

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14083-2025 (O/M)

Date of decision : 16.05.2025

Amritpal Singh and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Prateek Gupta, Mr. Shubham Pathania, Advocates
for the petitioners.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this writ petition filed under Article 226 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 16.06.2021 (Annexure P-9), passed by Assistant Collector 1st Grade, Jalandhar (in short 'Assistant Collector'), whereby the mode of partition was approved.

1.1 A further prayer has been made for setting aside the order dated 10.11.2022 (Annexure P-11), passed by the learned Collector, Jalandhar (in short 'Collector'), whereby an appeal filed by the petitioners against order dated 16.06.2021 (Annexure P-9), was dismissed.

1.2 Another prayer has been made for setting aside the order dated 27.11.2024 (Annexure P-13), passed by Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby a revision petition (ROR-17-2023), preferred by the petitioners, was dismissed.

2. Briefly, petitioners herein filed an application seeking partition of joint land comprised in Khewat No. 202/194, measuring 12 Kanal – 12 Marla (as per jamabandi 2015-16), situated at village Adampur (Hadbast No. 57, Tehsil Jalandhar-1, Adampur, District Jalandhar).

2.1 It appears that in the aforesaid partition proceedings, mode of partition came to be approved on 08.01.2021 (Annexure P-5), however, same was challenged by respondents No. 5, 6 and 8 herein by way of an appeal before learned Collector, who vide order dated 05.03.2021 (Annexure P-7), remanded the matter to the Assistant Collector concerned to pass a fresh order after inspecting the site.

2.2 Apparently, the site was inspected on 07.06.2021 and on the same day, mode of partition was corrected and fresh Naksha 'Arra' and 'Erri' was called, vide order dated 07.06.2021 (Annexure P-8 Colly.). The corrected mode of partition is attached with this petition as Annexure P-9.

2.3 Feeling aggrieved against mode of partition (Annexure P-9), petitioners preferred an appeal before learned Collector, however, same was dismissed, vide order dated 10.11.2022 (Annexure P-11). A further revision petition (ROR-17-2023), preferred by petitioners before learned Financial Commissioner was also dismissed, vide order dated 27.11.2024 (Annexure P-13).

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

4. Learned counsel for petitioners has mainly submitted that the corrected mode of partition (Annexure P-9) does not carry any date

therein, therefore, the proceedings were not carried out in a transparent manner. It is further submitted that the mode of partition has been corrected without affording any opportunity to the petitioners and even the objections thereto were not called. It is next submitted that Assistant Collector concerned has failed to comply with order dated 05.03.2021 (Annexure P-7), passed by learned Collector. Accordingly, it is prayed that impugned orders be set aside and the matter be remanded to learned Assistant Collector concerned for passing a fresh mode of partition.

5. Heard.

6. In this case, initially the mode of partition came to be approved, vide order dated 08.01.2021 (Annexure P-5), however, on an appeal being filed by respondents No. 5, 6 and 8, learned Collector, vide order dated 05.03.2021 (Annexure P-7), remanded the matter to Assistant Collector concerned to pass a fresh order after inspecting the spot.

7. On remand, concededly, spot was inspected on 07.06.2021, as would be apparent from zimni order dated 07.06.2021 (Annexure P-8 Colly.) and on the same day, the amendments were made in the mode of partition and a new mode of partition (Annexure P-9) was framed and fresh Naksha 'Arra' and Naksha 'Erri' were called.

7.1 It is required to be noticed here that order dated 07.06.2021 (Annexure P-8 Colly.), as translated by the petitioners, is not correct one, therefore, the vernacular copy of order dated 07.06.2021 has been seen, which when translated into English, reads as under :-

“ Case file presented. Case was called. Today, there is a strike of ministerial staff of the office of Deputy Commissioner, Jalandhar and entire Punjab, therefore, no court proceedings could be held. The undersigned went to

the spot and inspected the same and thereafter, mode of partition was amended and Naksha 'Arra' and 'Erri' were ordered to be called. File be put up on 07.07.2021 for Naksha 'Arra' and 'Erri' ”

7.2 Upon going through above extracted order dated 07.06.2021 (Annexure P-8 Colly.), it is apparent that the mode of partition came to be amended on 07.06.2021 itself, which is annexed with the writ petition as Annexure P-9.

7.3 Here, I deem it appropriate to juxtapose the provisions contained in mode of partition, which were earlier approved on 08.01.2021 (Annexure P-5) vis-a-vis mode of partition (Annexure P-9), which have been ordered on 07.06.2021 (Annexure P-8 Colly.), which are as under :-

<i>Mode of partition dated 08.01.2021 (Annexure P-5)</i>		<i>Amended mode of partition dated 16.06.2021 (Annexure P-9)</i>	
<u>Sr. No.</u>	<u>Clauses</u>	<u>Sr. No.</u>	<u>Clauses</u>
01.	<i>The partition will be done by removing the possession.</i>	01.	<i>The partition will be done by maintaining the possession.</i>
02.	<i>The portions will be allocated to the parties as under :-</i> <i>(a) The plot of both Amritpal Singh son of Shri Parminder Singh and Gaganpreet Singh son of Shri Parminder Singh will be carved out jointly and it will be separate from the remaining parties.</i> <i>(b) The plot of Sandeep Chabra son of Baldev Raj, Satpal Singh son of Ran Singh, Amarjit Singh son of Punjab Singh and Didar Singh son of Ran Singh will be carved out jointly and separately from the remaining parties.</i> <i>(c) The plot of the remaining parties will be kept joint.</i>	02.	<i>The portions will be allocated to the parties as under :-</i> <i>(a) The plot of both Amritpal Singh son of Shri Parminder Singh and Gaganpreet Singh son of Shri Parminder Singh will be carved out jointly and it will be separate from the remaining parties.</i> <i>(b) The plot of Sandeep Chabra son of Baldev Raj, Satpal Singh son of Ran Singh, Amarjit Singh son of Punjab Singh and Didar Singh son of Ran Singh will be carved out jointly and will be separated from the remaining parties.</i> <i>(c) The plot of the remaining parties</i>

			<i>will be joint.</i>
03.	<i>The partition of the land be done as per good land with good one and bad land with bad one and the land adjoining to the road will be partitioned as per share.</i>	03.	<i>The principles of Jamabandi will be given priority.</i>
04.	<i>Fencing and passage will be allocated as per requirement. The trees etc. will be given to the parties to whom the same belong.</i>	04.	<i>The land inside the boundary will be given to the owner, who possess the boundary wall.</i>
05.	<i>For the adjustment of portions, if there is a slight movement of the possession then this will not be considered as removal of possession.</i>	05.	<i>Fencing and passage will be allocated as per requirement. The trees etc. will be given to the parties to whom the same belong.</i>
06.	<i>The party who has no possession anywhere, keeping in view of Jamabandi, the land will be allocated to him as per his share after making partition of good land out of good one and bad land out of bad one.</i>	06.	<i>For the adjustment of portions, if there is a slight movement of the possession then this will not be considered as removal of possession.</i>
07.	<i>Any owner/buyer who is not shareholder in a khevat, no land will be allocated out of that khevat land while doing the partition. If while implying this principle, the buyer is found to have purchased more than his share then the buyer will be compensated out of the land in another khevat of owner meaning seller.</i>	07.	<i>The party who has no possession anywhere, keeping in view of the Jamabandi, the land will be allocated to him as per his share after making partition of good land out of good one and bad land out of bad one.</i>
08.	<i>Effort will be made for carving out minimum portions for the parties.</i>	08.	<i>Any owner/buyer who is not shareholder in a khevat, no land will be allocated out of that khevat land while doing the partition. If while implying this principle, the buyer is found to have purchased more than his share then the buyer will be compensated out of the land in another khevat of owner meaning seller.</i>
09.	<i>The shortage of 03 marla of land will be ignored.</i>	09.	<i>The shortage of 03 marla of land will be ignored.</i>
10.	<i>The drains, pahi/path will be carved out</i>	10.	<i>The drains, pahi/path will be carved out</i>

	<i>of the joint land. The trees will depend upon the partition.</i>		<i>of the joint land. The trees will depend upon the partition.</i>
11.	<i>The buyer will depend upon the seller. The land which is liable to be allotted to the actual owner/seller at the time of partition, the buyer will get the land out of that land.</i>	11.	<i>The buyer will depend upon the seller. The land which is liable to be allotted to the actual owner/seller at the time of partition, the buyer will get the land out of that land.</i>
12.	<i>In situation of selling or mortgaging the land by any share holder more than his share, the last buyer/mortgagee will be affected.</i>	12.	<i>In situation of selling or mortgaging the land by any share holder more than his share, the last buyer/mortgagee will be affected.</i>
13.	<i>The encumbrance of the mortgage will be on the mortgagor. The right of the bank/mortgagee will be protected. If any party had mortgaged any land then more efforts will be made to allot that land to that same party. But on the basis of good-bad type or due to having land in possession more than the share, if that land is withdrawn from the possession of the mortgagor in this partition then the land which will be with the mortgagor or any other new land is allotted to him by way of partition, the mortgagee will have first charge on that land.</i>	13.	<i>The encumbrance of the mortgage will be on the mortgagor. The right of the bank/mortgagee will be protected. If any party had mortgaged any land then more efforts will be made to allot that land to that same party. But on the basis of good-bad type or due to having land in possession more than the share, if that land is withdrawn from the possession of the mortgagor in this partition then the land which will be with the mortgagor or any other new land is allotted to him by way of partition, the mortgagee will have first charge on that land.</i>
14.	<i>If any party has built up any house or small room/kotha or any other structure etc. in the land under their possession then more efforts will be made to allot this land to that same party but on the basis of good-bad type or due to in possession of more than the share, this structure is found withdrawn his possession through this partition then the reasonable compensation in lieu of this structure will be got provided to that party from another party.</i>	14.	<i>If any party has built up any house or small room/kotha or any other structure etc. in the land under their possession then more efforts will be made to allot this land to that same party but on the basis of good-bad type or due to in possession of more than the share, this structure is found withdrawn his possession through this partition then the reasonable compensation in lieu of this structure will be got provided to that party from another party.</i>
15.	<i>In situation of written compromise between the parties, the partition will be done as per the compromise.</i>	15.	<i>In situation of written compromise between the parties, the partition will be done as per the compromise.</i>
16.	<i>Before receipt of map 'bai' prepared by</i>	16.	<i>Before receipt of map 'bai' prepared by</i>

<i>the Field Kanungo, if any party wants to get carved out his separate portion then that party can request regarding carving out separate partition by filing an application in this Court.”</i>	<i>the Field Kanungo, if any party wants to get carved out his separate portion then that party can request regarding carving out separate partition by filing an application in this Court.”</i>
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7.4 A perusal of above extracted chart would show that the clauses of the earlier Mode of Partition and the amended Mode of Partition are almost the same, the only change, which has been brought about is that in the earlier mode of partition, approved on 08.01.2021 (Annexure P-5), it was provided in Clause (1) that the partition would be carried out by disturbing the possession, whereas as per amended mode of partition (Annexure P-9), it has been provided that the partition be carried out by keeping the possession intact. Further, in Clause (6) of amended mode of partition (Annexure P-9), it has been provided that for carrying out the adjustment of blocks, in case some possession is disturbed then same shall not be considered as 'disturbing possession'. Still further, in Clause (7) of amended mode of partition (Annexure P-9), it has been provided that in case any of the party is not in possession anywhere then he shall be provided land after partitioning the same keeping in view his share recorded in the jamabandi by allotting him land as per its quality i.e. 'good for good land' and 'bad for bad land'.

7.5 It may also be noticed here that the petitioner while submitting reply dated 23.12.2020 to the objections raised against the earlier mode of partition; had specifically pleaded as under:-

“1. That para no. 1 of the on merits is also wrong, incorrect and vehemently denied. The proposed mode of partition is just and proper and legal. It is mentioned here that the portion of the land in partition application is

abutting on the road, which is more valuable, the land should be partitioned quality-wise as per their shares. That each co-sharer is entitled to land as per his entitlement out of superior/commercial/most valuable land. Thus this Hon'ble Court after going through the well-settled principle of law, decided that the land should be partitioned quality-wise, by disturbing the possession as per the shares of parties."

8. In my considered view, since only one clause i.e. Clause (1) in the earlier mode of partition dated 08.01.2021 (Annexure P-5) has been changed, however, when we read Clause (1) of earlier mode of partition dated 08.01.2021 (Annexure P-5) with Clause (6) and Clause (7) of amended mode of partition dated 16.06.2021 (Annexure P-9), the affect of Clause (1) gets neutralized. Accordingly, amended mode of partition (Annexure P-9) does not call for any interference by this Court and the same is hereby maintained. Let the partition proceedings continue as per the amended mode of partition (Annexure P-9) in accordance with law.

9. Resultantly, the instant civil writ petition fails and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

16.05.2025
sjks/Himani

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No