

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

CWP No.15757 of 2018
Date of decision : 29.06.2018

Kuldeep Singh

...Petitioner

Versus

Financial Commissioner (Revenue) Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Suresh Singla, Advocate and
Mr. Abhishek Singla, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The petitioner has filed this writ petition for issuing a writ, order or direction especially in the nature of certiorari for setting aside the alleged illegal, non-speaking and non-reasoned impugned order dated 06.06.2018 passed by the learned Financial Commissioner, Revenue Punjab.

The parties were joint owners of the land measuring 185 kanals and 8 marlas. Respondent No.3 filed an application before the Assistant Collector, Ist Grade, Mohali, praying for the partition of the joint land. On notice issued, the petitioner did not file any reply to the application for partition but filed an application for staying the partition proceedings on the ground that part of the land is covered by the constructed houses. It was further pleaded in the application that a Civil Suit is also pending and till the time the question of title is decided, the Revenue Authorities cannot proceed

with the matter. Finding no merit in the application proceeded with the partition proceedings. The proposed Mode of Partition dated 23.11.2016 was put to the parties. Both the counsel made a statement on 23.11.2016 that they have no objection to the proposed Mode of Partition and the proposed Mode of Partition be sanctioned. The order dated 23.11.2016 is extracted as under:-

“Present counsel for the parties

File is presented. Counsel for both the parties got recorded their respective statements for approving the proposed Mode of Partition. Since both the parties have no objection, proposed Mode of Partition is sanctioned. One copy of proposed Mode of Partition be sent to filed staff annd Naqsha Aara/Irri be called. File be presented on 28.12.2016.”

It is apparent that the counsel agreed that since there was no dispute, therefore, *Naqsha Aara* and *Irri* be called. *Naqsha Aara* and *Irri* prepared by the Revenue Authorities was received by the Court on 22.02.2017 and the case was adjourned permitting the parties to file the objections. The order dated 22.02.2017 is extracted as under:-

“Present counsel for the parties.

File is presented. Naqsha Aara/Irri have been received. File be presented on 8.3.2017 for objections.”

The Patwari of the area submitted a report on 01.03.2017 indicating that the land comprised in various khasra numbers cannot be partitioned as the land is covered by the houses and trees. *Naqsha Aara* and *Irri* as received were shown to both the parties who were represented by the counsel. Both the counsel alongwith the parties made a statement in the

Court on 08.03.2017 that they do not wish to file any objection and *Naqsha Aara* and *Irri* be approved. The order dated 08.03.2017 is extracted as under:-

“8.3.2017

Present:- Both the parties alongwith their counsels.

File is presented. Naqsha Aara/Irri have been received. Same is shown to both the parties. Counsel for both the parties got recorded their respective statements taking the Naqshas to be correct since parties have no objections against Naqsha Aara/Irri, the same are approved without any further amendment. Order is pronounced in open court. Typed order in Punjabi language is attached alongwith.”

Pursuant thereto, *Naqsha Aara* and *Irri* were approved and the case was adjourned for preparation of the *Sanad Taksim* which was prepared on 11.04.2017 after waiting for statutory period for filing the appeal.

The petitioner directly filed a revision petition under Section 16 of the Punjab Land Revenue Act, 1887, as applicable to the State of Punjab on 13.09.2017. Learned Financial Commissioner entertained the revision petition and after considering the objections of the petitioner, dismissed the revision petition by a detailed order dated 06.06.2018. This order has been challenged before this Court in the present petition.

The petitioner has been heard at length.

Learned counsel for the petitioner has submitted that the revision directly before the Financial Commissioner was maintainable as the *Sanad Taksim* has been prepared on 11.04.2017. He further submitted that the order of partition is bad for partial partition. He further submitted that

agricultural land comprised in Rectangle No.3 and Khasra Nos.26 and 28 have not been partitioned. He submitted that the petitioner had raised such argument before the Financial Commissioner. However, the same has not been dealt with.

Learned Financial Commissioner has not dismissed the revision petition on the ground that it is not maintainable. The revision petition has been decided on merits.

With respect to second submission of the learned counsel for the petitioner, it may be noted that the Financial Commissioner has noted after perusal of the record that some part of the land sought to be partitioned was *gair mumkin* land. The Financial Commissioner has held that the aforesaid *gair mumkin* land has to be excluded as the Revenue Authorities do not have jurisdiction to partition the *gair mumkin* land. The Financial Commissioner has also noted that the petitioner did not file any objection either against the Mode of Partition or when *Naqsha Aara* and *Irri* were prepared before the Court. He has further noted that no appeal was filed by the petitioner at an appropriate stage.

As noted while noticing the facts, it is apparent that when *Naqsha Aara* and *Irri* were prepared by the Revenue Authorities and presented before the Court, the Court granted the liberty to the parties to file the objection vide order dated 22.02.2017. The land sought to be allocated to each of the petitioner was specified. Land comprised in Rectangle No.3, Khasra Nos.26 and 28 were not part of the proposal. The land which was under *gair mumkin* houses was separately depicted whereas the agricultural land available was depicted separately. In *Naqsha Irri*, Annexure P-9, the

areas sought to be allocated/allotted to each of the co-sharer was proposed. As noted above on 08.03.2017, the parties alongwith their counsel made a statement before the Court to the effect that they do not have any objection to the acceptance of *Naqsha Aara* and *Irri*. In these circumstances, *Naqsha Aara* and *Irri* were accepted and the *Sanad Taksim* was ordered to be prepared. It was after a period of five months of the preparation of *Sanad Taksim*, when the revision was filed before the Financial Commissioner.

In the considered view of this Court, there is no force in the submissions of the learned counsel for the petitioner for two reasons, firstly, once an opportunity was given to the petitioner to file the objection, however he made a statement to the effect that the parties do not have any objection if *Naqsha Aara* and *Irri* are accepted and the partition is ordered accordingly. The petitioner is debarred now from challenging the *Naqsha Aara* and *Irri*. Secondly, the learned Financial Commissioner has clearly noted that the area under houses and *gair mumkin* land has been excluded from the partition. It is not disputed before this Court that certain area is *gair mumkin* land and under the houses.

Learned counsel for the petitioner has very ably tried to convince this Court that the order under challenge is perverse. He has submitted that the petitioner has also filed the written arguments before the Financial Commissioner and has pointed out that two khasra numbers i.e. Khasra Nos.3//26 (7-15) and 3//28 (12-10) as mentioned in the written arguments at Page 86 of the paper book have not been included while ordering the partition. However, on careful perusal thereof, it may be noted that once the petitioner did not at an appropriate stage file objections and

rather accepted *Naqsha Aara* and *Irri*, which clearly depicted the land which was proposed to be allotted, the petitioner at this stage cannot be permitted to raise the contention. The writ petitioner after having given a consent for accepting *Naqsha Aara* and *Irri* is estopped from challenging the same particularly when *Sanad Taksim* (partition deed) has been prepared.

Keeping in view the aforesaid, the Revenue Authorities have correctly excluded the area covered by *gair mumkin* land and under the houses.

In view thereof, there is no ground to interfere with the impugned order dated 06.06.2018 passed by the learned Financial Commissioner.

Accordingly, the present writ petition is dismissed.

29.06.2018

Pawan

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No