

Before Shaleen Kabra, IAS, Financial Commissioner (Revenue) J&K /
Commissioner Agrarian Reforms, J&K

File No.
1102/FC-AP

Date of Institution
27.01.2022

Date of Decision
08.06.2022

In case titled:

Rawail Singh S/o Sher Singh R/o Ward No. 2, Village Ramgarh, Tehsil Ramgarh,
District Samba.

Versus

(...Petitioner)

1. Pritpal Singh S/o Pritam Singh R/o Ward No. 2, Village Ramgarh, Tehsil Ramgarh, District Samba.
2. The Regional Director Survey & Land Records, Jammu with Powers of Collector under the Land Revenue Act, Jammu.

(...Respondents)

In the matter of: Revision petition against the order dated 16.10.2021, passed on file No. 2029/RDSOJ, by the Regional Director Survey & Land Records, Jammu with powers of Collector under Land Revenue Act, Jammu whereby he has set aside the order dated 19.04.2021 passed on file no. 1 by the Tehsildar, Ramgarh, with regard to the partition of the land covered under Khasra No. 201 (7 Kanal - 1 Marla) situated at village Trindi-Sangara, Khasra No's 1045 (3 Kanal- 8 Marla), 1049 (7 Kanal - 15 Marla), 1050 (3 Marla), 1051 (3 Kanal-12 Marla), 1052 (3 Kanal-14 Marla), 999 (2 Kanal) situated at village Trindi Jamura, Khasra nos 522 (7 Marla), 706 (1 Kanal-06Marla), 1239 (2 Kanal-5 Marla), 1240 (2 Kanal-4 Marla), 1434 (3 Kanal-9 Marla), 1480 (4 Kanal-1 Marla), 1482 (3 Kanal- 2 Marla) and 1429 (2 Kanal-08 Marla) situated at village Ramgarh, Tehsil Ramgarh, District Samba.

Present:

1. Advocate A. K. Lahori for petitioner.
2. Advocate J. I. Balwan for respondents.

ORDER

1. Briefly narrated facts of the case are that one Sher Singh (father of the petitioner and grandfather of respondent 1) being a refugee of 1947 was allotted evacuee land measuring 46K-15M in three villages namely Trindi Jamura, Trindi Sangarh and Ramgarh Tehsil Ramgarh, over which occupancy tenancy rights were also conferred under section 3-A of Agrarian Reforms Act. The



petitioner herein moved an application before the Tehsildar seeking partition of the above said land and Tehsildar vide order dated 19.04.2021 while deciding the said application partitioned the land except land under Khasra Nos 706 and 522 of village Ramgarh and directed the Naib Tehsildar to deliver possession to the parties as per the description of the land mentioned in the order of the Tehsildar. Aggrieved the respondent preferred an appeal against the order of Tehsildar before Regional Director Survey & Land Records Jammu who vide order dated 16.10.2021 set aside the order of the Tehsildar and remanded the matter to Tehsildar for partition of all the Khasra Nos including Khasra Nos 522 and 706 of village Ramgarh.

2. The parties appeared before this court through their respective counsels who argued the matter in detail. Ld. Counsel for the petitioner in his arguments pleaded that the order of Tehsildar is based on the report of Naib Tehsildar and after a proper enquiry and the Khasra Nos 522 and 706 referred to above were left out from the partition as the said Khasra Nos have been partitioned earlier in equal shares among the contesting parties over which both the parties have constructed shops and some portion of the land has been transferred to some other persons who too are in possession on spot. It is also said that the land under said Khasra Nos having been brought under construction is built up and as such does not fall within the definition of land and cannot be the subject of partition. The jurisdiction of the court below is questioned by pleading that the villages to which the matter pertains were not under settlement operation as no notification for settlement operations of these villages has been issued. It is also said that the respondent herein has virtually admitted before the court below the mode and manner of the distribution of other Khasra Nos and hence there



was no occasion for the court below to remand the matter to Tehsildar for partition of all the Khasra nos in all the three villages.

3. Ld. Counsel for the respondent 1 on the other hand argued that the predecessor - in - interest, Sher Singh way back in 1973 effected partition by way of a family settlement and the land was divided in the three equal shares. A quantum of land measuring 15K-3M was retained by said Sher Singh and his wife including land under Khasra nos 522 (7M) and 706 (3M). The contesting parties herein were also given possession of their respective shares. After the death of the parents, the quantum of land measuring 15K-3M was again divided between parties in 1991 and possession also given to both the parties. It is said that the private partition has thus taken place twice in 1973 and 1991.

Ld. Counsel further pleads that the earlier Tehsildar before whom the application for partition was moved by the petitioner, after holding enquiry and after seeking reports from the field agency had held that since the land has been privately partitioned between the parties much earlier and hence no further partition is required. However, successor of Tehsildar after the transfer of earlier Tehsildar reopened the matter and passed the impugned order exempting land under Khasra Nos 522 and 706 deliberately to give benefit to the petitioner. A reference of SRO-314 of 1999 dated 27.07.1999 is given by the Ld. Counsel, where under Tehsil Samba (Tehsil Ramgarh earlier being part of Tehsil Samba) has been notified for settlement operations, to justify the jurisdiction of court below. The Tehsildar is said to have ignored the reports of field agencies about the parties being in cultivating possession of their respective shares. The land under Khasra Nos 522 and 706 is said to be of great commercial value and the petitioner only wants to deprive the respondent of his



share in the said land. Ld. Counsel also said that the Tehsildar who has passed the impugned order had become *functus officio* after order dated 12.02.2018 by his predecessor. Ld. Counsel further pleaded that the land under Khasra Nos 522 and 706 despite being built up can be the subject matter of partition as both parties are entitled equally and otherwise also the land has now been brought under construction.

4. Heard.

5. The contention of the Ld. Counsel for the petitioner that the court below passed the impugned order without jurisdiction loses relevance by the perusal of SRO-314 referred to above, which clearly shows that the Tehsil Samba has been notified for Settlement operations in 1999, at which time Ramgarh was a part of the said Tehsil. It is to mention here that the jurisdiction of Settlement Officer (now Regional Director Survey & Land Records) extends to the tracts under settlement as per section 6 (6) of Land Revenue Act.

6. A contrary stand is taken by the petitioner by pleading that land under Khasra nos 522 and 706 is built up and as such cannot be partitioned, not being land as defined under Land Revenue Act but simultaneously justifies the exemption of the said land from partition on the pretext that these Khasra Nos have already been partitioned between the parties. The Tehsildar therefore, by confining partition to other Khasra nos only has thus not acted under law as it is not possible that only some part of the land is privately partitioned and the remaining is left un-partitioned. Otherwise also the points to be considered in framing method of partition as provided in Partition Rules 1970, the division of land has to be '*bailhaz nakis wa Kamil*' i.e. with regard to the quality of the various plots.

7. In respect of the argument of Ld. Counsel for the respondent that it was not appropriate for the Tehsildar to re-open the partition proceedings as his predecessor had already passed order on 12.02.2018 by holding that private partition has already taken place, it is noticed that the earlier Tehsildar had directed the Naib Tehsildar to proceed on spot and record the statements of the respectables of the village to ascertain the factum of private partition and thus it cannot be said that the Tehsildar had come to the conclusion of private partition having taken place. The proceedings have been continued by the successor of the said Tehsildar and thus cannot be said to have re-opened the matter.
8. It is relevant to mention here that as per Partition Rules, 1970, if during the course of partition proceedings, the question of private partition having taken place earlier is raised by any of the parties, the Tehsildar after enquiry shall affirm the said partition if the private partition is proved, otherwise shall direct partition of the land after determining shares of all the parties, frame an instrument of partition and put the parties in possession as well.
9. In the instant case neither of the parties have been able to adduce any such documentary or oral evidence which could prove the factum of private partition having taken place between the parties.
10. Thus for the above mentioned reasons, the Revision petition being devoid of any merit is dismissed. The Tehsildar to whom the matter has been remanded by the court below is directed to partition the whole land in all the three villages strictly in accordance with the procedure contained in Partition Rules, 1970. Parties to appear before the Tehsildar on 20.06.2022, who shall not issue fresh



summons to the parties as they have been present here and informed for their appearance before the Tehsildar on the above said date.

11. Interim Orders, if any, issued by this court shall continue till the parties are heard by the Tehsildar.

Announced
08.06.2022



Shaleen Kabra IAS
Financial Commissioner Revenue
J&K