



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

CWP-32116-2024 (O&M)
Date of decision :15.01.2025

JAI BHAGWAN

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Verma, Advocate
for the petitioner.

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

HARSH BUNGER, J. [ORAL]

Petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari*, for setting aside the order dated 04.09.2024 (Annexure P-11); vide which, the Deputy Commissioner, Rohtak has directed the petitioner to file a case in a Competent Court for cancellation of Mutation no.9276 (Annexure P-4), which is stated to be entered/sanctioned on 21.07.2003, in view of the instrument of partition dated 10.12.2002 (Annexure P-2) issued by the learned Assistant Collector Ist Grade, Sampla.

2. Briefly, respondent Nos.6 to 8 filed an application seeking partition of joint land measuring *214 kanals-18 marlas*, situate at Village Hasangarh, Tehsil Sampla, District Rohtak, wherein the petitioner was also one of the co-sharers. It appears that the afore-said partition proceedings

culminated into the drawing of an instrument of partition dated 10.12.2002.

It transpires that the *Sanad Takseem* came to be challenged by respondent No.9 (Smt. Savita d/o Sh. Manohar Lal), by way of filing an appeal before the learned Collector, Rohtak, who vide his order dated 24.12.2003 (Annexure P-6) set aside the partition proceedings/*Sanad Takseem* dated 10.12.2002 and remanded the case back to the learned Assistant Collector, for carrying out the partition proceedings afresh.

2.1 It appears that upon remand, the partition application was dismissed for non-prosecution and thereafter, respondent No.9-Smt. Savita submitted an application seeking restoration of possession, which came to be decided by the learned Assistant Collector 1st Grade, Sampla vide order dated 09.12.2005 (Annexure P-10) by observing as under :-

“Case file put up, parties were called. None is present amongst the applicant, respondent no.3 (appellant) is present along with counsel. The counsel has requested that the instrument of partition has been cancelled in the appeal and an application under section 144 C.P.C. was filed on 06.08.2004 that the parties be restored as they were before final partition order. This fact was considered and I reached at this conclusion that the mutation of partition, copy of which is produced by respondent no.3, is necessarily required to be cancelled due to setting aside of the entire partition proceedings in appeal in order to restore the parties at earlier position. Therefore, it be written to the field staff for proceedings to cancel the mutation, so that the revenue record be restored. Respondent no.3 (Appellant) made statement that I do not want to continue the partition proceedings rather the revenue record be restored as it was earlier. Therefore, the file is consigned in view of above statement of party.”

2.2 It is borne out from the paper book that the petitioner submitted an application dated 03.05.2024, seeking cancellation of

Mutation No.9276, to the learned Deputy Collector, Rohtak; however, the same has been disposed of vide letter/order dated 04.09.2024 (Annexure P-11), by observing as under :-

“In reference to your application dated 03.05.2024 on the above subject.

In the abovementioned subject matter, you are informed that inspection was got done by Tehsildar, Sampla. It is mentioned in his report that report was taken from Patwari Halka. According to the report, the Mutation No.9276 of the land describe in the application has been entered on 10.07.2003 and approved on 21.07.2003 on the basis Partition case no.16/N.T. decided on 10.12.2002, which has been incorporated in the Jamabandi for the year 2003-2004. The complainant wants to cancel this partition mutation. According to the application, appeal was filed on 28.07.2003 against case number 16/N.T. in the Court of District Revenue Officer, Rohtak. No any stay order or any other order is found to be entered in the record in relation to the appeal. During the said partition 4 Khewats were carved out, out of which 1 Khewat is for road and drain. During this period, after mutation no.9276, 5 marla land has been acquired from above 3 Khewats and compensation has been given in view of mutation no.9131 and according to mutation no.13636, 6 kanal 14 marla land has been acquired from 3rd Khewat and compensation has been given. In addition to this, in 3rd khewat, in which name of applicant is included, mutations no.9742, 10606, 10817, 10827, 12299, 12424, 12905, 13508, 14088, 14115, 14126 of sales and mutation no.9811 on the basis of gift have been entered and accordingly Suresh Kumar s/o Satnaryan, Rammurti w/o Amar Singh, Pasu s/o Rajneesh, Babli w/o Rohtash, Prakash Devi w/o Suresh Pal, Nirmala w/o Jai Karan, Pratik and Ashish sons of

Satish Kumar and Shree Ram s/o Lakhi Ram have been included as new owners. Record is not in the situation as earlier. Therefore, keeping in view the above, it is not possible to cancel the mutation entered on the basis of partition without order of competent court. Applicant can file application/case in competent court. In this relation, the applicant was called in Tehsil office on 21.08.2024. The applicant got understood above subject and told to file the case before the competent court.”

2.3 In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed here-in-above.

3. Heard.

4. From the facts, as noticed here-in-above, it is apparent that the partition proceedings initiated at the behest of respondents No.6 to 8, herein culminated into the drawing of an instrument of partition dated 10.12.2002. However, on appeal, the same was set aside by the learned Collector and the matter was remanded to the learned Assistant Collector. On remand, the partition application was dismissed for non-prosecution and an application submitted by respondent No.9-Smt. Savita, for restoration of possession was disposed of by the learned Assistant Collector, vide order dated 09.12.2005 (Annexure P-10).

4.1 It is not forthcoming as to what transpired from the year 2005 and after the passing of the order dated 09.12.2005 (Annexure P-10) upto the date when the petitioner submitted his application dated 03.05.2024, seeking cancellation of Mutation No.9276. It appears that the petitioner has woken up from his long slumber.

4.2 Be that as it may, the learned Collector has disposed of the application submitted by the petitioner for cancellation of Mutation

No.9276, by observing that out of the total land under partition, some land stood acquired and even the compensation stood paid and there were various other mutations of sales, gifts etc., in favour of third party, who came to be recorded as owners thereof. Learned Deputy Collector, Rohtak has observed that the record is not in the same situation as it stood earlier and accordingly, the petitioner has been advised to approach the Competent Court, for seeking cancellation of the mutation entered on the basis of instrument of partition.

5. In the peculiar facts and circumstances as noticed here-in-above, I find no merit in the present petition, especially when there has been a complete silence on the part of the petitioner for a long period of more than 20 years.

5.1 That apart, since various subsequent transactions have come into effect in the form of acquisition of land, sale and gift of land, which was the subject matter of partition proceedings and various other persons have stepped into as owners thereof, in my considered view, in case, the petitioner is aggrieved against the entries in the revenue records, then he has an appropriate remedy in terms of Section 45 of the Haryana Land Revenue Act, 1887, which reads as under :-

“45. Suit for declaratory decree by persons, aggrieved by an entry in a record:- If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.”

6. Accordingly, the petitioner, if so advised, may avail his remedy in terms of Section 45 of the Haryana Land Revenue Act, 1887

before the appropriate Forum. Therefore, finding no merit in the present petition, the same is dismissed.

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

January 15, 2025
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(HARSH BUNGER)
JUDGE

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