

2025:PHHC:033310



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

(1)

CWP-10718-2024 (O&M)

ADHIKAANSH REALTORS PVT. LTD.

...Petitioner

Versus

FINANCIAL COMMISSIONER, REVENUE, HARYANA AND
OTHERS

...Respondents

2025:PHHC:033312



(2)

CWP-24601-2021 (O&M)
Date of decision : 11.03.2025

ADHIKAANSH REALTORS PVT. LTD.

...Petitioner

Versus

FINANCIAL COMMISSIONER, REVENUE, HARYANA AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Randeep S. Rai, Senior Advocate
and Mr. Aashish Chopra, Senior Advocate assisted by
Mr. Parvinder Singh, Advocate
Ms. Rupa Pathania, Advocate
Ms. Rubina Virmani, Advocate
Ms. Radhika Mehta, Advocate
Ms. Nitika Sharma, Advocate
Mr. Varun Aryan Sharma, Advocate
and Mr. Arjun S. Rai, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Vikram Singh, Advocate
for respondents No.2 to 6.

Mr. Kulwant Singh Boparai, Advocate
for respondent No.9(i).

HARSH BUNGER, J.

This order shall dispose of **CWP No.10718-2024** titled as ***Adhikaansh Realtors Pvt. Ltd. Vs Financial Commissioner, Revenue, Haryana and others*** as well as **CWP No.24601-2021** titled as ***Adhikaansh Realtors Pvt. Ltd. Vs Financial Commissioner, Revenue, Haryana and others***, as both the cases involve common question of law and facts.

1.1 Prayer in **CWP-10718-2024** is, *inter alia*, for issuance of a writ in the nature of *certiorari* for setting aside the order dated 08.04.2024 (Annexure P-17); whereby, the learned Financial Commissioner has allowed the revision petition (***ROR-352-2021***) along with another revision petition (***ROR-17-2022***) titled as ***Rukmani vs Ranbir and others***.

1.2 Prayer in **CWP-24601-2021** is, *inter alia*, for issuance of a writ in the nature of *certiorari* for setting aside the order dated 22.11.2021 (Annexure P-13); whereby, the learned Financial Commissioner, has dismissed the application submitted by the petitioner for being impleaded as a party in revision petition (***ROR-352-2021***) titled as ***Naman and others vs Ranbir and others***.

2. For the sake of convenience, the facts are being derived from **CWP-10718-2024** titled as ***Adhikaansh Realtors Pvt. Ltd. Vs Financial Commissioner, Revenue, Haryana and others***.

3. Briefly, on 29.09.2015, Ranbir Singh son of Girdhari Lal (respondent No.7) filed an application for partition of joint land comprised in *Khewat no.182* (as per Jamabandi for the year 2004-2005), situate at Village Hayatpur, Tehsil and District Gurugram, total land measuring *81 kanals – 5 marlas*.

3.1 In the afore-said partition application, one M/s Ramaprasta Share Land Holding Company Pvt. Ltd., was also impleaded as a party. It

appears that during the pendency of the afore-said partition proceedings, Vatika Infracon Pvt. Ltd. (respondent No.8, herein) purchased a part of the land under partition from co-sharers, who were already arrayed as respondents in the partition application.

3.2 In the partition proceedings, the mode of partition came to be finalized on 16.11.2017 and thereafter, *naksha bey* was called from the Field Staff. Upon receipt of the *naksha bey*, objections of the respective co-sharers were called and two sets of objections dated 09.01.2018 came to be filed. One set of objection was filed by Ranbir Singh (respondent No.7) and another set of objections were filed by the legal heirs (present respondents No.2 to 6) of Satnarayan and Bagirath, who were the original respondents in the partition application.

3.3 The objections to *naksha bey* came to be rejected by the learned Assistant Collector and *naksha bey* was approved vide order dated 16.01.2018.

3.4 The afore-said order dated 16.01.2018, approving *naksha bey*, came to be challenged by way of two separate appeals before the learned Collector, Gurugram. One appeal was filed by Ranbir Singh and the another appeal was filed by present respondents No.2 to 6.

3.5 Both the afore-said appeals came to be dismissed by the learned Collector, Gurugram vide order dated 03.05.2018.

3.6 Thereafter, *naksha zeem* (Annexure P-3) came to be prepared and *sanad takseem* (Annexure P-4) came to be issued on 15.05.2018.

3.7 It appears that present respondents No.2 to 6 and respondent No.7 filed two separate revision petitions, challenging the order dated 03.05.2018 passed by the learned Collector, Gurugram before the learned Commissioner, Gurugram Division, Gurugram; wherein an *ex-parte* order

dated 29.05.2018 was passed staying the operation of the orders passed by the learned Courts below.

3.8 Feeling aggrieved against the order dated 29.05.2018 passed by the learned Commissioner; respondent No.8 herein (Vatika Infracon Pvt. Ltd.) filed two revision petitions i.e. **ROR-73-2021** and **ROR-74-2021** before the learned Financial Commissioner, Haryana; seeking setting aside of order dated 29.05.2018 passed by the learned Commissioner.

3.9 It transpires that one more revision petition i.e. **ROR-80-2021** came to be filed by one Rukmani, who claimed herself to be the legal heir of one Laxmi Devi (a co-sharer in the land under partition). All the afore-said three revision petitions i.e. **ROR-73-2021**, **ROR-74-2021** and **ROR-80-2021**, came to be decided by the learned Financial Commissioner, vide common order dated 28.07.2021 (Annexure P-5), holding that the revision petitions filed by respondents No.2 to 6 and respondent No.7 before the learned Divisional Commissioner, were not maintainable, since the same had been filed after the issuance of *sanad takseem* dated 15.05.2018.

3.10 The present petitioners claimed that after the decision of the afore-said three revision petitions on 28.07.2021 (Annexure P-5), two Exchange Deeds dated 30.07.2021 (Annexures P-1 and P-2) came to be executed between respondent No.8-Vatika Infracon Pvt. Ltd. and the present petitioners (Adhikaansh Realtors Pvt. Ltd.), whereunder, they exchanged their land with a part of the land under partition, which had fallen to the share of respondent No.8-M/s Vatika Infracon Pvt. Ltd.

3.11 It appears that in September-2021, the present respondents No.2 to 6 filed another revision petition (**ROR-352-2021**), challenging the *sanad takseem* dated 15.05.2018 along with order dated 16.01.2018;

whereby, *naksha bey* was approved and also the order dated 03.05.2018 passed by the learned Collector.

3.12 In the afore-said revision petition (**ROR-352-2021**), a *status-quo* order dated 21.09.2021 (Annexure P-7) was passed by the learned Financial Commissioner. However, upon learning about the afore-said revision petition (**ROR-352-2021**), the present petitioner preferred three applications, as under :-

(i) *an application for pre-ponement of hearing in the Revision Petition (in ROR-352-2021) ;*

(ii) *application for impleadment (in ROR-352-2021);*

(iii) *application for vacation of status-quo order dated 21.09.2021 (Annexure P-7)*

3.13 Apparently, the learned Financial Commissioner, vide order dated 22.11.2021 (Annexure P-13) dismissed the application filed by the petitioners for seeking impleadment in the afore-said revision petition i.e. **ROR-352-2021**.

3.14 Feeling aggrieved against the afore-said order dated 21.09.2021 (Annexure P-7) and also the order dated 22.11.2021 (Annexure P-13), the petitioner preferred a writ petition i.e. **CWP-24601-2021**, wherein, the following order dated 03.12.2021 (Annexure P-14) was passed :-

“It is submitted that the Financial Commissioner was in error in rejecting the application for impleadment filed by the petitioner on the ground that the petitioner was not a co-sharer in the land on the date the application for partition was filed. The petitioner has acquired title by way of registered exchange deeds obtained from the erstwhile owner, namely, M/s Vatika Infracon Private Limited after the sanad takseem in question had been upheld by the

Financial Commissioner vide order dated 28.07.2021. Thus, the order is perverse and deserves to be set aside. Still further, order of status quo dated 21.09.2021 has been passed mechanically without taking into consideration the fact that he himself has upheld the same vide order dated 28.07.2021.

Notice of motion to respondents No.1 to 8 only for 19.05.2022.

Mr. Rajneesh Chadwal, AAG, Haryana, accepts notice on behalf of respondent No.1 and waives service.

Remaining respondents be served in the ordinary manner.

Meanwhile, operation of order dated 21.09.2021 (Annexure P-7) and order dated 22.11.2021 (Annexure P-13) shall remain stayed.”

3.15 The above extracted order dated 03.12.2021 was challenged by respondents No.2 to 6 herein by way of filing an Intra-Court Appeal i.e. **LPA-127-2022** before the Division Bench of this Court; however, the same was dismissed.

3.16 During the pendency of the afore-said writ petition i.e. **CWP-24601-2021**, the learned Financial Commissioner proceeded to finally decide the revision petitions i.e. **ROR-352-2021** and **ROR-17-2022**, vide common order dated 08.04.2024 (Annexure P-17); whereby, the revision petitions have been allowed by setting aside the order dated 16.01.2018 passed by the learned Assistant Collector, approving *naksha bey* and also the Collector's order dated 03.05.2018. Even the *sanad takseem* dated 15.05.2018 has been set aside and the matter has been remanded to the learned Assistant Collector 2nd Grade, Harsaru, with a direction to carry out the partition proceedings afresh, strictly according to the mode of partition.

3.17 In the afore-mentioned circumstances, the petitioner has filed the present writ petition i.e. **CWP-10718-2024** before this Court, *inter alia*, seeking setting aside of order dated 08.04.2024 (Annexure P-17) passed by the learned Financial Commissioner.

4. Learned senior counsel appearing for the petitioners submits that the learned Financial Commissioner has erred in law and fact in not only dismissing the application filed by the petitioners for being impleaded as the party in the revision petition i.e. **ROR-352-2021** but has further erred in law and fact in allowing the revision petition (**ROR-352-2021**) by setting aside the partition proceedings and remanding the matter to the learned Assistant Collector, for deciding the case afresh, despite the fact that the issue concerning impleadment of the petitioners as a party in the revision petition, was pending consideration before this Court and even the orders passed by the learned Financial Commissioner, had been stayed vide order dated 03.12.2021 passed in **CWP-24601-2021**. It is further submitted that even otherwise, the learned Financial Commissioner has wrongly entertained and allowed the revision petition (**ROR-352-2021**) without appreciating that earlier the learned Financial Commissioner, Haryana had rendered a decision dated 28.07.2021 (Annexure P-5), while deciding three revision petitions i.e. **ROR-73-2021**, **ROR-74-2021** and **ROR-80-2021**, holding that the partition proceedings have been finalized strictly as per the mode of partition.

4.1 It is submitted that once in an earlier round of litigation, the learned Financial Commissioner, Haryana has observed that the partition proceedings have been finalized strictly as per the mode of partition; therefore, the learned Financial Commissioner while deciding **ROR-352-2021** could not have set aside the partition proceedings on the

ground that the partition proceedings have been carried out in violation of the mode of partition. It is, accordingly, prayed that the impugned order(s) may be set aside and the revision petition (**ROR-352-2021**) be declared to be not maintainable.

5. Per contra, learned counsel appearing for the private respondents have opposed the submissions made on behalf of learned counsel for the petitioner(s) by submitting that the petitioner herein is a subsequent purchaser during the pendency of the partition proceedings and was not recorded as a co-sharer; therefore, their impleadment application was rightly rejected by the learned Financial Commissioner. It is further submitted that since, there was no stay on the proceedings before the learned Financial Commissioner, therefore, the learned Financial Commissioner proceeded to decide the revision petition i.e. **ROR-352-2021** and no fault can be found therein. It is further submitted that in earlier revision petitions i.e. **ROR-73-2021**, **ROR-74-2021** and **ROR-80-2021**, it was held that the appeals preferred against the *naksha bey* were not maintainable on account of the fact that the *sanad taksim* dated 15.05.2018 already stood issued, therefore, the subsequent revision petition i.e. **ROR-352-2021** challenging *sanad taksim* was maintainable.

5.1 With the afore-said submissions, prayer for dismissal of the writ petitions has been made.

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

7. In the present case, the partition application came to be filed by respondent No.7-Ranbir Singh, whereby, the partition of joint land measuring *81 Kanals-5 Marlas*, situated in Village Hayatpur, was sought. In the said partition proceedings, mode of partition came to be approved on

16.11.2017 and thereafter, *naksha bey* was approved vide order dated 16.01.2018 after the dismissal of objections to *naksha bey* submitted by present respondents No.2 to 6 as well as the objections submitted by respondent No.7. The appeals filed against the order dated 16.01.2018 were dismissed by the learned Collector, vide order dated 03.05.2018 and thereafter, the partition proceedings came to be finalized upon drawing of *sanad takseem* dated 15.05.2018.

8. Apparently, respondents No.2 to 6 as well as respondent No.7 preferred revision petitions before the learned Commissioner, Gurugram, challenging the partition proceedings, which were clearly not maintainable, in view of the law settled by this Court in the case of *Amar Khan and others vs State of Punjab and others, 2009(1) RCR(Civil) 741*, wherein, it was held that after the issuance of *sanad takseem*, the only remedy available to an aggrieved party is to either prefer a revision petition before the learned Financial Commissioner under Section 16 of the Land Revenue Act, or by filing a writ petition under Article 226 of the Constitution of India, before the High Court.

9. Evidently, the learned Commissioner, Gurugram wrongly assumed jurisdiction in the matter and passed an order dated 29.05.2018; staying the operation of the impugned order therein.

10. Feeling aggrieved against the order dated 29.05.2018 passed by the learned Divisional Commissioner, respondent No.8 (predecessor-in-interest of the present petitioner) preferred two revision petitions i.e. *ROR-73-2021* and *ROR-74-2021*. Besides the said two revision petitions, another revision petition i.e. *ROR-80-2021*, came to be filed by one Rukmani.

10.1 All the said three revision petitions came to be allowed by the then learned Financial Commissioner, vide order dated 28.07.2021

(Annexure P-5), holding that the revision petitions before the learned Commissioner, were not maintainable, since they were filed after the issuance of *sanad taksem*. Another observation was made that the partition was as per the sanctioned mode of partition.

11. It is not disputed before this Court that after the afore-said decision on 28.07.2021 by the then learned Financial Commissioner, two Exchange Deeds dated 30.07.2021 (Annexures P-1 and P-2) came to be executed between respondent No.8-Vatika Infracon Pvt. Ltd. and the present petitioner; whereby the petitioner herein, acquired a part of the land, which was under partition. It is also not disputed that at the relevant time, there was no litigation pending at any stage nor any stay was operating.

12. Apparently, in September-2021, respondents No.2 to 6, herein preferred a revision petition i.e. **ROR-352-2021**; wherein, they laid challenge to the order dated 16.01.2018 passed by the learned Assistant Collector, sanctioning *naksha bey* and also the order dated 03.05.2018 passed by the learned Collector, whereby, an appeal against the order, approving *naksha bey* was dismissed. A further challenge was also made to the *sanad takseem* dated 15.05.2018. In the said revision petition i.e. **ROR-352-2021**, a *status-quo* order dated 21.09.2021 (Annexure P-7) came to be passed.

13. Upon learning about the afore-said revision petition i.e. **ROR-352-2021**, the present petitioner preferred three applications i.e. (i) for preponement of hearing in the revision petition (ii) for seeking impleadment and (iii) another application for vacation of *status quo* order dated 21.09.2021 (Annexure P-7). The learned Financial Commissioner, vide order dated 22.11.2021 (Annexure P-13) dismissed the application filed by the petitioner, seeking impleadment in the revision petition;

whereupon, the petitioner has preferred **CWP-24601-2021**, wherein, the operation of the order dated 21.09.2021 (Annexure P-7) and 22.11.2021 (Annexure P-13) was stayed.

14. In my considered view, the fall out of the order dated 03.12.2021 passed by this Court in **CWP-24601-2021**, is that the issue relating to impleadment of the petitioner as a party in the revision petition, was pending consideration before this Court and respondents No.2 to 6 were very well aware of the proceedings before this Court as they had also filed intra-Court appeals i.e. **LPA-1244-2021** and **LPA-127-2022**.

15. Be that as it may, the learned Financial Commissioner, without awaiting for the final outcome of the afore-said writ petition i.e. **CWP-24601-2021**, proceeded to finally decided the revision petition i.e. **ROR-352-2021**; whereby, he has set aside the partition proceedings and has remanded the matter to the learned Assistant Collector, for fresh decision.

16. On considering the totality of circumstances, I am of the considered view that once the issue pertaining to impleadment of the petitioner as a party in the revision petition i.e. **ROR-352-2021** was pending consideration before this Court and this Court, vide order dated 03.12.2021, had already stayed the *status quo* order dated 21.09.2021 (Annexure P-7) passed by the learned Financial Commissioner and also the order dated 22.11.2021 (Annexure P-13); whereby, the learned Financial Commissioner, had dismissed the application of the petitioner for being impleaded as a party in the revision petition; the judicial proprietary demanded that the Financial Commissioner should have stayed his hands from finally deciding the revision petition (**ROR-352-2021**).

17. As far as the impleadment of the petitioner as a party in the revision petition is concerned, suffice it to say that the Hon'ble Supreme Court of India, in the case of *Amit Kumar Shaw vs Farida Khatoon, 2005(2) RCR(Civil) 651*, had held that the transferee *pendente lite* can be added as a proper party if his interest in the subject matter of the suit is substantial. It was also observed that an alienee would ordinarily be joined as a party to enable him to protect his interests.

17.1 In *Amit Kumar Shaw v. Farida Khatoon, 2005(2) RCR (Civil) 651*; Hon'ble Apex Court observed as under:-

“16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party; under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where the transferee pendente lite is made a party to the

litigation; he is entitled to be heard in the matter on the merits of the case...”

17.2 In *Dhurandhar Prasad Singh v. Jai Prakash University, 2001(4) RCR (Civil) 280*; Hon'ble Apex Court observed as under:-

“23. Now we proceed to consider the second question posed, but before doing so, for better appreciation of the point involved, it would be appropriate to refer to the provisions of Order 22 Rule 10 of the Code which runs thus :-

"10. Procedure in case of assignment before final order in suit. - (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) the attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to be benefit of sub-rule (1)."

24. Plain language of rule 10 referred to above does not suggest that leave can be sought by that person alone upon whom the interest has devolved. It simply says that the suit may be continued by the person upon whom such an interest has devolved and this applies in a case where the interest of plaintiff devolved. Likewise, in a case where interest of defendant has devolved, the suit may be continued against such a person upon whom interest has devolved, but in either eventuality, for continuance of the suit against the persons upon whom the interest has devolved during the pendency of the suit, leave of the Court has to be obtained. If it is laid down that leave can be obtained by that person alone upon whom interest of party to the suit has devolved

during its pendency, then there may be preposterous results as such a party might not be knowing about the litigation and consequently not feasible for him to apply for leave and if a duty is cast upon him then in such an eventuality he would be bound by the decree even in cases of failure to apply for leave. As a rule of prudence, initial duty lies upon the plaintiff to apply for leave in case the factum of devolution was within his knowledge or with due diligence could have been known by him. The person upon whom the interest has devolved may also apply for such a leave so that this interest may be properly represented as the original party, if it ceased to have an interest in the subject matter of dispute by virtue of devolution of interest upon another person, may not take interest therein, in ordinary course which is but natural, or by colluding with the other side. If the submission of Shri Mishra is accepted, a party upon whom interest has devolved, upon his failure to apply for leave, would be deprived from challenging correctness of the decree by filing a properly constituted suit on the ground that the original party having lost interest in the subject of dispute did not properly prosecute or defend the litigation or, in doing so, colluded with the adversary. Any other party, in our view, may also seek leave as for example, where plaintiff filed a suit for partition and during its pendency he gifted away his undivided interest in the Mitakshara Coparcenary in favour of the contesting defendant, in that event the contesting defendant upon whom the interest of the original plaintiff has devolved has no cause of action to prosecute the suit but if there is any other co-sharer who is supporting the plaintiff, may have a cause of action to continue with the suit by getting himself transposed to the category of plaintiff as it is well settled that in a partition suit every defendant is plaintiff, provided he has cause of action for seeking

partition. Thus, we do not find any substance in this submission of learned counsel appearing on behalf of the appellant and hold that prayer for leave can be made not only by the person upon who interest has devolved, but also by the plaintiff or any other party or person interested...”

18. In the present case, since the petitioner had acquired a part of the land, which was the subject matter of partition proceedings from respondent No.8-Vatika Infracon Pvt. Ltd., vide Exchange Deed dated 30.07.2021 i.e. after the decision of three revision petitions vide order dated 28.07.2021 (Annexure P-5) holding that the partition was as per the sanctioned mode of partition and at the relevant time, no proceedings relating to partition were pending at any stage, in my considered view, the interest of the petitioner in the subject matter of the litigation is substantial and is, therefore, was required to be added as a proper party so as to enable him to protect his interest.

19. In view of the above discussion, writ petition bearing **CWP-24601-2021** titled as ***Adhikaansh Realtors Pvt. Ltd. vs Financial Commissioner, Revenue, Haryana and others*** as well as **CWP-10718-2024** titled as ***Adhikaansh Realtors Pvt. Ltd. vs Financial Commissioner, Revenue, Haryana and others*** are hereby, partly allowed and the order dated 21.11.2021 (Annexure P-13 in ***CWP-24601-2021***) and order dated 08.04.2024 (Annexure P-17 in ***CWP-10718-2024***) are hereby set aside and the matter is remanded to the learned Financial Commissioner to decide the revision petition (***ROR-352-2021***) afresh after affording due opportunity of hearing to all the concerned parties, in accordance with law, by passing a speaking order; within a period of four months from the date

of appearance of the parties before the learned Financial Commissioner, Haryana.

The parties are directed to appear before the learned Financial Commissioner, Haryana on 15.04.2025 or any other date, as may be fixed by the Office of the learned Financial Commissioner.

It is still further directed that till the final decision of the afore-said revision petition (ROR-352-2021), the parties shall maintain status quo.

20. Both the writ petitions i.e. *CWP-24601-2021* and *CWP-10718-2024*, are accordingly, disposed of.

21. Pending application/s, if any, shall also stand closed.

22. A photocopy of this order be placed on the file of another connected case.

March 11, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No