
(2016) 03 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 696, 11993 and 18923 of 2014

Mir Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Section 151
Constitution of India, 1950 — Article 226
Punjab Land Revenue Act, 1887 — Section 111, Section 113, Section 114, Section 115, Section 116, Section 117, Se

Citation : (2016) 2 LawHerald 1023 : (2016) 2 PLJ 468

Hon'ble Judges : Rajive Bhalla and Amol Rattan Singh, JJ.

Bench : Division Bench

Advocate : Ashish Chopra, Advocate, for the Appellant; D. Khanna, Addl. A.G., for the Respondent

Final Decision : Disposed off

Judgement

Rajive Bhalla, J.—1. Civil Writ Petition Nos. 696 of 2014, 11993 of 2014 and 18923 of 2014, shall be decided together, though, by passing separate order as there are certain points that are common.

2. Before proceeding to decide the matter, it would be necessary to clarify that Civil Writ Petitions No. 696 and 11993 of 2014 involve challenge to orders directing partition of agricultural land, whereas Civil Writ Petition No. 18923 of 2014 involves challenge to the grant of a licence to develop a part of the land into a colony.

Civil Writ Petition No. 696 of 2014

3. Mir Singh and Rattan Singh, the petitioners, pray for issuance of a writ in the nature of certiorari quashing, order dated 04.12.2013 (Annexure P-18), passed by the Financial Commissioner, Haryana, Chandigarh, dismissing their revision, order dated 19.10.2011, passed, by the Assistant Collector Ist Grade, Sohna,

during partition proceedings and the order dated 02.08.2012 (collectively Annexure P-10) concluding partition proceedings and drawing up the final document of partition, called, the "Sanad Takseem".

4. Counsel for the petitioners submits that partition proceedings are vitiated by illegalities that render the impugned orders and proceedings fraudulent, null and void. Apart from the fact that the proceedings were manipulated by the respondents, the petitioners were not granted adequate opportunity to file objections. The mode of partition, has been violated as instead of granting a consolidated chunk, the petitioners have been allotted land at different places without protecting their possession. Counsel for the petitioners further submits that it is rather surprising that Jaipal, who filed an appeal alleging that the clubbing of two separate khewats is illegal, eventually withdrew the appeal, on 01.08.2012, by stating that there is no order of clubbing. After withdrawal of the appeal, the record was surprisingly received by the Assistant Collector Ist Grade, Sohna, a distance of 40 Kms., on the same day and the "Sanad Taksim" was drawn up and partition proceedings concluded on 02.08.2012, the next day.

5. Counsel for the petitioners further submits that the Financial Commissioner did not examine the record and failed to detect errors and the fraud committed by the Assistant Collector Ist Grade. The land which was in exclusive possession of the petitioners has been allotted to the respondents and contiguity of the land has been disregarded as land allotted to Rattan Singh is at three different places. A perusal of the site plan, reveals that land has been allotted arbitrarily, so as to favour the builder, who purchased the land from the private respondents. A conjoint perusal of the site plan along with the site plan in Civil Writ Petition No. 11993 of 2014 would bear out the contention that an attempt has been made to consolidate the land purchased by the builder, from his vendors from the land involved in this as well as in Civil Writ Petition No. 11993 of 2014.

6. A perusal of interim orders passed by the Assistant Collector Ist Grade, reveal that they have been written by one person with the same pen and ink after the file was received from the Collector. The fact that proceedings were concluded in one day casts a serious doubt on the legality of proceedings. The "Sanad Taksim" was drawn up without securing the presence of the petitioners. The petitioners were not even served with a notice that any date has been fixed for drawing up of the "Sanad Taksim". The manipulation has been made at the behest of the builder and the private respondents.

7. Counsel for the private respondent, other than respondent No. 8, submits that the petitioners, instead of approaching the Financial Commissioner, filed a suit for declaration that partition proceedings are null and void, along with an application for grant of an interim injunction. The allegations levelled in the present petition were also levelled in the suit. The application for interim injunction was dismissed by the Additional Civil Judge (Sr. Division), Gurgaon, the appeal by the Additional District Judge, Gurgaon by recording findings that the petitioners have not suffered any prejudice. The revision filed before this Court was withdrawn. Even

otherwise, the allegations of prejudice, if any, are irrelevant as the petitioners did not file any objection to any of the proposed plans or the final plan and did not file any appeal against the mode of partition or plans prepared during partition.

8. Counsel for the private respondent further submit that the petitioners are trying to mislead this court and have not disclosed that partition proceedings remained pending for five years. Apart from filing a reply during partition proceedings, the petitioners did not raise any objection to the Naksha "A" and Naksha "K". A perusal of interim orders passed by the Assistant Collector Ist Grade, reveal that the application for partition was filed in the year 2007. Mir Singh, petitioner No. 1, filed his reply on 14.11.2007 and petitioner No. 2 filed his reply on 13.02.2008 after availing almost seven opportunities. The petitioners participated in the proceedings, as is apparent from order dated 12.03.2008, by which a request for clubbing of the other case was rejected on the basis of their arguments. Counsel for the respondents further submits that on 12.03.2008, the Assistant Collector Ist Grade, called for the Naksha "Alif", which was received on 26.03.2008. The partition proceedings were adjourned on 09.04.2008, 23.04.2008, 14.05.2008, 28.05.2008, 11.06.2008, to await the Naksha "Ka", which was eventually received on 09.07.2008, thus, putting paid to the arguments advanced by the petitioners that they were not granted an opportunity or that proceedings were rushed through or manipulated.

9. A further perusal of the interim orders reveals that the case was adjourned for a number of dates for recording the statements of parties, thereby, proving the falsity of the allegations levelled by the petitioners that partition proceedings were rushed through. A further perusal of the record reveal that from 09.07.2008 upto 08.06.2011, 44 opportunities were granted for recording statements. Eventually on 29.06.2011, Bharta, respondent No. 5, recorded a statement and a last opportunity was granted to the opposite party to record their statements. Mir Singh (petitioner No. 1 in the present petition) and Jaipal (Respondent No. 6 in the present petition) got their statements recorded on 13.07.2011, but Rattan Singh (petitioner No. 2 in the present petition) did not record a statement, and as no objections were raised by counsel for Bharta etc., further opportunity was denied to Rattan Singh. This order was not challenged by Rattan Singh, whether by way of an appeal or a revision, thereby exposing the malafides of the petitioners. The mode of partition was sanctioned on 27.07.2011, almost four years after the filing of the application, for partition. The petitioners did not file any appeal, though, such an appeal is maintainable against the mode of partition and, therefore, accepted the mode of partition. Counsel for Jaipal did not raise any objection but counsel for petitioner No. 1 Mir Singh prayed for time on 12.10.2011, to file objections to the Naksha. Mir Singh once again sought another opportunity on 19.10.2011 to file objections, but further opportunity was declined on the ground that Mir Singh wants to delay proceedings. The Assistant Collector Ist Grade perused the Nakhsa "Kha" and after recording a finding that as the parties have no objection to Naksha "Kha", directed the preparation of Naksha "Zeem". On 23.11.2011, an application was

filed before the Assistant Collector that proceedings have been stayed by the Collector. The Assistant Collector Ist Grade ordered that the partition proceedings be stayed and the case was adjourned to 30.11.2011. A similar order was passed on 30.11.2011. The Assistant Collector Ist Grade recorded an order on 01.02.2012 that the file be produced before the Collector, on 27.03.2012.

10. As the appeal before the Collector was eventually withdrawn and the file was received from the office of Collector, the Assistant Collector Ist Grade, recorded, on 01.08.2012, that parties have been heard, stamp papers be filed for drawing up of "Sanad Taksim" and on 02.08.2012 drew up the "Sanad Taksim".

11. Counsel for the respondents also submits that as there was no order of clubbing, the appeal was filed under a misconception and was, therefore, eventually withdrawn. The mere fact that the "Sanad Taksim" may have been sanctioned within a day or two is entirely irrelevant as all other proceedings had been completed and as at no stage of the proceedings had the petitioners raised any objection whether to the mode of partition or to the various Nakshas, prepared during partition proceedings. All that the Assistant Collector was required to do was to pass a final formal order, based upon already sanctioned maps. The allegation of malafides based on the fact that proceedings concluded within one day of receipt of the file from the Collector could have been relevant, if there is any difference between the Naksha "Zeem" and the "Sanad Taksim". The Naksha "Zeem" and all other plans were sanctioned in the presence of the petitioners, much earlier. The Assistant Collector, therefore, had nothing more to do but conclude partition proceedings, in accordance with the Naksha "Zeem" and even if he may have concluded proceedings in one day, there is no illegality or error of jurisdiction. The allegation that the file was received on 01.08.2012 when the appeal was withdrawn on 01.08.2012 disregards the fact that Sohna is merely at a distance of 25 Kms. from the office of the Collector and even otherwise the Assistant Collector Ist Grade was required to dispose of the petition for partition expeditiously particularly as it had been pending for the last seven years.

12. Counsel for the respondent further submits that a perusal of the proceedings reveal that the partition application filed in 2007 remained pending for five years, thus proving that allegations of haste and manipulation etc. are false. The petitioners merely seek to delay partition proceedings. The allegation regarding cuttings etc. in the orders passed by the Assistant Collector Ist Grade are baseless as a perusal of the original record would reveal that nothing hinges on the cuttings and even otherwise the cuttings are natural.

13. Counsel for respondent No. 8 submits that the petitioner No. 1 is the real brother of respondent No. 5 and petitioner No. 2 is the real brother of respondent No. 6. The petitioners and the other respondents are holding the answering respondent to ransom. The petitioners, respondent No. 5 and respondent No. 6, were negotiating for purchase of their shares, in the land. After the answering respondent refused to purchase their land, they challenged

partition proceedings by first filing a civil suit and after the injunction was decided, filing an appeal and then a Civil Revision No. 1233 of 2013. The petitioners, thereafter, approached the Financial Commissioner, who has also dismissed their revision. A perusal of the record reveals that, though, the petitioners were granted a large number of opportunities from 09.07.2008 to 13.07.2011, they did not file any objection to the various plans prepared during consolidation, meaning thereby that the petitioners had no objection to the proposed partition at any stage. The petitioners have admittedly participated in partition proceedings which commenced in the year 2007 and concluded with the "Sanad Taksim", in 2012. The mala fides of the petitioners are borne out by the fact that despite the absence of any change between Nakshas to which they did not file objections and the "Sanad Taksim" or any proof of prejudice to their rights, they have filed the present petition. The allegations of fraud etc. are merely a ruse to discredit the answering respondent and blackmail the respondent into purchasing their land.

14. Counsel for respondent No. 8, further submits that a perusal of the order passed by the Civil Judge (Sr. Division), Gurgaon, while rejecting the prayer for an injunction, reveals that the findings have been recorded that no prejudice has been caused to the petitioners. The findings have been affirmed upto the High Court. The petitioners, therefore, cannot reagitate this matter in the present proceedings.

15. We have heard counsel for the parties, perused the paper book, the impugned orders, interim orders, passed during partition proceedings, the various plans prepared during partition and the final plan.

16. An appraisal of the facts and the arguments reveal that the petitioners lay challenge to partition proceedings and the final order of partition called a "Sanad Taksim", by alleging fraud, manipulation of the record, inequitable allotment of land etc., and a hurried conclusion of partition proceedings.

17. Before proceeding to examine the controversy, it would appropriate be briefly set out the procedure for partition of agricultural land. Chapter IX of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the 1887 Act") prescribes the procedure for partition of agricultural land and commences with a joint owner, filing an application for partition indicating the quality and the location of the land in question along with reasons for partition and by appending a copy of the latest jamabandi. Upon receipt of such an application, a revenue officer is required by Section 113 (as applicable to the State of Haryana) to fix a day for hearing of the application and thereafter cause notice of the application and of the day so fixed to be served on the recorded co-sharers as have not joined in the application.

18. Section 114 of the 1887 Act, thereafter empowers the revenue officer to ascertain whether there are any other sharers, and, if any of them so desire, he shall add them as applicants to the partition application. Section 115 empowers

the revenue officer for good and sufficient cause to refuse to entertain the application by recording grounds for his refusal. Section 116 prescribes the procedure for admission of the application and by way of sub-section (a), requires a revenue officer to distinguish between a question of title and question as to the property to be divided and prepared the mode of partition. Section 117, thereafter, empowers a revenue officer to either call upon parties to approach a competent court for determination of any question of title or determine the question so raised by exercising the powers of a Revenue Court conferred by the Punjab Tenancy Act, 1887. Section 118 empowers a revenue officer to make an enquiry as to the property to be divided and the mode of making a partition and after recording reasons, record his decision.

19. Section 118(2) provides for an appeal from an order framing the mode of partition. Sections 119 and 120 provide for administration of property excluded from partition but is not relevant for the present controversy. Section 121 of the 1887 Act, requires a revenue officer, upon completion of partition, to cause an instrument of partition to be prepared and prescribe the day on which the partition is to take effect. The instrument of partition is called the "Sanad Taksim", which is actually in the nature of a decree which flows from the mode of partition and the various maps prepared. The 1887 Act, lays down the broad parameters of partition but the exact procedure for partition is set out in Chapter 18 of the Punjab Land Records Manual (as applicable to the State of Haryana).

20. Reverting to the present controversy, it would be appropriate to refer to the facts and record our opinion simultaneously.

21. Mir Singh and Rattan Singh, the petitioners were co-sharers, with Bharta, respondent No. 5 and Jaipal, respondent No. 6. Jaipal son of Hari Singh, filed an application, on 15.11.2006, for partition of 8 kanals of land bearing Khewat No. 68, Khata No. 70, Rectangle No. 11, Killa No. 11 (8-0), situated in village Dhunela, Tehsil Sohna, District Gurgaon, by arraying Mir Singh son of Heta (petitioner No. 1), Rattan son of Hari Singh (petitioner No. 2), Satpal and Mool Chand sons of Bharta, as opposite parties. Bharta son of Heta (respondent No. 5), filed an application, dated 19.09.2007, before the Assistant Collector Ist Grade, Sohna, District Gurgaon, for partition of land measuring 189 kanals 18 marlas, as detailed in the application, by arraying Mir Singh son of Heta, Rattan Singh and Jaipal sons of Hari Singh. Mir Singh, filed a written statement. Rattan Singh and Jaipal, filed a joint written statement. The Assistant Collector Ist Grade, vide order dated 12.03.2008, called for the Naksha "Alif", which was received on 25.03.2008. The Assistant Collector, thereafter adjourned the petition for 44 times, namely, 23.07.2008, 06.08.2008, 20.08.2008, 03.09.2008 (on which date the Presiding Officer was on leave), 17.09.2008, 01.10.2008, 15.10.2008, 05.11.2008, 19.11.2008, 03.12.2008, 17.12.2008, 07.01.2009, 21.01.2009, 04.02.2009, 18.02.2009, 04.03.2009, 25.03.2009, 08.04.2009, 22.04.2009, 03.06.2009, 15.07.2009, 29.07.2009, 12.08.2009, 26.08.2009, 09.09.2009, 18.11.2009, 09.12.2009, 10.02.2010, 10.03.2010, 31.03.2010,

21.04.2010, 12.05.2010, 09.06.2010, 07.07.2010, 04.08.2010, 04.09.2010, 13.10.2010, 19.01.2011, 16.02.2011, 30.03.2011, 06.04.2011, 11.05.2011, 25.05.2011 and 08.06.2011, to enable the respondents in the partition application to record their statements. Bharta recorded his statement on 29.06.2011. Mir Singh, petitioner No. 1 and Jaipal, respondent No. 6, recorded their statements but Rattan Singh, petitioner No. 2, did not record any statement and, therefore, no further opportunity was granted. The petitioners do not deny that they did not challenge this order, whether by way of an appeal or revision. The mode of partition was eventually sanctioned on 27.07.2011, four years after the filing of the application for partition. Admittedly, the petitioners did not challenge the mode of partition. At this stage, it would be necessary to point out that an order sanctioning the mode of partition, is appealable, under Section 118(2) of the Act. The Naksha "Kha" was received on 05.10.2011. Counsel for Jaipal, did not raise any objection on 12.10.2011 but counsel for Mir Singh, petitioner No. 1, prayed for time to file an objection. Mir Singh prayed for other opportunity on 19.10.2011, but any further opportunity was declined on the ground that Mir Singh wants to delay proceedings. The Assistant Collector, thereafter, directed preparation of the Naksha "Zeem", which leads to the preparation of the final document of partition, i.e., "Sanad Taksim". Partition proceedings were, however, stayed as the Assistant Collector was informed that a stay order has been granted by the Collector. The file was ordered to be produced before the Collector, on 27.03.2012, vide order dated 01.02.2012. The Assistant Collector Ist Grade recorded on 01.08.2012, that as the appeal has been withdrawn and the file has been received from the Collector, parties have been heard, stamp papers be filed for drawing up of "Sanad Taksim". The "Sanad Taksim" was admittedly drawn up on 02.08.2012.

22. Admittedly, the petitioners, did not challenge any order passed by the Assistant Collector, any map sanctioned or the proposed mode of partition or the final order of partition, before any revenue authority much less before the Financial Commissioner, who apart from revisional jurisdiction has plenary jurisdiction to rectify any wrong but instead filed a suit for declaration, before the Civil Judge (Sr. Division), Gurgaon, praying that partition proceedings be declared null and void, accompanied by an application under Order 39 Rule 1 and 2, read with Section 151 of the Code of Civil Procedure, for grant of an interim injunctions. The petitioners, apart from alleging various other facts, pleaded that partition proceedings had been concluded without associating them, principles of natural justice have been violated, Naksha "Kha" has been sanctioned in their absence, and though an appeal filed before the Collector was withdrawn, the Assistant Collector passed the final order of partition, on the very next day, without any notice to the petitioners. The petitioners also alleged that part of the property had been purchased by respondent No. 6, at whose behest partition proceedings have concluded at a fast pace and accused the revenue authorities as well as the other respondents of fraud.

23. The Civil Judge (Senior Division), Gurgaon, initially directed parties to

maintain status quo regarding the change in nature of the land but eventually rejected these allegations and dismissed the application for grant of an injunction. A relevant extract from the order passed by the Civil Judge (Sr. Division), Gurgaon, reads as follows:--

"28. A perusal of various sections as referred above would manifest that the instrument of partition is a step for execution of partition which has already taken place. Once all the necessary steps in effecting partition proceeding have been taken then the party to the proceeding cannot raise objection in drawing instrument of partition. It is just like a decree which is to follow the judgment. Though much emphasis has been laid down by the learned counsel for the plaintiffs while arguing the case that the appeal which was filed by defendant No. 2 in the court of collector in case No. 46 dated 2.11.2011 was withdrawn without the knowledge of plaintiffs and without notice there had been tampering of the dates since next date of hearing was originally mentioned as 9.8.2012 which was tampered and was over written as 2.8.2012 fraudulently but the plaintiff has already filed the appeal before the Collector and the plaintiffs are precluded from taking recourse to two parallel proceedings at the same time. It may be mentioned that it is not a case of question of title though there may be some irregularity but the same cannot be termed as fraud. The plaintiffs had been participating in the partition proceedings ever since the beginning and the act provides for filing of appeal excluding the jurisdiction of the court. The court is satisfied that logical distribution appears to have been made of the land while ordering partition of the land taking into account the quality of land and its value and also the possession. In fact better land appears to have been given to the plaintiffs and the land having pits has been given to defendants. Similarly land abutting road have been given to plaintiffs whereas the land which was bought by defendant No. 4 is situated on the back side of the land which has been given to plaintiffs. A co-sharer who is in exclusive possession of land more than his share will never want the partition proceeding to conclude because of the simple reason that the said co-sharer wishes to enjoy the benefit of the land which is in his exclusive possession. Prima facie, the jurisdiction of the civil court is barred in this case and the act provides for filing of appeal which remedy plaintiffs have already availed."

24. A perusal of the aforesaid findings, though, recorded, while deciding an application for grant of a permanent injunction, reveal that findings have been recorded that petitioners had participated in partition proceedings from the very beginning and the distribution of land reveals that partition has been effected after taking into account the quality of the land, its value and possession. The Civil Judge (Sr. Division), Gurgaon, had also recorded a finding of fact that plaintiffs have been given better quality of land, whereas the land given to the respondent has pits etc., the land abutting the road has been given to the plaintiffs, whereas the land in rear has been given to the defendants. The Civil Judge also recorded that it appears that the petitioners, who are co-sharers, want to continue to enjoy the benefit of land, which is in their exclusive

possession, to the exclusion of other co-sharers. The petitioners, thereafter filed an appeal. A relevant extract from judgment, dated 22.01.2013, recorded by the Additional District Judge, Gurgaon, while dismissing the appeal, reads as follows:--

"14. It is an admitted case of the parties that the partition proceedings were pending when the present suit was filed. A perusal of the record of the partition proceedings which was duly annexed with the plaint shows that parties had been appearing before the Assistant Collector Ist Grade, Sohna, right since early 2008. On 12th March, 2008, the request for consolidation of both partition cases was declined. Then the matter remained pending for production of Naksha Kay. On 9th July 2008 Naksha Kay was produced on record and the case was adjourned to 23rd July, 2008 for statements of the parties and adjournment was sought on 23rd July 2008 and the matter was adjourned to 6th of August 2008. The matter still remained pending for few dates. Finally on 29.06.2011 Bharta gave his statement whereas the other respondent No. 2 did not give his statement and he was given last opportunity for 13.7.2011. On 13.7.2011, he did not give his statement and his opportunity was, therefore, closed and the case was fixed for Tarika Taksim for 10.8.2011. The Tarika Taksim was finalised on the said date and objections were then sought. No objections were filed and, therefore, no further opportunity was granted after 24.8.2011. The Tarika Taksim was accepted and Naksha Khai was ordered to be prepared. The proceedings continued as it is in the presence of the parties. Naksha Khai was finally accepted on 19.10.2011. In the meantime, it transpires that appeal was filed against the alleged consolidation of both cases. The appeal was withdrawn on 1.8.2012 and on the same day, the matter was taken up by the Assistant Collector Ist Grade, Sohna. The partition proceedings were finalised on 1.8.2012 and 2.8.2012. Counsel for Meer Singh also put in appearance. Mutations were effected. Sale deeds were executed. The great efficiency with which the matter was taken up in the office of the Assistant Collector Ist Grade, Sohna, does raise an eye-brow. However, even if for the sake of arguments, the stand of the appellants-plaintiffs is accepted to be correct, there is no element of fraud. The parties had duly been appearing before the Assistant Collector Ist Grade, Sohna. No appeal/revision etc. was filed when Naksha Khai etc. was accepted. An appeal was filed but that was filed after the filing of the suit. The appellants-plaintiffs have not been able to explain as to why they chose to remain silent for all this while and why they started raising their voice only when they felt that partition proceedings were coming to an end. The appellants-plaintiffs cannot be permitted to now contend that everything had been done at their back whereas from the record it stands proved that they had been participating in the proceedings right from the very beginning."

25. A perusal of the aforesaid findings reveals that the first appellate court has also recorded a finding that partition proceedings had been pending since 2008, the petitioners had been appearing but did not file any objections to any of the Nakshas (maps) or to the mode of partition, and though, the haste with which the Assistant Collector Ist Grade concluded partition proceedings may raise an eye-

brow, the fact that the petitioners have been appearing before the Assistant Collector Ist Grade, but did not file any appeal or revision against the various maps prepared during partition, and only challenged partition proceedings when they were nearing finality indicates the conduct of the petitioners. The petitioners, thereafter, filed Civil Revision No. 1233 of 2013 (Rattan Singh and another v. Bharta and others), which was dismissed as withdrawn, on 01.08.2014, as the petitioners wanted to approach the Financial Commissioner.

26. The petitioners, though, unsuccessful before the civil courts, filed a revision before the Financial Commissioner, Haryana, alleging fraud by the Assistant Collector Ist Grade at the behest of the private respondents and respondent No. 8. The revision was dismissed by the Financial Commissioner, on 04.12.2013.

27. The petitioners have filed the present writ petition, against the order passed by the Financial Commissioner, praying for setting aside of partition proceedings.

28. A perusal of the record, which we have referred to in detail, the various orders passed in partition proceedings, the various maps prepared during partition, do not enable us to grant any relief to the petitioners, who in our considered opinion, filed a suit, an appeal, a revision and finally this petition with the sole object of stalling partition proceedings, may be for the reason that respondent No. 8 did not purchase their land. The land, it would be appropriate to point out, is situated in District Gurgaon, and is prime property, and though there have been a large number of instances of builders pressurising landowners to sell their land at lesser rates by purchasing pocket of lands from co-sharers, but the present appears to be a rare case, where the shoe is on the other foot, namely, the builder at the mercy of co-sharers.

29. The partition proceedings as referred to above commenced in the year 2007 and were continuing merrily without the petitioners" making any statement or filing any objections at any stage whether during the preparation of the initial maps, the interim maps, the mode of partition or the final plans. In fact, a perusal of the grounds of revision, filed before the Financial Commissioner, indicate only a rudimentary challenge to an inequitable distribution of the land, whether by reference to the quality, the location or the price of the land. The pleadings with respect to contiguity and that land allotted to the petitioners is in scattered parcels of land, though, factually correct are irrelevant as all co-sharers have been allotted land at different places. A perusal of the site plans showing land allotted before partition and after partition to the co-sharers, reveal that all co-sharers have been allotted parcels of land, in accordance with their share holdings.

30. Mir Singh has been allotted khasra No. 16/1, 20, 21/1, 22/2, out of Rectangle No. 6, Khasra No. 7/1 and 14/1, out of Rectangle No. 11, khasra No. 16, 25/2, out of Rectangle No. 10 and khasra No. 20/2, out of Rectangle No. 9.

31. Rattan Singh has been allotted khasra No. 19, out of Rectangle No. 6, part of khasra No. 2/2/3 from Rectangle No. 9, khasra No. 21 and 22/1 and khasra No.

8 from Rectangle No. 9 and a part of khasra No. 16, situated in Rectangle No. 10.

32. Jaipal has been allotted khasra No. 15 from Rectangle No. 7, khasra No. 15 and 13/2/1 from Rectangle No. 7, 17/2, part of khasra Nos. 24 and 25 and a part of Rectangle No. 9 and khasra No. 19.

33. Bharta has been allotted khasra No. 11, a part of khasra No. 12/2, 18/1, 22/1, 23, 24/2/2, a part of khasra No. 2/2 and 3 from Rectangle No. 6. Bharta has also been allotted khasra No. 1 in Rectangle No. 20 and a part of Khasra No. 25/2 from Rectangle No. 10.

34. A perusal of the post partition site plan, reveals that the petitioners as well as others have been allotted land which abuts the main Sohna road, a prime location and admittedly land that abuts the abadi of village Dhunela. From a perusal of the site plan, we find no reason to conclude that there has been an inequitable distribution of land particularly as neither Mir Singh nor Rattan Singh raised any objection during partition proceedings with respect to the various nakshas (maps), prepared during partition and, therefore, cannot now claim any prejudice or allege that partition proceedings were in any manner illegal or inequitable.

35. At this stage, it would be appropriate to point out that respondent No. 8 filed C.M. No. 11207-CWP-2015, offering the petitioners land from Killa Nos. 24/1(5-19), 24/2(2-1) and 25(7-19), purchased, vide sale deed No. 3412 and 3413, dated 08.08.2012, in exchange for land allotted to them. The petitioners filed an affidavit rejecting the offer, thereby in essence exposing their true intent and the falsity of their plea that they have been allotted land contrary to the mode of partition or in violation of their rights as co-sharers. If the petitioners were dissatisfied with the parcels of land allotted to them, they could have easily accepted the offer made by respondent No. 8.

36. We are of the firm opinion that the writ petition is but an attempt to coerce respondent No. 8 into purchasing the petitioners' land.

37. Apart from the above, the petitioners have alleged that a request for consolidation of the two applications was rejected, on 12.03.2008, but after Naksha "Ka" was received on 09.07.2008, a formal application was filed by Bharta to consolidate partition applications. The Assistant Collector Ist Grade, vide order dated 27.07.2011, directed consolidation of both partition applications. At this stage, it would be appropriate to point out that no such order is available on record. The petitioners further alleged that Jaipal, filed, appeals No. 46/SDOG(S) (Jaipal V. Mir Singh and others) and No. 47/SDOG(S) (Jaipal v. Mir Singh and others), before the Collector, by alleging that the order consolidating partition applications is illegal. The Collector, Gurgaon, entertained the appeal and vide order dated 13.12.2011, summoned the record of the Assistant Collector Ist Grade. The appeals were dismissed as withdrawn, vide order dated 01.08.2012 and counsel for the petitioners made a statement withdrawing the appeal. The petitioners allege that on the same day, i.e.,

01.08.2012, the record of the Assistant Collector Ist Grade, was shown to have been sent back from the office of the Collector, and received in the office of Assistant Collector Ist Grade, who took up the matter on 01.08.2012 itself and adjourned the case to 02.08.2012, on which date the "Sanad Taksim" was prepared, thereby concluding partition proceedings.

38. The argument regarding the haste with which the Assistant Collector Ist Grade concluded partition proceedings, must raise a doubt about the bonafides of the Assistant Collector but in the absence of any objection at any stage of partition proceedings regarding any illegality in the documents prepared during partition or the mode of partition, the petitioners cannot be heard to raise such a plea. The Assistant Collector Ist Grade had already concluded proceedings relating to partition and was only required to draw a "Sanad Taksim". We, therefore, find no merits in this and other contentions raised by the petitioners.

Civil Writ Petition No. 11993 of 2014

39. The petitioners pray for issuance of a writ in the nature of certiorari, quashing order dated 07.05.2014 (Annexure P-33), passed by the Financial Commissioner, Haryana, order dated 06.08.2013 (Annexure P-30), passed by the Commissioner, Gurgaon, order dated 18.03.2013 (Annexure P-23), passed by the Collector, Gurgaon, order dated 20.06.2012 (Annexure P-21), 13.06.2012 (Annexure P-20), 02.05.2012 (Annexure P-19) and 16.11.2011 (Annexure P-4), passed by the Assistant Collector Ist Grade, Sohna.

40. Counsel for the petitioners submits that partition proceedings are vitiated by fraud, perpetuated by the Assistant Collector Ist Grade, Sohna, and the private respondents. The proceedings for partition have been carried out in gross and blatant violation of the provisions of the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the 1887 Act"). The parties are admittedly co-sharers of agricultural land measuring 195 kanals 3 marlas, situated in Siwana, Mauja Dhunela, Tehsil Sohna, District Gurgaon. A perusal of the application for partition filed by Yashpal, respondent No. 7 reveals that, though, he was aware that petitioners No. 2 to 5, are married and reside in other villages, he intentionally chose to give a common address for all the petitioners, i.e., the address of petitioner No. 1. The Reader to Assistant Collector Ist Grade in his note dated 05.10.2011, recorded that the application is incomplete. The Assistant Collector Ist Grade ignored this fact and ordered that the file be presented for summoning on 12.10.2011, on which date, however, the application was adjourned to 02.11.2011, to enable counsel for the applicant to produce "deficient copies". On 12.10.2011, summons were ordered to be issued for 02.11.2011. The order issuing summons was passed even though a complete set of copies, was not filed. A perusal of the summons reveals that a common summon was prepared for all respondents and was allegedly served at the address, which to the knowledge of respondent No. 7, was incorrect. The process server made a report that he wanted to hand over copies of the summons but as the respondents were not available at home, he pasted a copy of the summons

on the wall and returned. The report allegedly bears the thumb impression of one, Gani Mohammad, Chowkidar of the village Dhunela. The Chowkidar has filed an affidavit that the thumb impression on the proclamation is forged and has been obtained by fraud. The Sarpanch and five Panches of Gram Panchayat Dhunela have sworn affidavits that no proclamation was carried out in relation to the present case. It is, thus, apparent that the service allegedly affected upon the petitioners is a mere sham.

41. Counsel for the petitioners further submits that, though, Section 20(1) of the 1887 Act, requires personal service, and only if persons cannot be served personally or summons are refused, may proclamation be ordered, the Assistant Collector Ist Grade directed that the respondents (in the partition application) be summoned by proclamation and thereafter recorded, on 16.11.2011, that notice for proclamation has been received back after service and as no one has put in appearance, the respondents are proceeded against ex-parte. The order, however, records that one Mr. C.P. Bhateja, Advocate, put in appearance on behalf of Mawasi son of Tulsi, by filing a power of attorney. The power of attorney does not bear a date nor does it bear the address of the counsel but appears to bear the signatures of Mawasi. The signatures have been denied by Satbir son of Mawasi Ram, who has deposed in an affidavit, jointly filed by Satbir and Mawasi that as Mawasi's eye site is weak, he always affixes his thumb impression.

42. Counsel for the petitioners further submits that Yashpal has sought partition of five different khewats without disclosing that khewat No. 274 is owned, apart from the present co-sharers by other co-sharers, who were not impleaded as parties, namely, Sunder Lal and Hans Raj. Counsel for the petitioners also submits that jamabandi, allegedly appended with the application for partition, shows that it was issued on 19.10.2011, but the jamabandi makes reference to mutation No. 1641, which was attested on 09.01.2012, thereby proving interpolation in the jamabandi, and also pointing to a fact that the jamabandi was placed on record at a later stage. Counsel for the petitioners also points out that the partition application bears the number 129/NT, but the institution/receipt register records some other case at Sr. No. 129.

43. Counsel for the petitioners further contends that partition has not been carried out in accordance with the mode of partition, which provides that possession of respective co-sharers shall be maintained but the petitioners have been deprived of their holdings. A "Samadhi of their grandfather, a path, a tubewell etc. have been ignored. The land adjoining the abadi has not been partitioned equally amongst co-sharers, as a larger part of the land adjoining the abadi and the road have been allotted to Yashpal etc.. Even the pucca houses of the petitioners have been allotted to Yashpal, respondent No. 7.

44. Counsel for the petitioners submits that as the final document of the partition has been prepared without service upon the petitioners, without maintaining their possession and apparently at the behest of M/s. ROF Infrastructure and Housing Pvt. Ltd. The petitioners came to know of partition proceedings only

after sale deeds were executed as news spread in the village. The entire exercise of partition appears to have been carried out at the behest of the builder. The petitioners, therefore, filed an appeal before the Collector, which has been dismissed by holding that an appeal against the "Sanad Taksim" is not maintainable. The revision filed before the Commissioner and the Financial Commissioner, have been dismissed without examining the record. The petitioners have filed a complaint before the Lokayukta, Haryana, which is pending enquiry before the Superintendent of Police, Vigilance Department, Gurgaon.

45. Counsel for Yashpal, respondent No. 7, submits that arguments advanced by the petitioners, are incorrect and misleading. The petitioners have not pleaded or alleged any prejudice to their rights by reference to any shortfall in their allotments or that land allotted to them is less advantageous. All the co-sharers have been allotted land as per their share holdings and in accordance with the mode of partition. The petitioners are unable to point out any prejudice to their rights. The petition is actually a malafide attempt to pressurize the builder into purchasing their land, proved by the fact that the appeal was initially filed by Om Parkash, who has accepted the partition. Another co-sharer Shree Ram has not challenged partition proceedings. The petitioners are the only co-sharers along with Mawasi, who, appeared before the Assistant Collector Ist Grade, did not file any appeal or revision but has now changed sides. Naresh, petitioner No. 1, is the real brother of petitioners No. 2 to 5 and though, petitioners No. 2 to 5 are married and reside in other villages, their interest in the land, in dispute, is common and is being looked after by Naresh, who admittedly resides in the village. As per the record, a notice was affixed on the house of petitioner No. 1. The petitioners were aware of partition proceedings but did not raise any objection to partition proceedings and only after respondent No. 7 sold his land at a good price did the co-sharers, who could not sell their land to the builder, set up the petitioners No. 1 to 5 to challenge partition proceedings. The malafides underlying the petitioners acts are apparent from the fact that the petitioners' co-sharers Om Parkash son of Shri Ram and Satbir son of Mawasi, appeared before the Collector. Om Parkash stated that I want to sell my entire land to the company, which may be asked to buy his land at the prevailing market rate. Om Parkash also raised a grievance that high tension electricity wires traverse the land allotted to him and, therefore, the company should purchase at least two acres of land in an adjoining village for him. Satbir son of Mawasi made a statement that they have been given the best land in partition and have no objection to the partition but the fact that Mawasi is now supporting the petitioners, has exposed the true intention of the co-sharers, who could not sell the land to the builder, namely, that they have set up petitioners No. 2 to 5 so as to pressurise the builder who has in the meanwhile been allotted a licence to develop the land. This apart the petitioners have fraudulently obtained an affidavit of the village Chowkidar, the Sarpanch and other persons as these very persons have confirmed the Munadi by filing affidavit, Annexure R-1 to R-12. The

affidavits reveal that the petitioners have obtained their thumb impressions by fraud or coercion. Balwan another son of Mawasi, has confirmed that his father Mawasi was residing with him and engaged Shri C.P. Bhateja, Advocate, as his counsel, by filing affidavit Annexure R-13. The malafides of the petitioners are proved by the fact that Om Parkash, who initially challenged partition proceedings, has not filed any writ petition as he has sold a part of his land. The petitioners have neither pleaded nor proved, by reference to any relevant fact that they have been allotted less land or that the land allotted to them is in any manner, less advantageous vi-a-vis other parcels of land or contrary to the mode of partition or various plans prepared during partition. The land, which was a part of a tubewell was never part of the partition proceedings. Even otherwise partition proceedings concluded on 20.06.2012, possessions were delivered vide Rapat Roznamcha dated 03.08.2012 and mutation of ownership was sanctioned on 04.08.2012. Counsel for respondent No. 8 further submits that respondent No. 8 has purchased land and obtained the change land user after spending Rs. 18 crores. The petition is nothing but an attempt to blackmail the respondents into purchasing land belonging to the petitioners and the other co-sharers.

46. We have heard counsel for the parties, appraised the pleadings, considered their submissions and perused the entire record, including the impugned orders.

47. Yashpal, respondent No. 7, filed an application for partition of agricultural land measuring 195 kanals 3 marlas, situated in Siwana, Mauja Dhunela, Tehsil Sohna, District Gurgaon, comprising Khata No. -145, 212 to 217, 289 to 295, 296, Rect. No. 1, Killa Number 25(8-0), Rect. No. 2, Killa Number 21/2(2-0), Rect. No. 12/1 (3-18), Rect. Number 7, 4 (7-14), 3 (0-12), 6(8-0), 7(8-0), 8(3-8), 13/1 (3-9), 14(8-0), Rect. No. 9, Killa Number 9(8-0), 10/1(1-4), 11/2(4-1), 12/1(7-11), 13(8-0), 17(8-0), 18(8-0), 10/1(1-4), 11/2(4-1), 12/1(7-11), 13(8-0), 17(8-0), 18(8-0), 19/2 (7-12), 20/1(1-0), 23(8-0), 24(8-0), Rect. Number 10, Killa number 6(8-0), 15/1(4-0), 15/2(4-0), 17(8-0), 18(1-4), 24/1(1-16), Rect. No. 19, Killa number 1/3(2-4), 2(7-12), 10/2 (4-15), Rect. No. 20, killa number 4/1 (5-11), Rect. No. 21, Killa number 2/2(8-0), 3(8-0), Rect. Number 27, Killa number 8/1(0-10), 8/4 (3-10), total kitte 36, on 16.11.2011, arraying all the co-sharers as opposite parties by giving these addresses as residents of Village Dhunela, Tehsil Sohna, District Gurgaon. Admittedly, all co-sharers, including petitioner No. 1, except petitioner No. 2 to 5 (daughters of Ganpat), reside in village Dhunela and it is not denied that their addresses on the summons are correct. The petitioners No. 2 to 5, who are the married sisters of Naresh, do indeed reside in other villages. Mawasi, a brother of Ganpat, now transposed as a petitioner, does not deny that he resides in village Dhunela and that his address in the summons is correct. The Assistant Collector issued summons which were pasted on the house of the co-sharers in village Dhunela. The Assistant Collector, thereafter, ordered service by proclamation and as only Mawasi put in appearance, directed ex-parte proceedings against the other co-sharers but did not file any objections. The final document of partition called the "Sanad Taksim" was drawn and mutation reflecting the severance of

status as co-sharers was recorded.

48. After conclusion of partition, a part of the land was purchased by respondent No. 8, vide registered sale deed dated 08.08.2012 and some other co-sharers have also sold their land. Om Parkash, the petitioners and other co-sharers, who were ex-parte, filed an appeal before the Collector. Om Parkash pleaded that his land may also be ordered to be purchased by the builder or the builder should give him additional two acres as the land allotted to him is traversed by electricity wires. Satbir and Mawasi appeared before the Collector and stated that they have been allotted the best land. The Collector eventually dismissed the appeal. Om Parkash and the petitioners filed a revision before the Commissioner, which was dismissed. A revision before the Financial Commissioner met the same fate.

49. Apart from the petitioners and Mawasi, who appeared before the Assistant Collector but did not file any objections and in fact his son made a statement before the Collector that they have been allotted the best land, no other co-sharer is aggrieved by the partition. Though, challenge to partition proceedings was initiated by Om Parkash and Dharam Pal, they have accepted the partition.

50. The petitioners, do not allege much less assert any dispute regarding title or that partition has been carried out without reference to or by disregarding their share holding. The petitioners, now supported by Mawasi, who appeared before the Assistant Collector but did not file objections, are primarily aggrieved by, failure to affect personal service, furnishing of wrong addresses in the summons, manipulation of the report regarding proclamation, based upon an affidavit filed by the chowkidar, affidavits by members of the panchayats as well as residents of the village that no munadi was carried out in the village, interpolation in the jamabandis, appended with the application for partition, the absence of any opportunity to file objections to the mode of partition and the proposed exchange of land pursuant to the partition, a failure of allot a "Samadhi" of an ancestor and a tubewell, the existence of a high tension wires over the land, equal land not given near the abadi, nor near the road, the inclusion of land of khewat No. 274 without impleading Sunder Lal, a co-sharer, in this khewat and finally the ex-parte nature of proceedings and the ex-parte impugned order.

51. A perusal of these objections and a due consideration of the arguments advanced by counsel for the petitioners, reveal that a major part of the arguments are directed against failure to affect service upon the petitioners. The arguments regarding an inequitable or illegal distribution of the land are to say the least perfunctory, but shall be dealt with later.

52. Before we record our opinion, it would be appropriate to point out that we do not propose to de-limit the procedure for partition of agricultural land as we have already referred to the procedure in detail in order of even date passed in Civil Writ Petition No. 696 of 2014, but would record that a partition, cannot by its very nature, ever be mathematically perfect as while allotting land, a revenue

officer has to take into consideration various factors, namely, location, existing possession, proximity to a road and the village abadi, access to the land, quality of the land etc. requiring a revenue officer to perform a delicate balancing act, which more often than not, leaves one or the other party dissatisfied. More often than not objections are not preferred during partition but appeals, revisions and even writ petitions are filed for motives, other than the merits of the case. A large number of cases are filed by co-sharers, after they have sold their land, or some times even at the behest of the co-sharer who has sold his land, in an attempt to extract better terms from the vendor or to perpetuate their possession or to thwart the sale deed executed by another co-sharer. The numerous appeals and revisions prescribed under the Punjab Land Revenue Act, 1987, go on and on till one or the party relents. The procedure for partition which allows multiple appeals and revisions, at almost every stage, lends itself to exploitation by unscrupulous co-sharers and is prone to misuse by a co-sharer in possession. Thus, while considering challenge to partition proceedings, a significant consideration, except where partition proceedings are without jurisdiction or disclose a degree of error that cannot be over-looked, are the motive of parties and whether any serious prejudice is proved, namely, an inequitable distribution of land.

53. The application for partition as also noticed was filed by Yashpal, respondent No. 7, on 05.10.2011, seeking partition of land measuring 195 kanals 3 marlas, situated in Siwana, Mauja Dhunela, Tehsil Sohna, District Gurgaon, by arraying the petitioners and the proforma respondents as parties. The Assistant Collector, entertained the application and directed that the file be present for summoning of the respondents, on 12.10.2011. A report was appended regarding shortage of documents/copies. The application came up for consideration on 12.10.2011, when counsel for the applicant was directed to produce deficient copies and it was ordered that file be presented on 02.11.2011, for producing the documents and summoning the respondents. The summons were issued in accordance with addresses provided in the petition, namely, the addresses of village Dhunela. The report of the process server, appended by Rajbir, Sewadar, bears the left thumb impression of Gani Mohammad, Chowkidar and records that due to non-availability of the respondents at home, a copy of the summon was pasted on the wall. The Assistant Collector recorded on 02.11.2011, that the applicant has presented incomplete copies, but summons have been received back with the report that they have been pasted. After considering the report, the Assistant Collector ordered that the respondents be summoned by proclamation for 16.11.2011. The proclamation, calls upon all the co-sharers to appear before the Assistant Collector Ist Grade, Sohna, on 16.11.2011, at 10.00 AM. The reverse side of the proclamation bears the signatures of Rajbir, Sewadar, the left thumb impression of Gani Mohammad, Chowkidar and the signatures of Akbar Bhola, Nambardar of village Dhunela, certifying that proclamation has been carried out and expenses of proclamation have been paid at the spot.

54. The petitioners and the other co-sharers do not deny that all co-sharers,

except petitioners No. 2 to 5 reside in and that the land in dispute is located in village Dhunela. The Assistant Collector Ist Grade passed the following order on 16.11.2011:--

"File presented. Announcement made, Counsel for the applicant came present. Sh. O.P. Bhareja presented his power of attorney on behalf of respondent number 9. No one came present on behalf of the remaining respondents. Notice for the proclamation has been received after its service. Even after the notice for proclamation, no one has come present on behalf of Respondent number 1 to 8. The time of the court is about to over. Now ex-parte proceedings are ordered against the respondents number 1 to 8. Now the file may be presented for the submission of reply of the application on 23.11.11."

55. A perusal of the order reveals that one Shri O.P. Bhareja, Advocate, presented a power of attorney on behalf of Mawasi, arrayed as respondent No. 9 in the partition application and as the other respondents did not put in appearance despite service, ex-parte proceedings were ordered against them. The petition was, thereafter, adjourned to 23.11.2011 and eventually as no objections have preferred against the mode of partition or the plans prepared during partition, the partition was finalised on 19.10.2011.

56. The petitioners allege that as Yashpal, respondent No. 7 was aware that apart from petitioner No. 1, the other petitioners, reside in other villages, but intentionally choose to give the addresses of their paternal village. The petitioners also allege that the Assistant Collector did not make an attempt to serve the petitioners personally and the proclamation is fraudulent as Gani Mohammad, the Chowkidar of village Dhunela, has filed an affidavit that his thumb impression is forged. The petitioners also allege that the Sarpanch and five panches of the village as well as a Lambardar have sworn affidavits that no proclamation was carried out as recorded in the report. The respondents, on the other hand, have appended affidavits by these very persons and others that contradict these affidavits. We shall not go into the question whether the proclamation was or was not carried out as disputed question of fact cannot be answered in a writ petition and, therefore, confine answer to the question of a personal service and the alleged wrong addresses of petitioners No. 2 to 5.

57. A perusal of Section 20 of the Punjab Land Revenue Act, 1887 (as applicable in the State of Haryana), reveals that it prescribes the procedure for service and requires that summons shall, "if practicable", be served (a) personally on the person to whom it is addressed, or (b) his recognised agent or (c) an adult male member of his family usually residing with him and if service cannot be so made, or if acceptance of service so made is refused, summons may be served by pasting a copy thereof at the usual or last known place of residence of the person to whom it is addressed. Section 20 also provides that if the person to whom the summon is addressed, does not reside in the district in which the revenue officer is employed, and the application for partition relates to land in that district, a copy of the summons shall be affixed at a conspicuous place in or near the estate

wherein the land is situate and if the summons relate to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, the revenue officer may direct service by proclamation and also by post.

58. Admittedly, summons for personal service were issued, but as rightly urged by petitioners No. 2 to 5, at address of their paternal village Dhunela, though, they are married and reside in other villages. Naresh, petitioner No. 1, a real brother and a co-sharer of the petitioners No. 2 to 5, however, admittedly, resides in village Dhunela and does not urge that his address in the petition for partition or on the summons was incorrect. The summons were pasted outside the house, where Naresh resides and we are confident that Naresh was looking after his share and the shares of his sisters, petitioners No. 2 to 5. Naresh does not deny that his address is rightly recorded in the application for partition and on the summons which were pasted outside his house. A defect in service may be sufficient to set aside ex-parte proceedings, but if the order of partition does not disclose an inequitable distribution of land whether regarding proprietary or possessory rights and the party alleging defect in service or no service is unable to point out any prejudice, the defect in service would be a mere irregularity. The petitioners, we are confident, were all along aware of the pendency of the partition proceedings but have been set up by other co-sharers to delay partition proceedings apparent from facts that we shall not proceed to narrate.

59. As regards the process, the fact that both sides have filed affidavits of the chowkidar for and against his signatures and also filed affidavits of the members of the panchayat for and against the proclamation, raises a disputed question of fact which we cannot answer and, therefore, the question eventually boils down to whether the petitioners were aware of partition proceedings and whether the addresses of petitioners No. 2 to 5, given as village Dhunela, render partition proceedings a nullity, vis-?-vis these petitioners.

60. Admittedly the land is situated in village Dhunela. The summons were pasted on the house of Naresh son of Ganpat, petitioner No. 1, the brother of petitioners No. 2 to 5, who along with Naresh had inherited rights in common from their father Ganpat. The petitioners, however, have not been able to establish much less is there any cogent evidence or argument that they have suffered any prejudice, insofar as it concerns their proprietary or possessory rights.

61. Apart from Mawasi, none of the co-sharers put in appearance, though they allege they were not served. Mawasi put in appearance through an advocate but did not raise any objection. Counsel appearing for Mawasi has alleged that Mawasi did not engage a counsel and his signatures on the power of attorney are forged. Mawasi has, in support of this submission, filed his and his son's affidavit deposing therein that as Mawasi's vision is impaired, he always appends a thumb impression. The affidavit, however, is not supported by any medical report. This apart, there are certain other significant facts, which would indicate that after conclusion of partition proceedings, when the other co-sharers became

aware that Yash Pal sold his land to respondent No. 9, they suddenly became active. Om Parkash, Shree Ram and the petitioners filed an appeal to challenge partition proceedings but Mawasi son of Tulsi Ram did not file any appeal or revision and was arrayed as a respondent, in the writ petition before he filed an application and was transposed as a petitioner. A relevant extract from order dated 18.03.2013, passed by the Collector that would expose the true intent of the petitioners, reads as follows:--

"After hearing the arguments of all the Id. Counsels of all the parties and hearing all the parties were heard in person. For Shri Om Parkash, his son Shri Ram and on behalf of Shri Mawasi his son Shri Satbir and on behalf of the company Shri Mittal appeared before me. On behalf of Shri Om Parkash his son Shri Ram appeared and stated that a cheating has been committed with them which has been committed by his brothers. I want to sell my entire land to the company. The company may buy my whole land on the prevailing market rate. I have been allotted the area of the land in which the high-power electricity line is crossing and the land adjoining to the village has not been given. The company may purchase at least 2 killa land of me and allot me land adjoining to the village. On behalf of Shri Mawasi his son Satbir appeared and stated that they have been given the best land in the partition and he has no objection on this partition. They are just fighting for his brother Shri Ram. He should be given justice. In our house, since the time when our one brother has sold his land, since then the dispute is going on. We want to sell our entire land. The company may purchase our entire land on the prevailing market rate. Our dispute will come to an end. On the statements of both the parties Shri Mittal, appeared for the company stated that I am harassed unnecessarily due to their domestic dispute. As they want I have the capacity to purchase one of a half killa land from the parties. I cannot purchase the entire land and if any purchaser is found, I can made an attempt. If they want to exchange any killa with each other then I can made an attempt and if there is dispute of any tubewell then I can install their tubewell. The appellants are harassing me unnecessarily. After passing of the period of appeal, after issuance of Sanad Taksim and sanction of mutation and after my purchasing of land, the appeal has been filed just with the intention to harass me. Therefore, the appeal may be dismissed.

After hearing the arguments of the Id. Counsels for the parties and hearing all the parties in person and from the perusal of the evidences/facts available on the file I have come to conclusion that legally after issuance of Sanad Taksim none of the party has any right of filing any appeal against the Map "B" before the Collector. After conducting Munadi, the non-appearance of the parties goes against them and it proves that all the appellants were given an ample opportunity to personal hearing but they did not appear in the court intentionally and the ex-parte proceedings were initiated against them. Hon"ble Punjab and Haryana High Court in case Faqir Singh versus Financial Commissioner, Punjab, 2012 (1) HLR 326 P&H have decided that the purchaser purchased the land after completion of all the proceedings of the partition of the partitioned land and after

sanctioning of the mutation and in such condition the partition could not be cancelled. This order is absolutely applicable upon this case.

Shri Mawasi has given no objection on Map "B" whereas he had been personally appearing before the Information Commissioner and other officers regarding the investigation of this case. The inquiry of which is going to be conducted by other officers. From which it is clear that the appellants on the one side are filing the appeal of the case and simultaneously are filing a case to the other officers and getting the same investigated so that the case may be lingered on and the partition could not be settled. For settlement of the objections raised by the appellant as a compromise, the purchaser appeared before me and requested to purchase one half killa and to exchange the killa mutually and installation of tubewell but the appellants were not agreed with it and declined. From which it is clear that the appellants want to linger on the instant case and do not want the settlement."

62. A perusal of the aforesaid extract, reveals that Om Parkash and his son Shri Ram and Satbir son of Mawasi, appeared before the Collector and stated that they have been cheated by their brothers and as they also want to sell their entire land, the company, may buy their land at the prevailing market rate. Satbir son of Mawasi stated that they have been given the best land in partition and he has no objection to the partition. It is for this reason, Mawasi did not file any appeal or revision to disown these statements whether before the Commissioner or the Financial Commissioner. A perusal of the above extract also reveals that all that these co-sharers, including the petitioners wanted was that their land should also be purchased by respondent No. 9, who in response stated that he does not have the means to purchase their land and if they want to exchange any killa number or if they want a tubewell, he can consider their request but he is being unnecessarily harassed. The Collector has also recorded that Mawasi did not raise any objection against Map "B", thus proving that reasons for getting this petition filed is not any grievance regarding the distribution of land but the fact that parties were aggrieved by purchase of the land belonging to Yashpal and wanted the builder to purchase their land.

63. The respondents have also appended an affidavit by Balwan another son of Mawasi that Mawasi engaged a counsel, who appeared on his behalf before the Assistant Collector. The Collector has also made reference to a civil suit which proves that parties were aware about the pendency of partition proceedings. The order passed by the Collector was affirmed by the Commissioner, Gurgaon Division, Gurgaon, on 06.08.2013 and then by the Financial Commissioner (Revenue), Haryana, on 07.05.2014, but neither Mawasi nor the other co-sharers, except the petitioners, have raised any grievance regarding any inequitable distribution of land or that statements referred to in the order passed by the Collector are incorrect, thereby fortifying our opinion that the petitioners have been set up by other co-sharers and the ground of defect i.e. service is being used as an excuse to pressurize respondent No. 9 to purchase their land.

Our opinion is further fortified by the fact that there are no cogent pleadings about any inequity in the allotment of land to any co-sharer much less the petitioners before us. It would also be appropriate to point out that Om Parkash, respondent No. 11 in the present petition who initiated challenge along with the petitioners by filing an appeal before the Collector, a revision before the Commissioner and the Financial Commissioner, but has filed a reply admitting that he had knowledge of partition proceedings and that they were only fighting with respondent No. 9 as he had refused to purchase their land. It would also be appropriate to point out that another son of Ganpat, namely, Dharampal has not challenged partition proceedings. We may not attach much significance to these admissions but these facts are indicative of the motive underlying the present petition namely not any grievance about an inequitable distribution of land but of being left out of the sale deed executed by Yashpal in favour of respondent No. 9.

64. As regard the inclusion of khewat No. 274, rectangle No. 7, killa No. 13/1, Sunder Lal and Hans Raj were owner of 2/7th share, which was purchased from them by Ganpat and Mawasi by registered sale deed, dated 12.10.1993. Sunder Lal and Hans Raj sold 19 marlas in Rectangle No. 7, killa No. 13/2(3-9) to one Kavita wife of Shri Varinder Kumar, son of Gian Chand, resident of Sohna, on 01.12.2011. Sunder Lal and Hans Raj have not raised any objection with regard to Khewat No. 274, having already sold their land. Smt. Kavita had raised an objection and filed a civil suit but the matter was compromised and the suit was withdrawn. The petitioners have no right to raise any objection on behalf of these persons.

65. The allegations regarding the tubewell and the "Samadh" or that the land near the abadi have not been equally allotted is factually incorrect. The khasra number where the tubewell is situated, has not been included as the parties are not owners of this land. The other objections are incorrect as a perusal of the maps placed before us to depict the position before and after partition does not indicate any inequitable distribution of land and all partner have been allotted land in accordance with their entitlement after taking into consideration quality, location etc., and parties, as already recorded cannot be mathematically perfect and one or the other party would always be aggrieved

66. A common question has arisen in Civil Writ Petition No. 696 of 2014 and Civil Writ Petition No. 11993 of 2014, namely, that if the site plans showing land allotted during partition in both cases is examined, it would reveal that land purchased by the builder has been sought to be consolidated, whereas land belonging to the petitioners has been allotted at different places. We asked parties to file site plans showing the position of land before and after partition and upon examination of the site plans, are of the opinion that the contentions raised by the petitioners do to an extent appear to be correct but whether this fact would nullify partition proceeding is another matter. The land in both cases, is owned, was and is in possession of different co-sharers. The sale deeds are of different dates, the partition application in both cases was filed with a difference

of seven years and conclusion of partition proceedings and the "Sanad Taksim" are also of different dates. The petitioners in both the writ petitions have not been able to prove any serious prejudice to their proprietary or possessory rights and, therefore, we do not consider this as sufficient to nullify partition proceedings which commenced in one writ petition in 2007 and in the other in 2011. Consequently, we reject the aforesaid contentions.

67. Consequently, finding no merit, in the writ petitions, the impugned orders are affirmed and the writ petitions are dismissed with no order as to costs.

Civil Writ Petition No. 18923 of 2014

68. The petitioner challenges a licence granted to respondent No. 3, to develop a colony.

69. Counsel for the parties have agreed that in case partition proceedings are set aside, the licence would necessarily have to be set aside but in case partition proceedings are affirmed, the licence would also have to be affirmed.

70. As we have dismissed the writ petitions and affirmed partition proceedings, the present writ petition also must meet the same fate. Dismissed with no order as to costs.

Amol Rattan Singh, J.—71. I have perused the judgment of my learned brother, Rajive Bhalla, J., in these writ petitions, but find myself unable to agree with the same. Consequently, I am recording my separate judgment in respect of all three petitions, two of which pertain to partition of land in Tehsil Sohna, District Gurgaon and the 3rd seeks quashing of the licence granted to a Company, for construction of group housing on the said land which is subject matter of the other two petitions.

CWP No. 696 of 2014

72. The two petitioners in this petition have challenged the order of the Financial Commissioner, Haryana, dated 04.12.2013 (Annexure P-18), dismissing the revision petition filed by them against the order of the Assistant Collector 1st Grade, dated 19.10.2011 and 02.08.2012 (both collectively part of Annexure P-10).

Vide order dated 19.10.2011, the Assistant Collector 1st Grade, Sohna, rejected further opportunity of filing objections to "Naksha Kha" prepared during partition proceedings, on the ground that sufficient opportunity had been granted to petitioner No. 1 Mir Singh, to do so, which he had not availed of and hence, no further opportunity was to be granted. The Assistant Collector also, consequently, recommended vide the same order, that "Naksha Kha" be accepted as it was and that the file be presented on 23.11.2011 for calling the next partition map, i.e. "Naksha Zeem".

Subsequently, the order dated 02.08.2012, passed by the same revenue authority, allowed the partition applications filed by respondent No. 6, Jaipal and

respondent No. 5, Bharta, seeking partition of land, in all measuring 197 kanals 18 marlas in village Dhunela, Tehsil Sohna, District Gurgaon.

A revision petition challenging these orders, before the learned Financial Commissioner, Haryana, was filed under Section 16 of the Punjab Land Revenue Act, invoking the powers of the Financial Commissioner to call for the record of any case pending before any revenue officer subordinate to him.

73. The facts leading up to the case have already been detailed by my learned brother, Rajive Bhalla, J., and as such are not being repeated.

I shall, therefore, come straight to the points of difference that I have with my learned brother.

74. In the present petition, the difference of opinion comes from the wholly contradictory stand on a point of fact, taken by the official respondents, i.e. respondents No. 3 and 4 and the private respondents, i.e. respondents No. 5, 6 and 8, in their respective written statements.

Before I refer to the apparently contradictory stand taken by the respondents, it is necessary to first notice that the petitioners, in para 9 of their petition, have stated that upon an application for consolidation of the two partition proceedings, i.e. on the application filed by Jaipal in respect of partition of 8 kanals of land and the application filed by Bharta for partition of 189 kanals and 18 marlas of land, Shri Javinder Malik, Assistant Collector 1st Grade, had passed an order on 27.07.2011, directing that the two partition cases be consolidated.

The petitioners have further stated that thereafter, Bharta (respondent No. 5) in fact, filed an amended application for partition, qua the entire land, measuring 189 kanals 18 marlas plus the 8 kanals sought to be partitioned by Jaipal, in his application.

In support of this contention, the petitioners have annexed a copy of the said application as Annexure P-5 with the petition, shown to be filed before the Assistant Collector 2nd Grade, Sohna, though carrying no date on it. It has further been alleged in para 9 of the petition that:--

"Shockingly, passing of the said order has been denied by the private respondents and more shockingly the records had been interpolated and fabricated to show existence of some other order of 27.07.2011."

75. In the reply filed on behalf of respondents No. 3 and 4, i.e. the Collector, Gurgaon and the Assistant Collector, 1st Grade, Tehsil Sohna, the contents of para 9 have been denied and it has been stated that no direction was issued vide order dated 27.07.2011, for consolidation of the partition applications. In this regard, reference has been made in para 9 of the reply itself, to the zimni order of the Assistant Collector 1st Grade, Sohna, dated 27.07.2011 annexed by the petitioners themselves as part of Annexure P-10, at page 77 of the writ petition.

A perusal of that short order, shows that it is to the following effect:--

"File presented. Parties were called. The counsel for the parties appeared. Mode of partition has been proposed. Now the file be presented/produced on 10.08.2011 for objections with regard to mode of partition."

The petitioners on the other hand, have alleged thereafter (in paragraphs 10 and 11 of the petition), that the passing of the order dated 27.07.2011 ordering consolidation of the two partition applications, is fortified by the fact that two separate appeals "bearing case No. 46/SDOG(s) Jaipal v. Mir Singh and others" and "case No. 47/SDOG(s) Jaipal v. Mir Singh and others" were filed against the said order (presumably before the Collector). Copies of the said appeals have also been annexed with the petition as Annexures P-6 and P-7 respectively.

Paragraph 10 of the writ petition, containing the aforesaid averment, has been admitted to be a matter of record in the reply filed on behalf of respondents No. 3 and 4.

Paragraph 11, which refers to the stay order passed by the Collector, Gurgaon, in the aforesaid appeals, has also been referred to which again is admitted in the reply of respondents No. 3 and 4.

76. Respondents No. 5 and 6, i.e. Bharta son of Heta and Jaipal son of Hari Singh, have denied the passing of the order dated 27.07.2011, by which the partition cases were ordered to be consolidated and have stated that if that were so, the petitioners would have raised an objection to the hearing of the two partition cases separately on subsequent dates, (rather than conjointly), whereas no such objections were raised. The inference is that as per the order of the Assistant Collector 1st Grade, annexed collectively as Annexure P-10, on 27.07.2011 the zimni order shown to have been passed, is for production of the file on 10.08.2011 for objections and with regard to mode of partition, and not for consolidation of the two applications. Thereafter, on 10.08.2011, it is recorded that the counsel for the parties had appeared and "The applicant and respondent No. 3 did not raise any objection with regard to the mode of petition" and requested for its acceptance, whereas counsel for respondent Mir Singh (petitioner No. 1 before this Court), sought time for filing objections to the mode of partition, which was countered by the counsel for the applicant and eventually, the order passed was that one opportunity be granted to Mir Singh to file objections, and the matter was adjourned to 24.08.2011.

As already noticed, in the last part of paragraph 9 of the writ petition, conversely, the petitioners have alleged that the order dated 27.07.2011 has been interpolated.

77. It is also necessary to refer to the reply filed by respondent No. 8, i.e. M/s. ROF Infratech and Housing Pvt. Ltd., i.e. the Company which is stated to have purchased the land from respondents No. 5 to 7 and has obtained a licence from respondent the Director, Town and Country Planning Department, Haryana (not a party here), for constructing a group housing colony.

It is further necessary to mention here that against the grant of the licence, the petitioners filed an appeal to respondent No. 2, i.e. the Principal Secretary, Government of Haryana, Town and Country Planning, which was dismissed on 25.03.2014, a copy of which has been annexed as Annexure R-11 with the reply filed on behalf of respondent No. 2.

In fact, the petitioner in CWP No. 18923 of 2014 (one Dharam Pal) has challenged the grant of that licence to M/s. ROF Infratech (respondent No. 8 in CWP No. 696 of 2014).

78. Coming back to the reply filed on behalf of respondent No. 8, in paragraph 9 of the written statement, it is stated as follows:--

"That the contents of para No. 9 of the writ petition, as stated, are misconceived, incorrect, wrong and hence vehemently denied. It is emphatically denied that vide the order dated 27.7.2011, directions were issued for consolidating two partition cases as alleged. A perusal of the record reveals that on the said date, mode of partition has been proposed and the matter was adjourned to 10.08.2011 for objections if any with regard to the mode of partition. A perusal of the interim orders passed prior and after the said date also reveal that on 27.7.2011, no order for consolidating two partition proceedings, as alleged, was ever passed. The counsel for the parties had been present on 13.7.2011, 27.7.2011, 10.8.2011, 24.8.2011 as duly recorded in the respective orders of the said case. Moreover, the said aspect has been considered by the learned Financial Commissioner and a specific finding has been recorded. A specific issue has been framed in that regard. The said issue and the finding returned thereunder is extracted hereunder for ready reference:

"1. Whether more than one khewat can be combined for partition in a single application?"

"So far as the first issue is concerned, it is the rudimentary revenue law that two khewats can be combined only in the eventuality when the share holders in both the khewats are same, irrespective of the quantum of their shares in different khewats. Further, if there is such any order dated 27.7.2011 as alleged by the petitioner, the same is illegal ab-initio. In this case, there is no such proof on the file that two khewats were having common share holders, as enunciated above. The issue is decided accordingly."

Thus, respondent No. 8 has emphatically denied that any order consolidating the two applications for partition, was ever passed. Hence, the stand of this respondent is the same and more emphatically to that effect, as that of respondents No. 5 and 6.

79. What I find wholly contradictory is that, firstly, in the reply filed on behalf of respondents No. 3 and 4, i.e. the Collector and the Assistant Collector 1st Grade (reply actually filed by the Assistant Collector), while denying that any order was passed consolidating two applications for partition, in paragraph 9 by reference

to the zimni orders collectively annexed as Annexure P-10, the subsequent paragraphs, 10 and 11, of the reply, admit the filing of two appeals by Jaipal (respondent No. 6).

Further, in paragraphs 10 and 11 of the reply, the specific contention of the petitioner is that these appeals were against the order dated 27.07.2011, consolidating the partition cases.

In paragraph 11, the petitioners' specific contention is that upon stay having been granted by the Collector, Gurgaon, in the aforesaid appeal (one of them), the record before the Assistant Collector 1st Grade had been summoned and had been received in the office of the Collector on 16.04.2012 and thereafter, the matter was adjourned by the Collector from time to time till, finally, the appeal (not stated to be appeals) is shown to have been withdrawn on 01.08.2012, pursuant to an application having been made on 30.07.2012 (on which date the Presiding Officer-Collector was on leave). A copy of all these orders, including a statement of Jaipal made on 01.08.2012, to the effect that he did not wish to proceed with the appeal (case No. 47/SDOG), have been collectively annexed as Annexure P-9 with the petition. All these orders of the Collector and the contention of the petitioners that these orders were passed in an appeal, consolidating the two applications for partition, have not been denied by respondents No. 3 and 4, in paragraph 11 of the reply, despite having specifically denied in paragraph 9, that any order of consolidation of the two applications was passed on 27.07.2011.

80. It is now necessary to refer to the impugned order of the Financial Commissioner, dismissing the revision petition filed by the petitioners in this writ petition, i.e. Mir Singh and Rattan Singh. In fact, it would be appropriate to reproduce the entire part of the order, where she has considered the matter, as follows:--

"I have gone through the contents of revision petition, submissions made by the counsels, order dated 24.08.2011, 19.10.2011, 30.11.2011 and 02.08.2012 passed by Assistant Collector, 2nd Grade, Gurgaon. Order dated 01.08.2012 passed by SDO (Civil)-cum-Collector Gurgaon, various other connecting orders as enunciated in the facts of case, connecting provisions of Punjab Land Revenue Act, 1887 and various rulings in the matter. Before proceeding further in the matter, the following issues need to be decided:--

1. Whether more than one khewat can be combined for partition in a single application?
2. Whether there is any infirmity in various orders passed by Assistant Collector, 2nd Grade, Gurgaon?
3. Whether case can be re-opened at Financial Commissioner Court after issuance of "Sanand Taqseem" or not and whether case falls in the category to call for the same before this court?

So far as the first issue is concerned, it is the rudimentary revenue law that two khewats can be combined only in the eventuality when the share holders in both the khewats are same, irrespective of the quantum of their shares in different khewats. Further, if there is such any order dated 27.07.2011 as alleged by the petitioners, the same is illegal ab-initio". In this case, there is no such proof on the file that two khewats were having common share holders, as enunciated above. The issue is decided accordingly.

So far as the second issue is concerned, various orders have been passed by Assistant Collector at various intervals by following procedure as enunciated in Haryana Land Records Manual. There appears prima-facie no question of committing any fraud, in view of the fact that cutting and overwriting can be due to error of judgment and not intentional. Even if, any criminality is presumed to have been committed, the petitioners are well within their jurisdiction to take up the same at the appropriate forum. The issue is decided accordingly.

So far as the third issue is concerned, in various rulings cited in 2010(2) RCR (Civil) 263 (P&H), 2009(4) RCR (Civil) 353 (P&H) and 2009(2) RCR (Civil) 712 (P&H), it has been clearly upheld that Section 16(1) of the said Act confers suo moto revisional powers upon the Financial Commissioner to call for and examine the legality of proceedings pending before and decided by a revenue officer. It has been further upheld that finality attached to "Sanad Taqseem" can also be impugned by invoking the power of High Court under Article 226 of Constitution of India and suo moto powers conferred under Section 16(1) of the said Act concurrently, if some patent error has been committed. In the present case, no grave error of law has been committed by Assistant Collector, 2nd Grade, Gurgaon. Hence, the said "sand taqseem" cannot be set aside in any way. There is not a scintilla of doubt that such circumstances have not been existed, which require calling for the entire proceedings of the case. The issue is decided accordingly.

In the light of above, revision petition is dismissed being, frivolous and devoid of merit.

81. Thus the Financial Commissioner dismissed the revision petition on two grounds:--

"i) that partition proceedings of two khewats can be combined only if all the co-sharers in the two khewats are common, which fact had not been proved before her (Financial Commissioner); and

ii) that there was no infirmity in the order of Assistant Collector, as no fraud had been proved by the petitioners."

No fraud having been proved, as held by the Financial Commissioner, was in reference to the petitioners' allegations before her (as also before this Court), that respondents No. 5 and 6, and specifically respondent No. 8, had got the record before Assistant Collector 1st Grade interpolated to have the order of

consolidation of the two applications, passed by Assistant Collector 1st Grade on 27.07.2011, substituted by another order of that date, by which it was shown that the mode of partition has been proposed and that the file be produced on 10.08.2011 for objections with regard thereto.

The order dated 10.08.2011 has already been referred to earlier hereinabove, in which Mir Singh is shown to have raised an objection upon which he was granted opportunity to file the objections.

Thereafter, on 24.08.2011, Mir Singh sought yet another opportunity for filing objections which was denied in view of the fact that he had already been granted opportunities earlier.

82. It is also necessary to refer to paragraph 14 of the writ petition, to appreciate the reference made by the Financial Commissioner, in her order, to no fraud having been proved.

Paragraph 14 of the writ petition is reproduced hereinunder:--

"14. That surprisingly and rather shockingly, on the same day itself i.e. 01.08.2012, the record of the Assistant Collector 1st Grade is shown to have been sent back from the office of the Collector and is even received by the Assistant Collector 1st Grade on the same date itself. Not only that, Assistant Collector 1st Grade is even shown to have taken up the matter on the said date itself i.e. 01.08.2012 and thereafter, the matter has been shown to have been adjourned for the very next date i.e. 02.08.2012, on which date, Sanad Taqsim is shown to have been prepared and the file is shown to have been consigned to the record room. Copies of all the Zimni Orders forming part of the record of the Assistant Collector 1st Grade, as provided to the petitioners, are collectively annexed hereto as Annexure P/10. Apparently the entire process has been undertaken surreptitiously without any notice to the petitioners. Further, the proceedings sheets/orders have been seemingly manipulated, which not only gets apparent from the perusal of the zimni orders (in original), which would show that the same has been in one ink and in same handwriting from a particular date, but would also gets apparent from the contradictions appearing in the records."

The reply thereto on behalf of respondents No. 3 and 4, i.e. Collector and the Assistant Collector 1st Grade is as follows:--

"14. That in reply to the contents of para No. 14."

In other words, no reply whatsoever has been given by the said two official respondents, with regard to the specific allegation of fraud in the face of, what is contended by the petitioners to be, interpolated and substituted record.

83. The private respondents, i.e. respondents No. 5 and 6, and 8, in their two respective replies, have denied the allegations. In the reply filed on behalf of respondents No. 5 and 6, it has been stated that the petitioners are raising a

bogey of fraud etc. only in order to extort money from respondent No. 8 and that there was no need to carry out any proceedings surreptitiously, as all the parties were to be given lands as per their share, which is precisely what has been done, upon the partition having been effected (vide order dated 02.08.2012).

Respondent No. 8, in its reply to the said paragraph, while vehemently denying it, stated that this issue had also been raised by the petitioners in the civil suit filed by them, seeking permanent injunction against respondents No. 5 and 6 (Bharta and Jaipal).

84. The reference by respondent No. 8, to the orders passed in the civil suit, are orders pertaining to an application moved under Order 39 Rules 1 & 2 CPC, seeking ad-interim injunction during the pendency of the suit.

The learned Civil Judge having declined interim injunction, the petitioners filed an appeal against the said order before the Additional District Judge, Gurgaon, which was also dismissed on 22.01.2013, holding therein that though "The great efficiency with which the matter was taken up in the office of the Assistant Collector 1st Grade, Sohna does raise an eye-brow. However, even for the sake of arguments the stand of the appellants-plaintiffs is accepted to be correct, there is no element on fraud".

The learned Additional District Judge went on to notice that the parties had been duly appearing before the Assistant Collector 1st Grade, Sohna and that no appeal/revision etc. was filed when "Naksha Khai" was accepted and though thereafter, an appeal was filed, it was after filing of the civil suit.

All in all, it was held by the learned Additional District Judge, while dismissing the appeal, that once the "Sanad Takseem" had been prepared, the aggrieved person could approach the Financial Commissioner under the Punjab Land Revenue Act and this Court under Article 226 of the Constitution.

85. That appeal also having been dismissed, the contention of the respondents is that a finding of fact having been recorded by the Civil Courts, that no fraud was played, that matter stands settled.

It needs to be stated here that my learned brother has reproduced the order of the learned Civil Judge (Senior Division), Gurgaon and that of the learned Additional District Judge, dated 22.01.2013, in his judgment and order. It is also noticed that thereafter, Civil Revision No. 1233 of 2013 was filed against the aforesaid order of the Additional District Judge, by the petitioners, which was eventually dismissed as withdrawn. However, the reasoning given by my brother for such withdrawal, is erroneously recorded, as being for filing a revision petition before the Financial Commissioner, whereas the order of the learned Single Judge of this Court dated 01.08.2014, passed in the aforesaid Civil Revision, reveals that the petitioners had withdrawn their petition taking liberty to take all pleas taken therein, before the lower Court at the appropriate stage. That liberty was granted, further observing that since a question of jurisdiction of the Civil

Court had also been referred to by both the Civil Courts below, a specific issue in that regard would be framed, and the entire matter would be decided within six months.

86. Whether the aforesaid civil suits had been decided or not has not been stated in the pleadings; however, in my opinion, that would have no bearing on the present issue, in view of the fact that the suit before the Civil Court was one seeking permanent injunction restraining the 5th and 6th respondent from changing the nature of the land in dispute and from raising any sort of construction thereupon. Hence, whatever findings may have been recorded in that suit, qua the issue of permanent injunction, would not override the jurisdiction of revenue Courts in matters wholly within the purview of the Punjab Land Revenue Act, 1887, as regards the jurisdiction with regard to effecting partition. Chapter 18 of that Act, governs the procedure for partition of land and under Section 111 thereof, as already noticed by my learned brother, an application for partition is to be made to a revenue officer, and under Section 118(2) an appeal against the mode of partition would lie to the next higher revenue authority. As already noticed, the Financial Commissioners' revisional jurisdiction can be invoked with regard to any order passed by an officer subordinate to him, under Section 16.

87. Hence, with the petitioners having invoked such jurisdiction, calling upon the Financial Commissioner to decide as to whether the proceedings before the Assistant Collector 1st Grade were vitiated by fraud or not, in view of the fact that an order of a specific Assistant Collector 1st Grade (Shri Jaivinder Singh), was alleged to have been substituted and interpolation even made thereafter, and further, that no proper service had been effected upon the petitioners even in the appeals filed by respondent No. 6, Jaipal, against the order alleged to have been passed on 27.07.2011, consolidating the two partition applications, and yet further, that the said appeals were withdrawn and within one day thereafter, the "Sanad Takseem" was issued by the Assistant Collector in allegedly undue haste, were also issues that were required to be adjudicated upon in detail by the learned Financial Commissioner, which has not been done.

Neither was the first issue, with regard to combining of applications for partition of more than the one khewat, dealt with by her in detail, by noticing who the co-sharers were in each khewat, or considering the relevant factors due to which the applications combining the applications were to be allowed or disallowed; nor was the issue of alleged fraud gone into by her in detail, simply stating that there appeared to be, prima-facie, no question of committing any fraud. What she was required to go into, was whether, ex-facie, a fraud had been committed or not. Very strangely, she further observed that "even if any criminality is presumed to have been committed", the petitioners would be within their jurisdiction to take up the same at an appropriate forum.

I find this recording in the order to be wholly and completely perverse, in view of the fact that the entire case of the petitioners was that the order of partition

(Sanad Takseem) was obtained by way of a fraud having been committed upon them. Whether or not such fraud had actually been committed, or whether the orders passed were completely valid and legal, was something which she needed to go into in detail, and thereafter record her findings and reasons, accordingly in detail.

88. The petitioners have further contended that their consolidated holding, to the extent of what they were in specific possession of as per their shares, has been now wholly scattered after the partition order, only to accommodate respondent No. 8 which is a Company seeking to construct group housing. That would also be a question which would require the Financial Commissioners' adjudication.

89. I wish to say here that the opinion recorded by my learned brother, that the petitioners are trying to coerce respondent No. 8 into purchasing the land (at higher prices), is obviously a real possibility, which cannot be discounted in any manner. However, in my opinion, even if it is so, the allegations of the petitioners, of the manner in which, allegedly, respondent No. 8 is stated to have been favoured, in alleged collusion with respondents No. 5 and 6, was an issue which the Financial Commissioner needed to go into, after careful perusal of the records of the revenue Courts below and thereafter, to record her findings on the issue of fraud, as also on the issue of whether partition was effected fairly or not.

That not having been done, I quash the impugned order of the Financial Commissioner dated 04.12.2013 (Annexure P-18) and remand the matter back to that authority, to consider the matter afresh, in the light of what has been observed hereinabove and to pass a detailed reasoning order thereafter.

The writ petition is accordingly allowed but with no order as to costs.

CWP No. 11993 of 2014

90. In this petition, I agree with my learned brother, that in terms of Section 20 of the Punjab Land Revenue Act, 1887 (as applicable to Haryana), service on each co-sharer is not essential; in my opinion in three situations, i.e. if notice of partition proceedings is effected upon an agent of the party concerned, or on an adult male member of the family with whom the co-sharer is usually residing, or if service on everybody is not practicable because the number of co-sharers is so large, that service on those as are sharing a common interest, would suffice as service upon all.

91. In the present petition, we are not fully aware of the entire number of co-sharers but only of those aggrieved of the order of partition, and the dismissal of the appeal and the revision thereafter, the last being by the order of the Financial Commissioner. These proceedings, as are before us, are of petitioners of whom petitioner No. 1, Naresh, is the brother of the other four petitioners. Affixation of notice of the proceedings is stated to have been made on Nareshs' house. Petitioners No. 2 to 5 are his married sisters, residing in their matrimonial homes in different villages, as noticed by my learned brother.

92. I also agree with my learned brother that a question of fact would not be gone into by a writ Court and as such, to fully determine as to whether affixation of the notice was actually made on the premises of petitioner No. 1 or not, or whether thereafter, munadi/proclamation by voice was made in the village or not, would not be fully determinable in these proceedings.

However, in my opinion, in view of the fact that, admittedly, petitioners No. 2 to 5 do not reside in the same village, and it cannot be presumed in today's environment, as to whether their interest is being looked after by their brother (petitioner No. 1) or not, to a complete extent, and in any case, it is not even certain whether any affixation was made or proclamation was made, in view of the affidavits filed to the contrary, by the village Lambardar and Members of the Panchayat, I would allow the writ petition to the extent that the petitioners would have a right to be heard, as with no proof of actual service of notice of the proceedings upon them, they cannot be deemed to have been served.

93. Normally, it would not be unknown in the same village, that partition proceedings are going on with regard to a particular parcel of land and as such, even if it is accepted that petitioner No. 1 had such knowledge, with his co-sharer Mawasi having been duly represented and having appeared along with son before the Assistant Collector, the same cannot be presumed qua petitioners No. 2 to 5.

These aspects have not been considered by the Financial Commissioner, or the Commissioner, in the orders passed by them, as have been impugned in this petition.

94. Consequently, I allow this writ petition, quash the impugned orders of the Financial Commissioner dated 7.5.2014 (Annexure P-33) and that of the Commissioner dated 6.8.2013 (Annexure P-30), as also the orders passed by the Assistant Collector First Grade, Sohna, dated 16.11.2011 (Annexure P-4), 2.5.2012 (Annexure P-19), 13.6.2012 (Annexure P-20) and 20.6.2012 (Annexure P-21), on the ground that the petitioners are not shown to have been served of the proceedings culminating in the order dated 20.6.2012 (Annexure P-21), by which a Sanad Takseem was ordered to be prepared and issued.

The matter is ordered to be remitted to respondent No. 6, i.e. the Assistant Collector First Grade, Sohna, to afford an opportunity of hearing to the petitioners and other co-sharers again, so as to ensure that no orders are passed behind their back, after they have been heard.

95. The Assistant Collector would ensure that service is effected upon all the co-sharers, in terms of Section 20 of the Punjab Land Revenue Act, 1887 (as application to Haryana), and in case service is to be effected by the alternate modes provided therein, then firm proof of it having been effected service by substituted/alternate mode would be obtained, in the form of photographs etc., so as to ensure that no further litigation results only on account of a plea raised of non-effecting of service upon any of the co-sharers.

96. The Assistant Collector would ensure that service upon all the co-sharers is effected within a period of three months from the date of receipt of a certified copy of this order and thereafter, after giving due opportunity of hearing, the final order, whatever it be, shall be passed within a period of six months thereafter, positively.

97. With the aforesaid observations, the writ petition is allowed, with no orders as to costs.

CWP No. 18923 of 2014

98. In this petition, the petitioner is a co-owner of land measuring 195 kanals 3 marlas and is essentially aggrieved of the partition proceedings as are subject matter of CWP No. 11993 of 2014, i.e. the partition proceedings in which partition was effected on an application made by respondent No. 4 herein, i.e. Yashpal.

99. As recorded by my learned brother, counsel for the parties were agreed that in case partition proceedings are set aside, in both/either of the two connected writ petitions, i.e. CWP No. 696 of 2014 and CWP No. 11993 of 2014, the licence granted to respondent No. 3, M/s. ROF Infratech and Housing Pvt. Limited, for developing a group housing project, would necessarily have to be set aside but in case partition proceedings are affirmed, challenge to the grant of licence to respondent No. 3 would fail.

100. Though in my separate orders recorded in both the connected writ petitions (CWP No. 696 of 2014 and CWP No. 11993 of 2014), I have allowed the writ petitions and set aside either the order of the Financial Commissioner (in CWP No. 696 of 2014), or the entire partition proceedings (in CWP No. 11993 of 2014), however, I am not inclined to allow this writ petition in toto, in view of the fact that if, eventually, the partition proceedings are affirmed or decided in a manner by which respondent No. 3 would still meet with the criteria for grant of a licence, then there would be no need to cancel the licence at this stage. Thus, in my opinion, a direction to respondent No. 2 herein, i.e. the Director General, Town and Country Planning, to hold the licence of respondent No. 3 in abeyance during the partition proceedings, would suffice. That is ordered accordingly.

It is further directed that if, after finalization of the partition proceedings, as are subject matter of CWP No. 696 of 2014 and CWP No. 11993 of 2014, respondent No. 3 still meets with the criteria for grant of the licence, in terms of acreage held etc., the licence already granted vide order dated 28.12.2013 (Annexure P-6), passed by respondent No. 2, would stand revived. However, if as a result of the partition proceedings to be now finalized, respondent No. 3 does not meet with, or falls short of such criteria, then an appropriate order in that regard would be passed by respondent No. 2, at that stage.

This writ petition is, consequently, disposed of, as above.