'Bey', however, none of the parties raised any objection to Naksha 'Bey', accordingly, the Assistant Collector, vide order dated 12.03.2020 (Annexure P-6), sanctioned Naksha 'Bey', which

was followed by Naksha 'Zeem' and partition proceedings concluded with the drawing of sanad takseem dated 05.11.2020 (Annexure P-8). It is further revealed from the order dated 17.09.2024 (Annexure P-12), passed by learned Financial Commissioner that warrants of possession were issued on 17.06.2021, whereupon also signatures of petitioner (Nahar Singh) are available and the same were authenticated by Sarpanch and Chowkidar of village Dhianpura.

5.2 Apparently, the partition proceedings were concluded with the drawing of sanad takseem dated 05.11.2020 (Annexure P-8) and warrants of possession were issued on 17.06.2021, however, the petitioner did not raise any challenge to the partition proceedings/sanad takseem, until the year 2022 when the petitioner directly approached this Court by way of filing a writ petition (CWP-21992-2022) which was dismissed as withdrawn, vide order dated 11.10.2022 (Annexure P-9), so as to avail the remedy of filing a revision petition before learned Financial Commissioner. Thereafter, the revision petition (ROR-91-2023) was filed by the petitioner, which was dismissed, vide order dated 17.09.2024 (Annexure P-12).

5.3 Considering the above, it cannot be said that the partition was conducted at the back of the petitioner and/or that no opportunity was afforded to the parties much less the petitioner to file objections at the relevant stage. Therefore, the aforesaid contentions of the petitioner are rejected.

5.4 As regards the other contentions raised by the petitioner that the area of 3 Marla has been deducted from his share-holding, it is noticeable that as per Clause 8 of the mode of partition that the khal

(water channel) and pahi (passage) shall be provided as per necessity out of joint land and the deduction shall be made as per share for leaving the land for common places, therefore, the petitioner cannot say that 3 Marla area has been wrongly taken from his share-holding to provide passage. Even otherwise, Clause 7 of the mode of partition provides that deficiency to the extent of 2 Marla is liable to be ignored. Accordingly, I find no merit in the said plea of the petitioner and the same is also rejected.

5.5 As regards the contention of the petitioner that he has not been allotted land abutting the road or that the petitioner has been wrongly allotted area comprised in Khasra No. 113/1 (0-19), which is gair mumkin, it is observed that once the petitioner had opportunity to file objections to Naksha 'Bey', which was not availed by him and the proposed Naksha 'Bey' was approved by the Assistant Collector, vide order dated 12.03.2020 (Annexure P-6) and on that basis, Naksha 'Zeem' was prepared and the partition proceedings concluded with the drawing of sanad takseem dated 05.11.2020; at this stage, the petitioner cannot be permitted to turn around and raise objection as regards the deduction of 3 Marla area towards providing common passage to the co-sharers and/or non-provisioning of land abutting road and/or the allocation of shares of land to respective co-sharers in a particular manner.

5.6 Further, as regards the plea of the petitioner that he has been wrongly allotted land comprised in Khasra No. 113/1 (0-19), which is gair mumkin, it is observed from jamabandi for the year 2013-14 that the area of Khasra No. 113 is recorded as 1 Kanal – 18 Marla, out of which

area to the extent of 1 Kanal is recorded as Bagh Barani and on the balance 18 Marla area, the entry is gaim mumkin house.

5.7 Learned counsel for petitioner has failed to show from any material whatsoever that it is the house, which has been allocated to the petitioner and not the 'Bagh Barani' area; as reflected in the revenue records. Therefore, the aforesaid contention is also without any merit and is rejected.

5.8 Further as regards the plea of petitioner that inferior land has been allotted to petitioner; suffice it to say that no material has been placed on record to show that the land under partition was of different value nor any such objection was raised at the relevant time. It appears that the said objection is being raised only for the sake of raising objection and without there being any merit therein. Accordingly, the same is also rejected.

5.9 It is well established that partition can never be carried out with mathematical precision and some adjustments are always required to be made considering various factors like number of co-sharers in the joint land, shape of the land parcel under partition, location of land (whether abutting the road/passage or near to village abadi or town etc.), nature/value of land, source of irrigation, existing possession of the parties, provisioning of passage(s)/water-course(s), construction of hutments/houses etc. There may be other factors as well which may call for carving out of blocks of respective co-sharers, in a particular manner.

6. Considering the totality of circumstances, I find no merit in the instant civil writ petition and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

15.07.2025
sjks

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