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

CWP-19073-2023

Date of Decision: August 31, 2023

Mahabir Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.S.P.Arora, Advocate
for the petitioners.

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RAJESH BHARDWAJ, J.(ORAL)

Petitioners have approached this Court praying for issuance of a writ in the nature of certiorari for quashing the order passed by respondent No.2, dated 03.08.2023, Annexure P-11, and order dated 20.04.2022, Annexure P-8, passed by respondent No.3 dismissing the revision petition preferred by the petitioners without advancing any reason and without affording the proper opportunity of hearing. It is further prayed to issue directions to the respondents not to interfere in the peaceful possession of the petitioners. Petitioners have also prayed to stay the operation of the impugned orders dated 03.08.2023 and 20.04.2022, Annexures P-11 and P-8, respectively.

Adumbrated facts of the case are that two partition applications for partition of the land, i.e. one bearing Khewat No.138, measuring 425K-01M and another pertaining to Khewat No.139, measuring 353K-13M situated in village Arjan Khurd, Tehsil Thanesar, District Kurukshetra were

filed by respondents No.1 to 5 in the year 2014. Petitioner No.1 alongwith his father put in appearance and filed their written statement and after recording the statements of the parties, mode of partition was suggested and finalised. The petitioners, after purchasing the land in the year 2006, constructed a residential house, cattle shed, tractor parking and other ancillary units to facilitate the farming. After about 17 years, the partition proceedings have been challenged. *Naksha Bay* was prepared on the basis of partition to which the objections were filed by the respondents, which were dismissed by the Assistant Collector Ist Grade, vide order dated 08.09.2016. The respondents filed an appeal against the same before the Collector, which was also dismissed by the Collector, vide order dated 09.03.2017. Feeling aggrieved, four revision petitions were filed by the respondents before the Commissioner, Ambala Division Ambala, which were decided on 20.04.2022 and the learned Commissioner remanded the case to the Assistant Collector Ist Grade to prepare a fresh *Nakhsa Bey* and thus set aside both the orders, dated 08.09.2016 and 09.03.2017, passed by learned Assistant Collector Ist Grade and the Collector, respectively. Being aggrieved, the petitioners filed ROR No.512-2022-23 on 22.07.2022. In the meantime, the petitioners also filed CWP No.27105-2022 for seeking direction to the respondents to hear the appeal. However, the Financial Commissioner dismissed the revision petition vide order dated 03.08.2023. Aggrieved by the same, the petitioners are before this Court by way of present petition.

Counsel for the petitioners has vehemently contended that partition proceedings were initiated at the behest of respondents No.1 to 5

and the respondents duly participated in the same. He has submitted that the objections filed by them were also considered and rejected. *Naksha Beh* was prepared and thus, the partition proceedings were finalised after following the due procedure and in accordance with the mode of partition, as prepared. However, the respondents challenged the same after an unexplained delay. He submits that learned Divisional Commissioner accepted the four revision petitions by ignoring the facts and circumstances on record and, thus, has illegally accepted the same by setting aside the well reasoned order and thus illegally remanded the case to learned Assistant Collector Ist Grade vide impugned order, dated 20.04.2022. He submits that aggrieved by the same, other petitioners filed ROR No.512-2022-23, however, the learned Financial Commissioner by assigning no reason, dismissed the same by passing a cryptic impugned order, dated 03.08.2023. It is submitted that the impugned order, being against the evidence on record and in violation of settled principles of law, deserves to be set aside.

Heard.

After hearing counsel for the petitioners and perusing the record, it is apparent that partition proceedings were initiated at the behest of respondents No.1 to 5 and the respondents duly participated in the same. The objections filed by them were also considered and rejected. *Naksha Beh* was prepared and the partition proceedings were finalised after following due procedure and in accordance with the mode of partition, as prepared. Then the respondents challenged the same before the Commissioner Ambala Division, Ambala, by way of filing four revision petitions and the same were accepted by the Commissioner, vide order dated

20.04.2022. The ROR filed by the petitioners before the learned Financial Commissioner has been dismissed. However, a perusal of the impugned order passed by the Divisional Commissioner, Ambala, dated 20.04.2022 shows that learned Divisional Commissioner heard counsel for both the sides and had perused the record before passing the impugned order. It has been observed that it is an admitted fact that land, which was subject matter of the partition in both the Khewats, is in two compacts. One compact is abutting the main road having more valuable land and the other compact is abutting the Markanda river, which was a flood area and thus, the land in this compact is of less value. It was found from the record that co-sharer Mahavir Singh etc. were not given any land in the compact which was of less value and thus, the partition proceedings concluded were totally in contravention of the terms and conditions of the mode of partition. Besides this, it is also evident from the record that specific khasra numbers have been sold out of the joint Khewats before partition, which is totally against the settled principle of law. Finding the procedure adopted in partitioning the land wrong, the revision petitions filed by the respondents were accepted and the case was remanded by the learned Divisional Commissioner to the Assistant Collector Ist Grade for deciding the partition proceedings afresh, after adhering to the settled principles of law to meet the ends of justice. ROR-512-2022-23 filed by the petitioners was dismissed by learned Financial Commissioner by simply observing that the learned Commissioner had passed the well reasoned order and thus, the same requires no interference. There is no gain saying that the order passed by learned Financial Commissioner is cryptic, however, this Court finds that the

impugned order passed by the Commissioner is definitely a reasoned order, which has been affirmed by the learned Financial Commissioner. This Court finds that in the reasoning given by the Commissioner, the partition proceedings were directed to be decided afresh to meet the ends of justice and thus, this Court would not prefer to go into the question that the learned Financial Commissioner has not passed a detailed order when the remand, as held by the Commissioner, has been upheld by the learned Financial Commissioner. In the considered opinion of this Court, the view taken by both the authorities would meet the ends of justice only by initiating the partition proceedings afresh.

Thus, finding no merit in the petition, the same is hereby dismissed. However, keeping in view the overall facts and circumstances of the case, the parties are directed to appear before the learned Assistant Collector, who would decide the matter expeditiously preferably in three months from the date of appearance of the parties, in accordance with law.

August 31, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |