

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision : 06.05.2025

1. CWP-21368-2023 (O/M) Citation No. 2025:PHHC:058672  
Budhu Khan and another ..... Petitioners

Versus

Financial Commissioner, Haryana and others ..... Respondents

2. CWP-8549-2020 (O/M) Citation No. 2025:PHHC:058687  
Gram Panchayat village Sultanpur  
Tehsil Raipur Rani, District Panchkula ..... Petitioner

Versus

State of Haryana and others ..... Respondents

3. CWP-8848-2020 (O/M) Citation No. 2025:PHHC:058691  
Mohammad Iqbal ..... Petitioner

Versus

State of Haryana and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ranjit Saini, Advocate  
for the petitioners in CWP-21368-2023 and  
for private respondents in CWP-8549-2020.

Mr. Ashish Aggarwal, Senior Advocate with  
Mr. Vishal Pundir, Mr. Anmol Rattan S. Dhillon,  
Ms. Aashna Aggarwal, Advocates  
for the petitioner in CWP-8549-2020 and  
for the petitioner in CWP-8848-2020.

Mr. Rajneesh Chadwal, AAG Haryana.

Mr. Hardeep, Advocate  
for respondents No. 3 and 4 in CWP-21368-2023.

Mr. Sunil Kumar Rohilla, Advocate for  
Mr. S.M. Sharma, Advocate  
for respondent No. 8 in CWP-8848-2020.

Mr. Aashish Chopra, Senior Advocate with  
Mr. Hardeep, Ms. Rupa Pathania,  
Ms. Nitika Sharma, Advocates  
for respondents No. 11 to 15 in CWP-8549-2020.

HARSH BUNGER, J.

1. This order shall dispose of aforementioned three writ petitions i.e. CWP-21368-2023, CWP-8549-2020 and CWP-8848-2020, as identical questions of law and facts are involved therein.

1. **Prayers**

CWP-8549-2020

1.1 Prayer in the instant writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the partition proceedings initiated, vide application (Annexure P-1), including the order dated 13.02.2015 (Annexure P-4), whereby the mode of partition was approved; order dated 17.05.2018 (Annexure P-10), whereby objections to Naksha 'Bey' were rejected; order dated 21.01.2020 (Annexure P-11), whereby Naksha 'Zim' was approved and order dated 20.03.2020 (Annexure P-12), whereby sanad takseem was issued, being contrary to law and in defiance to the rights of Gram Panchayat, wherein the land meant for common purposes, has been ordered to be partitioned alongwith other land.

CWP-8848-2020

1.1 Prayer in the instant writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the partition proceedings initiated vide application (Annexure P-1), vide which the land of Gram Panchayat, which is shamlat deh, is sought to be distributed illegally; without deciding the question of title and without complying with the

provisions of Section 13 of Punjab Village Common Land (Regulations) Act, 1961 (in short '1961 Act').

1.2 A further prayer has been made for setting aside the letter/notice dated 09.06.2020 (Annexure P-14), vide which possession is sought to be taken in respect of land reserved for school, village pond/johar and rasta etc.

1.3 Another prayer has been made for holding an inquiry through some independent agency for the fraud, which has been committed by private respondents in collusion with official respondents to usurp the public property/Panchayat land by illegal means.

CWP-21368-2023

1.1 Prayer in the instant writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the partition proceedings filed by respondents No. 3 and 4, namely, Ranbir Singh Lamba and Rajeshwar Dayal, respectively (in short 'respondents No. 3 and 4') including the order dated 13.02.2015 (Annexure P-11), vide which the mode of partition was approved and also consequential proceedings including the order, approving Naksha 'Bey' dated 17.05.2018, approving Naksha 'Zeem' on 21.01.2020 and issuance of sanad takseem dated 20.03.2020 (Annexure P-20), being illegal and in violation of Punjab Land Revenue Act.

1.2 A further prayer has been made for setting aside the order dated 08.06.2023 (Annexure P-21), passed by learned Financial Commissioner, Haryana (in short 'Financial Commissioner'), whereby the

revision petition, preferred by the petitioners, challenging the partition proceedings/sanad takseem, has been dismissed.

**2. Facts**

1. For the sake of brevity, facts are being taken from CWP-21368-2023, titled as '*Budhu Khan and another Versus Financial Commissioner, Haryana and others*'.

2. The pleaded case of the petitioners is that one Mir Mohd. Ali Khan was the owner of the land, situated in village Sultanpur, Tehsil Naraingarh, District Ambala, who expired in 1958 and thereafter, his elder son, namely, Mir Mohd. Kasim Ali Khan, sold the land in dispute to various inhabitants of village, vide registered sale deed dated 19.03.1959 and the vendees were put in possession of the land. It is stated that the aforesaid sale deed was challenged by Smt. Pakiza Begum and others, which came to be finally partly decreed, vide judgment dated 02.04.1975 (Annexure P-1), passed by learned Sub Judge 1<sup>st</sup> Class, Ambala. It is the admitted case of the petitioners that the aforesaid decree dated 02.04.1975 was never incorporated in the revenue records and the vendees of the sale deed dated 19.03.1959 continued to be reflected in the revenue records. It is stated that on the basis of the decree dated 02.04.1975, a mutation was presented before the revenue authorities, however, the same was rejected by the concerned Assistant Collector, vide order dated 15.11.1999 (Annexure P-2). It is further stated that on the basis of decree dated 02.04.1975, one of the decree holders, namely, Raja Ali Khan sold the land to respondents No. 3 and 4. An offshoot regarding execution of the above referred decree dated 02.04.1975 is stated to be pending.

2.1 It transpires that respondents No. 3 and 4 filed an application dated 15.06.2012 (Annexure P-4) seeking partition of land measuring 907 Kanal – 17 Marla, situated at village Sultanpur, Tehsil Raipur Rani, District Panchkula. On the said partition application, notice was issued to the co-sharers.

2.2 It appears that there were total 154 respondents in the partition application and out of them, only respondents No. 14 and 134 appeared before the Assistant Collector. Since respondents in the partition application were numerous, learned Assistant Collector, vide order dated 07.09.2012, ordered service upon respondents by way of proclamation (munadi) and/or through publication in the newspapers.

2.3 It is stated that in the said partition proceedings, the petitioners and other co-sharers were never served. The petitioners allege that the service upon respondents in the partition application was manipulated and also that various irregularities were committed by the Assistant Collector, while conducting the partition proceedings. It is further stated that some of the zimni orders available on the file were never signed by the Assistant Collector. It is also stated that the partition papers were not prepared by the authorized person.

2.4 Apparently, the mode of partition came to be proposed on 13.02.2015 (Annexure P-11) and the same was subsequently sanctioned. Upon finalisation of mode of partition, Naksha 'Bey' was called from the field staff. It appears that there were some objections raised to Naksha 'Bey', however, the same were rejected, vide order dated 17.05.2018 and thereafter, Naksha 'Bey' was approved. Subsequently, Naksha 'Zeem' was also called, vide order

dated 21.01.2020 and the partition proceedings culminated with the drawing of sanad takseem (instrument of partition), vide order dated 20.03.2020 (Annexure P-20).

2.5 Being aggrieved against the partition, the petitioners filed a revision petition (ROR-369/2019-20) before learned Financial Commissioner, challenging the partition proceedings/sanad takseem, which was dismissed, vide order dated 08.06.2023 (Annexure P-21).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court for the relief (s), as noticed hereinabove.

4. Learned counsel for petitioners submits that the partition proceedings/sanad takseem are liable to be set aside as the entire proceedings have been carried out in a clandestine manner and the same are result of fraud committed by respondents No. 3 and 4 in connivance with official respondents. It is submitted that the procedure as envisaged under the Land Revenue Act has not been followed for carrying out partition proceedings. It is submitted that various zimini orders were unsigned by the concerned Assistant Collector and thereby vitiating the entire proceedings. It is further submitted that while conducting the partition proceedings, even the gair mumkin land and also the land, which was reserved for the common purposes like school, pond, rasta etc. has also been partitioned, which is not permissible under law. It is also submitted that the question of title was involved in the matter, however, despite that, the partition proceedings have been concluded. It is next submitted that even the learned Financial Commissioner has failed to consider and appreciate the issues raised before him and wrongly

dismissed the revision petition filed by the petitioners. It is also stated that one another suit i.e. Suit No. 455 of 2015, titled as '*Gulam Deen and others Versus Meer Syad Mohd. Mehandi and others*', was filed before the Civil Court, wherein restraining order was passed as regards alienation of the suit property. On the basis of aforesaid submissions, prayer has been made for setting aside the partition proceedings/sanad takseem, as well as, impugned orders.

5. Per contra, learned counsel appearing for private respondents No. 3 and 4 have opposed the submissions raised on behalf of the petitioners by submitting that the partition proceedings have been carried out in a fair manner, wherein the predecessor-in-interest of the petitioners, namely, Ilma, was impleaded as respondent No. 114. It is stated that Shri Ilma was proceeded against ex-parte and it has neither been shown as to when the petitioners learnt about the partition proceedings nor any such reasoning is forthcoming in the writ petition. It is further submitted that as regards the allegation regarding non-signing of few zimni orders is concerned, the same is a mere irregularity and in any case, the litigants cannot be made to suffer on account of inaction on the part of Government officials. It is submitted that in the partition proceedings, only small area has been partitioned out and the remaining area is still lying joint. It is submitted that the petitioners have failed to show as to what prejudice has been caused to the petitioners by the manner in which the final partition has been carried out.

5.1 As regards the submission of the petitioners that certain area forming part of school, pond, rasta etc. has also been included in the partition proceedings and same has been allocated to the co-sharers, it is

submitted that since khasra number depicting the school, pond, rasta etc. was a part of joint khewat, accordingly, the same had to be included in the partition application and in case the same has been allocated to respondents No. 3 and 4, that would not take away the fact of said area being put to common use and that respondents No. 3 and 4 would lay no claim to such areas, which are earmarked/used for common purposes like school, pond, rasta etc. It is submitted that the petitioners are pursuing the present matter with an oblique motive to harass respondents and to make unlawful gains, which cannot be permitted. With the aforesaid submissions, prayer has been made for dismissal of the writ petition.

6. I have heard learned counsel for respective parties and perused the paperbooks with their able assistance.

7. In my considered opinion, the area which has been earmarked or is being used for common purposes, cannot be claimed exclusively by any co-sharer and the said areas are required to be kept intact. Further, the private respondents No. 3 and 4 have taken a stand that they would not claim any share/right as regards the area which is earmarked/used for common purposes like school, pond, rasta etc. With the aforesaid stand, the grievance made by Gram Panchayat in CWP-8549-2020 and the grievance of petitioner in CWP-8848-2020 and also one of the issues raised by petitioners in CWP-21368-2023; stands addressed and Gram Panchayat would be at liberty to claim the said areas by initiating appropriate proceedings, in accordance with law.

8. As regards the plea of the petitioners that the revenue authorities have not carried out the partition proceedings in accordance with law and also that question of title was involved, it is observed that

the said arguments have been duly considered by the learned Financial Commissioner and have been rightly rejected by observing as under :-

*“ I have gone through the arguments put forth by Counsels for the parties and have gone through the records available on file. There is ample proof available on record that efforts were made by issuing summons and registered AD envelops for effecting service upon the opposite party by Assistant Collector 2<sup>nd</sup> Grade. However, later keeping in view the large number of respondents, the Assistant Collector 2<sup>nd</sup> Grade vide order dated 07.09.2012 deemed it appropriate to issue proclamation for service of respondents No. 1 to 154 as their service could not be effected in ordinary course/manner. Accordingly, proclamation was made in the village for all the respondents on 16.08.2012 in the revenue estate of village Sultanpur through village Chowkidar Sh. Jai Singh. Report in this regard is available on lower Court's file. Therefore, due service has been effected upon all the respondents. It is also to mention that despite service most of the respondents failed to participate in the partition proceedings and proceeded ex-parte.*

*In fact, as per latest jamabandi 2008-09, the application for partition was filed and all the co-sharers recorded in the jamabandi were impleaded as respondents at the time of filing partition application before the Assistant Collector 2<sup>nd</sup> Grade, Raipur Rani. Therefore, it some co-sharers had died after preparation of jamabandi and before filing of the partition application, it was for the legal heirs of deceased to get the revenue record corrected. Hence, no fault can be found with the applicants/respondents No. 1 and 2 on this count. Besides, during the proceedings before the Assistant Collector 2<sup>nd</sup> Grade, an application dated 28.05.2015 was moved by the respondents before the Assistant*

*Collector 2<sup>nd</sup> Grade stating that the partition application is not maintainable as some of the co-sharers had already died before filing the partition application. The Assistant Collector 2<sup>nd</sup> Grade after hearing both the parties, vide order dated 19.02.2016 specifically observed that keeping in view the judgment in the case of 'Kartar Singh versus Kundan Singh' reported as PLJ (1) 1997 Page 543-and decision of Financial Commissioner Revenue in ROR No. 528/1988-89 decided on 29.08.1996, the partition proceedings can be continued and the Counsel for the respondents was directed to bring on record the LR's of deceased co-sharers. Hence, the contention of the petitioners is devoid of any merits. This order has never been challenged before higher authorities and as such the said order has attained finality.*

*The petitioners have also challenged the validity of partition proceedings on the ground that the issue of question of title with regard to the land in question was raised but the Assistant Collector 2<sup>nd</sup> Grade without deciding the same finalised the partition proceedings. As already discussed above, the issue of title to the suit land had already been settled by the Civil Court in Civil Suit No. 7 and 8 of 1971 way back in 1975 and the said judgments and decrees were never challenged by anyone and as such have attained finality. Now with vested interest, the present petitioners have filed objections during the execution proceedings of aforesaid judgments and decrees of 1975 and also challenged the sale deeds of the respondents No. 1 and 2 at belated stage before the Civil Court just to raise the question of title so as to hamper the partition proceedings. Thus, no controversy regarding title is existing with regard to ownership of land.*

*A perusal of Lower Court file reveals that some of the zimni orders are not signed and few orders are not available on file but these are mere procedural irregularities but do not wipe out the entire partition proceedings. After recording statement, Mode of partition was sought on 06.02.2015 and objections were invited on 13.02.2015 and thereafter finding no objections, the Mode of partition was sanctioned on 27.02.2015 by keeping the possession intact. Consequently, Assistant Collector 2<sup>nd</sup> Grade appointed Girdawar (Kanungo) Raipur Rani as Commission to prepare Naksha 'Bey'. The said Commission prepared the Naksha 'Bey' on 17.06.2016 and objections were invited on 01.07.2016, 08.07.2016. The Assistant Collector 2<sup>nd</sup> Grade vide order dated 16.10.2017 directed the Kanungo to resubmit coloured Naksha 'Bey' alongwith field book after inspecting the site in presence of both the parties. Thereafter, objections on Naksha 'Bey' were received and the same were considered on 17.05.2018 by the Assistant Collector 2<sup>nd</sup> Grade, Raipur Rani and dismissed the same and approved Naksha 'Bey'. Thereafter, the applicants/respondents No. 1 and 2 requested on 20.01.2020 for preparation of Naksha 'Zeem' and issuance of Sanad Takseem on 20.01.2020 Assistant Collector 2<sup>nd</sup> Grade, Raipur Rani vide order dated 21.01.2020 ordered for preparation of Naksha 'Zeem' and thereafter Sanad Takseem was issued on 20.03.2020.*

*Hence, the proper prescribed procedure has been adopted in completing the partition proceedings. So far as the question of partition of common purpose land is concerned, though the same Khasra number of common purpose land has been included but the same is not partitioned. ....”*

9. In view of the above, the aforementioned writ petitions are partly allowed to the extent that the areas, which are earmarked for common purposes like school, pond, rasta etc., shall stand excluded from the partition and considering the stand taken by private respondents that they shall not claim any right/share in such lands/areas used for common purposes and even if the said areas have been allocated to the block of any co-sharer(s), the same shall stand excluded from their holding and their share in the joint land shall stand reduced to that extent. It is directed that such co-sharers would not be entitled to claim any more land on the basis of that area (meant/reserved for common purposes) which has been taken out from their share.

10. As a consequence of this order, there shall be a direction to the concerned Assistant Collector to carry out modification of the partition papers including Naksha 'Bey', Naksha 'Zeem' and Sanad Takseem and also the field book/Akshajra, so as to reflect the partition proceedings excluding the areas meant/reserved for common purposes, as noticed above. It is also made clear that in case any litigation as regards the title/share of any person in the land is pending before any Forum/Court, the concerned person, in whose favour, the right is finally decided, shall be at liberty to seek execution of his right against the persons against whom it is decided.

11. All three writ petitions bearing CWP Nos. 21368-2023, CWP-8549-2020 and CWP-8848-2020 are accordingly disposed of, in the aforestated terms.

12. Pending application (s), if any, shall also stand closed.

13. Photocopy of this order be placed on connected case files.

(HARSH BUNGER)  
JUDGE

06.05.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No