

138 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7125-2025 (O/M)
Date of decision : 17.03.2025

Smt. Birwati

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Aditya Jain, Mr. Yatin Mehta, Mr. Kanan Jain, Advocates
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Birwati) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 25.11.2024 (Annexure P-6), passed by learned Commissioner, Gurugram Division, Gurugram (in short 'Divisional Commissioner').

2. Briefly, respondents No. 4 and 5 herein, (namely, Smt. Sudha Yadav and Smt. Vidya Devi), filed 4 applications seeking partition of joint land comprised in four separate khewats. It appears that all the four partition applications were ordered to be clubbed and a combined mode of partition dated 10.07.2024 (Annexure P-1) was proposed.

2.1 It appears that the petitioner (who is stated to be respondent No. 6 in the partition application) was proceeded against ex-parte in the aforesaid partition proceedings. However, an application for setting aside ex-parte proceedings submitted by present petitioner, was allowed by Assistant Collector, vide order dated 05.06.2024 and the petitioner was

permitted to join the partition proceedings from that stage onwards. Thereafter, the mode of partition was proposed on 10.07.2024 and objections of the co-sharers were called for. It transpires that since no objections were received from any of the parties to the proposed mode of partition, the same came to be sanctioned on 24.07.2024 and Naksha 'Bey' was called from the field staff. On receipt of Naksha 'Bey' from the field staff, objections thereto were called from the respective co-sharers. Since none of the co-sharers submitted any objections to Naksha 'Bey', accordingly, the same was approved by Assistant Collector 2nd Grade, Harsaru, vide order dated 07.08.2024. Thereafter, Naksha 'Zeem' was also confirmed by learned Assistant Collector, 2nd Grade, Harsaru, vide order dated 09.09.2024.

2.2 It appears that the petitioner as well as the proforma respondents challenged the partition proceedings including order dated 24.07.2024 (Annexure P-3) whereby mode of partition was sanctioned; order dated 07.08.2024 whereby Naksha 'Bey' was approved and also order dated 09.09.2024 whereby Naksha 'Zeem' was approved; by filing their separate revision petitions before learned Divisional Commissioner, however, the same were dismissed, vide a common order dated 25.11.2024 (Annexure P-6).

3. In the aforementioned circumstances, the petitioner has preferred the instant civil writ petition before this Court.

4. Heard.

5. The only argument raised by learned counsel for petitioner is that the petitioner was not afforded due opportunity to file objections to mode of partition.

6. I have considered the aforesaid submission made by learned counsel for petitioner, however, I do not find any merit in the same. A perusal of the zimni orders would reveal that although the petitioner (who was respondent No. 6 in the partition application) was proceeded against ex-parte on 22.03.2024, however, on an application being submitted by her (petitioner), the ex-parte proceedings against her were set aside vide order dated 05.06.2024 and the petitioner was permitted to join the partition proceedings from that stage onwards. Thereafter, the mode of partition came to be proposed on 10.07.2024 and objections thereto were called from the respective co-sharers; however, since no objections were received to the proposed mode of partition, the same was sanctioned vide order dated 24.07.2024 (Annexure P-3). Once the petitioner was allowed to join partition proceedings prior to stage of proposing Mode of Partition and petitioner having failed to submit any objection to the proposed Mode of Partition, which was subsequently sanctioned, vide order dated 24.07.2024 (Annexure P-3), then now at this stage when Naksha 'Bey' and Naksha 'Zeem' already stands approved, the petitioner cannot be permitted to raise the plea that she was not afforded any opportunity to submit objections to proposed Mode of Partition.

7. Even the learned Divisional Commissioner has rejected the revision petitions filed by petitioner and proforma respondents, vide impugned order dated 25.11.2024 (Annexure P-6), by observing as under :-

“19. Having considered the submissions of both parties, examined the records meticulously, and analyzed the provisions of the Haryana Land Revenue Act, this Court finds no merit in the revision petitions filed by the

petitioners. The orders passed by the learned Assistant Collector 2nd Grade on 15.03.2024, 24.07.2024, 07.08.2024 and 09.09.2024 are well reasoned, in accordance with the statutory provisions, and do not suffer from any procedural or legal infirmities. The petitioners have failed to demonstrate any substantive prejudice or irregularity in the partition process that would warrant interference by this Court.

20. The consolidation of Khewat Nos. 273, 271, 274 and 409 by the learned Assistant Collector was not only reasonable but also necessary to ensure an equitable and practical partition. The land in question is contiguous and similar in character, and its fragmentation into isolated and unusable parcels would have been detrimental to all stakeholders. The consolidation avoided unnecessary duplication of proceedings and ensured that the partition was conducted in a manner that preserved the agricultural viability of the land. The petitioners' objections to the consolidation are misplaced and contrary to the interests of equity and justice.

21. The petitioners' allegations regarding the violation of possession-based allocation and arbitrary distribution are equally without merit. The Naksa Bay sanctioned by the learned Assistant Collector took into account the ownership rights of all parties and aimed to allocate land proportionally and equitably. The petitioners' claim that their possession was disregarded is unsupported by evidence. It is well-established that partition is based on ownership rights rather than mere possession, and no party can claim a vested right over specific parcels of land unless substantiated by legal entitlement. The Assistant Collector appropriately balanced the interests of all co-sharers and ensured that the partition was fair and reasonable.

22. *The Court also finds that the Assistant Collector provided ample opportunities to all parties to participate in the proceedings and raise their objections. The petitioners were duly served notices and given the chance to present their concerns at every stage of the process. Their failure to utilize these opportunities cannot now be used as a ground to challenge the partition. Moreover, the Assistant Collector exercised due diligence and followed the prescribed procedures in consolidating the Khewats, sanctioning the Naksa Bay, and finalizing the partition.*

23. *The petitioners' contention that the Assistant Collector failed to conduct a site inspection is unfounded. The orders demonstrate that the partition was carried out with a clear understanding of the ground realities, including the contiguity and usability of the land. The allegations of arbitrary allocation and irregularity in the preparation of Naksa Bay lack credibility and are not supported by the record. On the contrary, the partition ensured that all co-sharers received usable and proportionate shares of land, and it minimized the risk of creating unproductive parcels.*

24. *Furthermore, the petitioners have not presented any compelling legal or factual basis to challenge the Assistant Collector's orders. The partition process adhered to the principles of equity and statutory requirements under the Haryana Land Revenue Act. The objections raised by the petitioners appear to be an attempt to delay the conclusion of the partition and to disrupt a process that has been conducted fairly and transparently. The respondents, on the other hand, have acted in good faith and have cooperated fully with the proceedings to ensure their smooth and timely completion.*

25. *In view of the above, the revision petitions lack merit and appear to be an attempt to delay the implementation of partition proceedings that have already been concluded in*

accordance with the law. Hence, the impugned orders passed by the Assistant Collector 2nd Grade, Harsaru, are upheld. Consequently, both revision petitions are dismissed. 26. To be communicated.”

7.1 It has not been shown as to how the findings/observations returned by learned Divisional Commissioner are illegal or perverse.

8. No other argument was raised.

9. Considering the totality of circumstances, I find no merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

17.03.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No