

(2020) 01 P&H CK 0166

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12319 Of 2015 (O&M)

Kanwar Lal

APPELLANT

Vs

Financial Commissioner, Haryana And Others

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Punjab Land Revenue Act 1887 — Section 16

Citation : (2020) 01 P&H CK 0166

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : P.R. Yadav, Harkesh Kumar, B.K. Bagri

Final Decision : Dismissed

Judgement

Sudhir Mittal, J.

This judgment shall dispose of the aforementioned writ petition and the connected contempt petition.

The petitioner and the private respondents are brothers being sons of Ram Kishan. The dispute between them is regarding partition of their joint holding measuring 2226 kanal 15 marlas.

Respondent No.5-Bishan Devi widow of Kailash Chand son of Ram Kishan moved an application dated 30.10.2002 for partition of the joint holding. The petitioner filed a reply thereto and raised a preliminary objection that the land stood partitioned in the year 1975 and that parties are in their respective individual possession. The Assistant Collector, First Grade, Dharuhera, proposed a mode of partition (Annexure P-3) inter alia providing therein that possession, type of land and cultivation be kept in mind, the area in which a party had constructed a tubewell be given to it and area falling on road/village be given as per share. Spot inspection was conducted on 15.6.2004 and the possession of respective parties was verified. On the same day, parties were heard and objections were considered. The objection that possession had not been respected, was rejected

on the ground that certain adjustments were necessary to give effect to the condition of providing area adjoining the road and the village in accordance with respective shares. Naksha Bey was sanctioned on the same day and Naksha Zeem was called for 23.7.2004. Thereafter, the matter remained pending for three years and another spot inspection was conducted on 5.4.2007. Directions were given to prepare amended Naksha Bey on 7.8.2008. Amended Naksha Bey was presented on the same day and was accepted. Naksha Zeem was called for 24.10.2007. It was, however, sanctioned on 14.11.2007 and sanad takseem was issued thereafter.

Thereafter, Bishan Devi-respondent No.5 and Sewa Ram-respondent No.7 filed two separate appeals challenging order dated 16.5.2007 and 26.9.2007. The appeals were allowed vide order dated 16.2.2009 and the orders impugned therein were set-aside. The matter was remanded to the Assistant Collector, First Grade with a direction to requisition Naksha Bey once again. Consequently, Naksha Bey was again called for and sanctioned on 22.1.2013. The petitioner challenged the aforementioned order by way of appeal, but the same was dismissed. Revision before the Financial Commissioner was also dismissed. Another sanad dated 10.2.2015 was issued. Hence, the present writ petition has been filed.

The first and foremost argument of learned counsel for the petitioner is that earlier, a sanad takseem had been issued, a copy of which has been placed on record as Annexure P-11. Thereafter, the appeals filed by Bishan Devi-respondent No.5 and Sewa Ram-respondent No.7 challenging order dated 16.5.2007 and 26.9.2007 were not maintainable. Order dated 16.2.2009 passed thereupon was without jurisdiction as were all subsequent proceedings. After preparation of sanad takseem, the same could have been challenged only before the Financial Commissioner or before this Court and any orders passed before that could not have been challenged by way of appeal. It has also been argued that the mode of partition has been violated as the petitioner has not been granted any frontage on the main road, possession has been distributed and only one marla of land in khasra No.22, where the tubewell of the petitioner exists, has been given to him. It has also been argued that this Court had ordered status quo regarding possession on 1.7.2015 and the petitioner has been dispossessed thereafter. Thus, the private respondents also deserve to be proceeded against under the Contempt of Courts Act, 1971.

On behalf of the private respondents, it has been argued that consequent to issuance of sanad on 10.2.2015 warrants of possession dated 8.4.2015 were issued and mutation of partition was entered on 3.6.2015 after possession was transferred on 18.5.2015. The report of transfer of possession dated 18.5.2015 is on record. The transfer of possession is also corroborated from the statement of Girdawar Halqa dated 16.10.2015 and the statement of Patwari Halqa, which is of even date. Photographs showing transfer of possession are on record as Annexure R5/11. The orders impugned in the writ petition are legal and valid.

The petitioner never objected to the maintainability of the appeals filed against order dated 26.9.2007 (Annexure P-9). He also did not challenge/object to the maintainability of the proceedings post remand. Thus, the petitioner has waived his right, if any, to challenge the said proceedings. There is no violation of the mode of partition and the writ petition deserves to be dismissed.

The primary argument of learned counsel for the petitioner is that before remand sanad takseem (Annexure P-11) was issued and thereafter, no challenge could have been made to orders passed during the pendency of the partition proceedings. Sanad takseem could only have been challenged by way of a revision petition or by way of a writ petition but the same has not been done, order dated 16.2.2009 passed by the Collector accepting the appeals of Bishan Devi and Sewa Ram was without jurisdiction. The subsequent proceedings taken by the Assistant Collector, First Grade were also without jurisdiction and a nullity. Maintainability of proceedings can be challenged at any stage and consequently, writ petition deserves to be allowed on this ground alone. In support of his argument, learned counsel for the petitioner has relied upon *Amar Khan and others Vs. State of Punjab and others*, 2009(1) RCR (Civil) 741, wherein, it has been held that an order of preparation of sanad is not appealable and can only be challenged under Section 16 of the Punjab Land Revenue Act 1887 before the Financial Commissioner. A single Bench judgment in case of *Krishan Vs. State of Haryana and others*, 2009(4) RCR (Civil) 353, has also been relied upon to argue that the sanad can also be challenged by way of a writ petition. A judgment of the Supreme Court in *The State of Rajasthan Vs. Rao Raja Kalyan Singh (dead) by his legal representatives* 1971 AIR (SC) 2018, has been cited in support of the proposition that the maintainability of a suit can be objected to at any stage.

The proposition that a sanad can only be challenged by way of a revision petition under Section 16 of the Punjab Land Revenue Act, 1887, before the Financial Commissioner or by way of a writ petition before this Court is well established. The question, however, is whether the petitioner can be permitted to argue that the order of the Collector dated 16.2.2009 allowing the appeals of Bishan Devi and Sewa Ram was without jurisdiction, although, he never objected to the maintainability of the appeals. Similarly, it has to be seen whether the petitioner can challenge the subsequent proceedings on the ground that they were a nullity, though, he never objected to the said proceedings. An appeal before the Collector could have been objected to after the same was filed. If such an objection had been raised, it may have been held that post issuance of sanad takseem, the appeal was not maintainable. However, it cannot be said that the Collector had no inherent jurisdiction to hear and decide an appeal in a partition case. The appeal being not maintainable and the Collector having no inherent jurisdiction, are two different issues. If the Collector had no jurisdiction to hear an appeal in a partition case, learned counsel for the petitioner would be correct in submitting that the order was without jurisdiction and thus, a nullity. The appeal was definitely not maintainable and the petitioner should have objected to its maintainability, at that time. Having not do so, it has to be held that the

petitioner waived his right to object to its maintainability. Consequently, at this stage, he cannot argue that the appeal was not maintainable. Similar is the case regarding subsequent proceedings held before the Assistant Collector, First Grade. The judgment in Rao Raja Kalyan Singh's case (supra), is not applicable. In that case, the High Court had not found the suit of the plaintiff to be not maintainable on the ground that no specific plea had been taken in the written statement. Under the circumstances, the Supreme Court held that the plea of maintainability is a legal plea and even if, no specific objection is taken thereto, the same can be argued. This proposition is not attracted in the present case. The judgment would help the petitioner in case he had set up the same before the learned Collector without raising an objection in writing to the maintainability of appeal.

The next argument of learned counsel for the petitioner is that the mode of partition had been violated. The violations alleged have been referred to earlier. So far as, the issue of frontage on the main road is concerned, a reference needs to be made to the specific condition in this regard in the mode of partition. The condition is 'area falling on the road/village would be given as per the share.' This implies that the parties would get land in the village and adjoining the road based upon their respective shares. A copy of the amended Naksha Bey has been placed on record as Annexure P13/A. According to the said plan, the petitioner has been provided complete khasra No.62/4, which is within the village. That khasra No.62/4 is part of village abadi is corroborated by Annexure R5/16, which is google map of the area. An affidavit dated 26.9.2018 is also on record stating that the rate of land upto the depth of two killas of road is about Rs.27,50,000/- per acre, whereas, the rate of land in the village abadi is Rs.2,80,72,000/- per acre. The petitioner has been allowed 26 kanals, 7 marlas within the village abadi and thus, he got more valuable land. There is no specific denial to this averment by the petitioner and thus, it cannot be said that there is any violation of the mode of partition. The second issue raised in this regard is that only one marla of land has been given in khasra No.22/4, whereas, the petitioner sunk his tubewell within said khasra No.22/4 and thus, the entire khasra should have been given to him. This argument also cannot be accepted. As per the mode of partition, the area where a party had constructed his tubewell was to be given to the said party and it is not the case of the petitioner that one marla of land given to him does not lie in khasra No.22/4, where he has sunk his tubewell. The final limb of this argument of learned counsel for the petitioner is that the petitioner has been given land at three separate places. A perusal of the amended Naksha Bey shows that other parties have also been given land at different places. It appears that to complete the area of each party and to ensure that each one of them got land of the same value, the said exercise has been done. Thus, this argument also deserves to be rejected.

Moreover, after remand by the learned Collector, amended Naksha Bey dated 22.1.2013 had been sanctioned, which was challenged by way of appeal. The appeal was dismissed vide order dated 6.3.2016, but it has been recorded

therein that the petitioner was given a chance to chose any one of the four khewats prepared by the Assistant Collector, First Grade, but he did not accept the offer. For this reason also, the petitioner cannot be heard to say that he has been given less valuable land.

For the aforementioned reasons, there is no merit in the writ petition and the same is dismissed. The issue regarding the writ petition having been rendered infructuous as the sanad has been executed and possession has been transferred is not being considered by me as the writ petition has been decided on its merits.

COCP-2753-2015

This contempt petition came to be filed as the petitioner therein alleged that interim order dated 1.7.2015 has been violated by the private respondents. Vide the said order, the parties were directed to maintain possession as obtaining on the date and the allegation is that the petitioner has been dispossessed thereafter.

According to the contempt petition, possession report dated 18.5.2015 was only a paper transaction because possession could not have been taken when crops were standing. After harvesting of rabi crop in March-April 2015, the petitioner had sown crops of cotton, corn and vegetable in April 2015 and the said crop was standing at the spot on 18.5.2015. Thus, the parties continued to remain in respective possession despite the possession report dated 18.5.2015. On 15.6.2015, the private respondents along with gunda-elements came to the land of the petitioner and damaged the crops of the petitioner. An application dated 16.6.2015 was filed before the Superintendent of Police, Rewari regarding the incident. The private respondents also made a counter complaint to the police and with the intervention of other members of the family, a compromise dated 23.6.2015 was reached between the parties in the Police Station. Thus, the parties continued to remain in their respective possession, but the private respondents interfered with the possession of the petitioner once again on 24.8.2015 by enclosing his land with barbed wire fence. Photographs of barbed wire fence have been annexed as Annexure P-16. It has thus, been contended that order dated 1.7.2015 passed by this Court has been violated.

In response, a reply has been filed on behalf of respondent No.6, wherein the allegations made by the petitioner have been denied. Reliance has been placed on the report dated 18.5.2015 of transfer of possession. Photographs dated 18.5.2015 showing physical transfer of possession have also been annexed as Annexure R-6/4. These photographs corroborate the photographs Annexure R-5/11 filed with reply of respondent No.5 in the writ petition.

In the light of the report of transfer of possession dated 18.5.2015 as well as the statements of the Girdawar Halqa and Patwari Halqa dated 16.10.2015 as well as a comparative examination of the evidence on record by way of photographs, it has to be held that possession stood transferred on 18.5.2015. Thus, violation of order dated 1.7.2015 is not made out.

The contempt petition is also dismissed.