
(2007) 05 P&H CK 0214

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14750 of 2004

Amar Khan and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Citation : (2009) 1 RCR(Civil) 741

Hon'ble Judges : P.Sathasivam, J and Rajiv Bhalla, J

Advocate : Mr. P.K. Gupta, Advocate.For the Respondents No. 1 and 2, Mr. N.D.S. Mann, Addl. A.G. Punjab, Mr. R.S. Chauhan, Advocate, Mr. Narinder Hooda, Advocate.For the Respondents No. 7 to 9, Mr. Narender Lucky, Advocate., Advocates for appearing Parties

Judgement

Rajiv Bhalla, J.—Prayer in the present writ petition is for the issuance of a writ in the nature of certiorari for quashing the order, dated 16.12.2003 (Annexure P7), whereby respondent No. 2 prepared Sanad Partition.

2. Respondents No. 3 and 4 filed an application, before the Assistant Collector Ist Grade (Tehsildar), Kharar, District Ropar, for partition of land, jointly held by them, with the petitioners. The Assistant Collector Ist Grade called upon the Kanungo Halqa to prepare a NakshaB and the same was produced by Kanungo Halqa on 11.9.2001. The petitioners filed objections. Thereafter, the Assistant Collector Ist Grade rejected NakshaB and directed the preparation of a fresh NakshaB. Accordingly, a fresh NakshaB was prepared and the petitioners again filed objections. Vide order, dated 10.6.2003 (Annexure P5), respondent No. 2 directed the Kanungo Halqa to submit a report with respect to the objections raised by the petitioners. In compliance with the above order, a report was filed, detailing therein the total gair mumkin land, peerkhana, gair mumkin house, shop, engine, gair mumkin deh, trees, gohara, Taur etc.

3. After considering the objections, the Assistant Collector Ist Grade, vide order dated 16.12.2003, directed the preparation of the final document of partition, namely, the Sanad Takseem. Thereafter, vide order, dated 19.7.2004, the

Assistant Collector Ist Grade ordered implementation of the sanad takseem. On 20.9.2004, the petitioners filed the present writ petition claiming that no appeal was maintainable against the final order of partition.

4. Counsel for the petitioners contends that the revenue authorities committed an error of jurisdiction in proceeding to partition houses. Peerkhana and shops. Their jurisdiction, under the Punjab Land Revenue Act, 1887 is confined to partition of agricultural land. It is contended that the final document of partition has been prepared, in the absence of the petitioners, as they were not present, before the Assistant Collector on the date the Sanad Takseem was prepared. As the impugned order is without jurisdiction the present petition be accepted.

5. Counsel for the respondents vehemently deny the aforementioned facts. It is contended that the order, directing drawing up of the final document of partition, namely the Sanad Takseem was passed in the presence of counsel for the parties. This fact is specifically recorded in the impugned order. It is further contended that the houses, shops and peerkhana have not been partitioned. The houses etc. have been assigned to the share of cosharers, who constructed them, as has been done with respect to shops. It is further argued that as housed etc. have not been partitioned, but have been assigned to the respective share holders, the impugned order does not suffer from any error of jurisdiction. As regards, the contention that the petitioners were not heard, before the impugned order was passed, it is contended that a perusal of the impugned order discloses the presence of the petitioners counsel. It is further contended that apart from a bald statement that the petitioners were not heard, the petitioners have failed to place on record any material to cast any doubt about the presence of the petitioners counsel before the Assistant Collector Ist Grade.

6. Another argument pressed into service, is that an order, directing the drawing up of the document of final partition namely, the Sanad Takseem is appealable under the provisions of the Punjab Land Revenue Act (for short herein after referred to as "the Act" and therefore the petitioners be relegated to the remedy of filing an appeal, before the Collector.

7. We have heard learned counsel for the parties and perused the paper book.

8. As regards the plea of alternative remedy, as the petition has been pending consideration since 2004. it would not be appropriate to relegate the petitioners to the remedy of filing an appeal revision under the provisions of the Act. Even otherwise in our considered opinion. the provisions of the Act do not envisage the filing of an appeal against the preparation of the Sanad Takseem. This however would not bar an aggrieved person from invoking the jurisdiction of the Court under Articles 226/227 of the Constitution of India. or that of the Financial Commissioner under Section 16(i) of the Act, which reads as follows :

"16. Power to call for examine and revise proceedings of Revenueofficers. (1) The Financial Commissioner may at any time call for the record of any may case pending before or disposed of by any Revenueofficer subordinate to him."

9. Section 16(1) of the aforementioned Act empowers the Financial Commissioner to call for the record of any case pending before or disposed of by any revenue officer subordinate to him. These powers, in our considered opinion would take within their ambit challenge to a Sanad Takseem. We are, therefore of the opinion that the petitioners could have filed an appropriate petition before the Financial Commissioner. However in view of the fact that the present writ petition has been pending since 2004, we proceed to adjudicate the same on merits.

10. The first contention urged namely that the impugned order was passed in the absence of the petitioners and or their counsel. is factually incorrect. In order to emphasize the aforementioned conclusion the impugned order as translated by counsel for the petitioners. Is reproduced herein below :

"File presented today, case called counsel for parties are present on dt. 27.11.2003 the undersigned inspected at the spot and it was found that the field staff which has prepared the NakshaEx and presented in the Court and the same was according to spot. Latter on whatever amendment has been done due to that both the parties are not satisfied and if partition is made as per that site plan then there is no objection to the parties. Hence as per spot the site plan produced by field staff as on 11.9.2001 to the Court is correct and is accepted. Counsel for the parties are present. Order is announced. Counsel for the parties are directed that after the period of appeal both the parties can get the Sanad Takseem."

11. The impugned order clearly records the presence of counsel for the parties. It is also recorded that on 27.11.2003. when the site was inspected, counsel for the parties were present. In the absence of any material to infer that the aforementioned facts recorded in the orders were incorrectly recorded we have no option but to hold that the impugned order was passed in the presence of the petitioners counsel. A presumption of truth attaches to orders passed in judicial quasi judicial proceedings.

12. As regards the other contention that the revenue authorities had no jurisdiction to order partition of the houses, the peerkhana and the shops, suffice it to say, and as specifically pleaded by the respondents in their written statements, the revenue authorities have not partitioned houses peerkhana or shops. The houses have been assigned to cosharers who constructed them. The peerkhana has fallen to the share of one on of the co sharers. The shops have also been similarly assigned. Thus the petitioners contention that the revenue authorities proceeded to partition property other than land is incorrect.

In view of what has been noticed herein above the present petition is dismissed with no order as to costs.