

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

CWP-5808-2025

Date of Decision: 03.03.2025

Suresh Kumar and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Virender Singh Punia, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG, Haryana.

HARSH BUNGER J. (ORAL)

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 05.02.2025 (Annexure P-11) passed by the learned Financial Commissioner, Haryana, thereby setting aside partition proceedings/*Sanad Taksim* (Annexure P-4) and remanding the matter to the learned Assistant Collector, IInd Grade, Tosham with the direction to draw fresh *Naksha 'Kh'* as per the approved Mode of Partition and proceed further in the matter.

2. Briefly, the present petitioners filed an application dated 20.04.2016 before the learned Assistant Collector, IInd Grade, Tosham, seeking partition of the joint land. Evidently, in the said partition proceedings, Mode of Partition (Annexure P-1) was proposed by the learned

Assistant Collector, IInd Grade, Tosham, which was subsequently sanctioned. It appears that the aforesaid partition proceedings culminated with the drawing of *Sanad Taksim* (Instrument of Partition) on 20.09.2023 (Annexure P-4).

2.1 Thereafter, respondent No.3 (Jaibir) challenged the aforesaid partition proceedings/*Sanad Taksim* (Annexure P-4) by way of filing a revision petition (ROR No.97 of 2023-24) before the learned Financial Commissioner, Haryana; which was disposed of vide order dated 05.02.2025 (Annexure P-11).

3. In the aforementioned circumstances, the present writ petition has been filed before this Court, seeking relief(s) as noticed hereinabove.

4. Heard.

5. In the instant case, the learned Financial Commissioner, Haryana has set aside the partition proceedings, vide order dated 05.02.2025 (Annexure P-11), by observing as under:-

“ In brief, the Ld. Counsel for Petitioners submits that the Mode of Partition has been violated in the partition proceedings. The Petitioners along with their mother, brother and sister (that is, respondents no.16 to 19 & 21 as per the memo of parties in the impugned sanad takseem) were entitled to a separate kurra, but the Assistant Collector carried out the partition proceedings after the Corona epidemic in great hurry behind their back, totally ignoring clause no. 1 of the Mode of Partition. Secondly, the Ld. Counsel challenges the report of the Tehsildar and submits that the Petitioners’ office and saw mill are located in killa no. 309//6/1/1, which has been omitted in the demarcation report.

2. It is submitted by the Ld. Counsel for Respondents that opportunity was given to the Petitioners to raise objections against the draft Naksha-Kh, but no objections were raised by the Petitioners before the Assistant Collector. Moreover, there

was no corona when Naksha-Kh was finalised between 19.01.2023 and 03.05.2023.

3. Be that as it may, the Mode of Partition is inviolable. The valuable rights of the Petitioners have been infringed upon by not carving out a separate kurra for them as per clause no. 1 of the Mode of Partition. Hence, the impugned sanad takseem is set aside. The Assistant Collector shall draw a fresh Naksha-Kh as per the approved Mode of Partition and invite objections thereupon from the parties. Parties are directed to appear before the Assistant Collector, Tosham on 03.03.2025. The partition proceedings shall be finalised within a period of three months.

ROR disposed of accordingly. Order announced in open Court.”

5.1 A perusal of the above extracted order clearly shows that the learned Financial Commissioner, Haryana has set aside the partition proceedings on the ground that there was violation of Clause No.1 of the approved Mode of Partition and accordingly, the partition was held to be unsustainable.

6. Here, it would be relevant to refer to Clause No.1 of the approved Mode of Partition, which reads as under:-

“1. Proposed Partition of total land 238 kanal 16 marla situated in two different khewats at Tosham out of which six khewat is be made out. First khewat would be for petitioner no.1, second khewat would be for petitioner no.2, third khewat for respondents no.1 and 2, fourth khewat would be for respondents no.16, 19 and 21, fifth khewat for respondents no.29 and 31 and sixth khewat would be for rest of the respondents.”

6.1 In view of the aforesaid Clause No.1 of the approved Mode of Partition, the total land measuring 238 Kanal-16 Marla was to be partitioned by carving out six separate *khewats*, as indicated therein.

7. During the course of hearing before this Court, learned counsel for the petitioners has not disputed the fact that in the final partition proceedings/*Sanad Taksim* (Annexure P-4), only three *khewats* have been carved out, whereas as per the sanctioned Mode of Partition, total six *khewats* were to be carved out. Therefore, there is no manner of doubt that the final partition proceedings/*Sanad Taksim* (Annexure P-4) is contrary to the sanctioned Mode of Partition, which is untenable in law.

7.1 It is well settled that the Mode of Partition is the back-bone of partition proceedings and the same is inviolable.

8. Keeping in view the aforesaid facts and circumstances of the case, I find no compelling reason to interfere in the order dated 05.02.2025 (Annexure P-11) passed by the learned Financial Commissioner, Haryana. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

9. All pending application(s), if any, shall also stand closed.

03.03.2025
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No