

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-35238-2024 (O/M)
Date of decision : 29.01.2025

Rakesh Kumar

..... Petitioner

Versus

Financial Commissioner (Revenue), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Shubham Thakur, Advocate
for applicant-petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

CM-1340-CWP-2025

This is an application filed under Section 151 CPC for placing on record certain documents as Annexure P-15 to Annexure P-18.

For the reasons mentioned in application, same is allowed and certain documents (Annexure P-15 to Annexure P-18) are taken on record subject to all just exceptions.

Application is accordingly disposed of.

CWP-35238-2024

1. Petitioner (Rakesh Kumar) has filed this writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 30.06.2015 (Annexure P-8), passed by Assistant Collector 1st Grade, Mukerian (in short 'Assistant Collector'); order dated 18.09.2017 (Annexure P-13),

passed by Collector, Mukerian (in short 'Collector') and order dated 12.05.2023 (Annexure P-14), passed by Financial Commissioner (Revenue), Punjab (in short 'Financial Commissioner').

1.1 Another prayer has been made for setting aside the sanad takseem (instrument of partition) dated 21.09.2015 (Annexure P-12).

2. Briefly, petitioner (Rakesh Kumar) alongwith respondents No. 12 to 16 filed five separate applications for partition of joint land comprised in five khewats namely :-

<u>Khewats No.</u>	<u>Area</u>
55/50 56/51	4 Kanal – 18 Marla 44 Kanal – 17 Marla
57/52	28 Kanal – 0 Marla
58/53	58 Kanal – 8 Marla
59/54	37 Kanal – 8 Marla

2.1 The aforesaid partition applications were filed on the basis of jambandi for the year 2008-09 and the land under partition is situated at village Talwandi Kalan, Tehsil Mukerian, District Hoshiarpur. It is noticed that in all the partition applications, a specific prayer was made by the petitioner and respondents No. 12 to 16 that the partition be conducted by clubbing all the khewats.

2.2 In the aforesaid partition proceedings, mode of partition came to be proposed on 26.05.2014 and same was sanctioned, vide order dated 21.08.2014 (Annexure P-2), passed by learned Assistant Collector. The relevant extract of mode of partition (Annexure P-2) reads as under :-

“1. Partition would be executed/conducted after clubbing all the khewats no. 55/50, 56/51, 57/52, 58/53, 59/54 (as per jambandi for the year 2008-09).

2. *The Kurah of petitioner no. 1, joint kurah of petitioners no. 2-3, joint kurah of petitioners no. 4-3, and kurah of petitioner no. 6 would be prepared separately from rest of petitioners. In the claim petition, in the khewat no. 58/53 the kurah of petitioners no. 1 to 5 joint and separate from all. In the claim petition of khewat no. 57/52, the kurah of petitioners no. 3 to 7 joint and separate from rest of all.*
3. *The partition would be conducted by keeping the possession intact and any kind of fluctuation as per requirement would be solved from the abutting land.*
4. *The bore, garden falls in the land of which party would be placed in the kurah of same party.*
5. *The passage of 2 karam would be made as per requirement.*
6. *The trees etc. would be kept as they are.*
7. *The partition would be carried out in the supervision of Girdawar and Halqa patwari and they would be responsible to produce the documents after completing the partition process from all the aspects.”*

2.3 Thereafter, Naksha 'Arra' was called from field staff. Upon receipt of Naksha 'Arra', objections to same were called, whereupon petitioner (Rakesh Kumar) submitted his objections dated 26.06.2015 (Annexure P-4), the relevant extract of which reads as under :-

- “1. *That the map, documents which have been prepared by Field staff regarding the partition, the same should be amended. The partition be executed by keeping the possession intact.*
2. *Partition be executed after visiting the spot and front be allotted as per respective share.*
3. *It is very difficult to drive my tractor trolley and combine through the passage of 2 karam proposed in*

khasra no. 18/4. Please passage be increased as per requirement near my Kurah.”

2.4 It transpires that the aforesaid objections raised by the petitioner came to be dismissed by learned Assistant Collector, vide order dated 26.06.2015 (Annexure P-3), the relevant extract of which (as reproduced at pages 59 and 60 of this writ petition) reads as under :-

“26.06.2015: case file has presented. Parties were called upon. The counsels came present. Petitioner Rakesh Kumar filed the objections in this regard to documents of partition which were enclosed with case file. The documents of partition have been enclosed with case file on 25.06.2015 prior to filing the objections. Today again the partition documents shown to parties after getting prepared the same. Petitioner Rakesh Kumar said in the serial no. 1 of his objections that partition be executed by keeping the possession intact and after visiting the spot and front be allotted as per respective share. Petitioner was called upon and case file was examined, from which it has been verified that partition has executed by keeping the possession intact and front has granted to petitioner as per his share. In such condition, it would be wastage of time by visiting the spot. The petitioner has raised objection at serial no. 3 that passage of 2 karam has allotted to him. Passing of tractor-trolley and combine is difficult through the passage and wrote to make addition in the passage. This objection of the petitioner is being rejected because court is not in the possession of right to grant the passage of more than 2 karams without the consent of the parties as per the instructions/directions. The statements of Madan Lal Sharma and petitioner No. 2 have already enclosed with the case file in which the field officer has requested to accept the partition documents as word to word and wrote about not

any objection. The case file of partition be produced for decision on 29.06.2015. Sd/- AC-1st Grade.”

2.5 It appears that the petitioner did not prefer any appeal against aforesaid order dated 26.06.2015 (Annexure P-3), whereby his objections to Naksha 'Arra' were rejected and Naksha 'Arra' was approved. On the basis of approved Naksha 'Arra', Naksha 'Erri' was received on the case file and ultimately, vide order dated 30.06.2015 (Annexure P-8), final order of partition was passed and sanad takseem (Annexure P-12) came to be issued on 21.09.2015.

2.6 Apparently, on 18.02.2016, the petitioner preferred an appeal against the final order of partition dated 30.06.2015 (Annexure P-8), however, same came to be dismissed by learned Assistant Collector, Mukerian, vide order dated 18.09.2017 (Annexure P-13), primarily on the ground that after issuance of sanad takseem, the said Court had no jurisdiction in the matter.

2.7 Thereafter, the petitioner preferred a revision petition (ROR-862-2017) before learned Financial Commissioner (Appeals), Punjab, wherein the petitioner challenged the final order of partition dated 30.06.2015 (Annexure P-8); sanad takseem dated 21.09.2015 (Annexure P-12) and also learned Collector's order dated 18.09.2017 (Annexure P-13).

2.8 The aforesaid revision petition (ROR-862-2017) came to be dismissed, vide order dated 12.05.2023 (Annexure P-14), passed by learned Financial Commissioner (Appeals), Punjab.

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. Heard.

5. Only two submissions have been raised on behalf of petitioner; firstly, that the petitioner has not been granted frontage on the passage/road, proportionate to his share in the joint land and secondly, that the possession of the petitioner over the land under his possession has been disturbed.

6. I have considered the aforesaid submissions raised on behalf of the petitioner, however, I do not find any merit in the same. Similar objections were raised by the petitioner before learned Assistant Collector to the proposed Naksha 'Arra', however, said objections came to be dismissed by learned Assistant Collector, vide order dated 26.06.2015 (As reproduced above).

6.1 Evidently, the petitioner did not prefer any appeal against the order dated 26.06.2015 (Annexure P-3), whereby his objections to Naksha 'Arra' were rejected. Accordingly, said order has attained finality and on that basis, subsequent partition papers i.e. Naksha 'Erri' came to be prepared and final order of partition was passed on 30.06.2015 (Annexure P-8) and partition proceedings culminated with the drawing of sanad takseem (instrument of partition) dated 21.09.2015 (Annexure P-12). Therefore, once the petitioner has failed to challenge order dated 26.06.2015 (Annexure P-3), whereby his objections to Naksha 'Arra' were rejected and on that basis, partition proceedings culminated and now at this stage, the petitioner cannot be permitted to

turn around and seek re-opening of partition proceedings, which have been finalized with the drawing of sanad takseem.

7. Keeping in view the above discussion, I find no merit in this petition and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

29.01.2025
sjks

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