

125

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

CR No.2364 of 2015

Date of decision: April 06, 2015

Subhash Chander Bajaj

.....Petitioner

Versus

Punjab State through Deputy Commissioner,
Ferozepur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sandeep Kumar Passi, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 13.03.2015, whereby application moved by the petitioner for appointment of local commissioner, was dismissed.

Learned counsel for the petitioner has submitted that the petitioner has filed suit for mandatory injunction that respondent No.6 be directed to demolish illegal construction raised by him. In this regard, it was necessary to appoint local commissioner, who could visit the spot and submit report qua the factual position existing at the spot.

Order 26 Rule 9 of Code of Civil Procedure, 1908 ('CPC' for short) reads as under:-

“Commission to make local investigations.- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any meson profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.”

Thus, as per above provision, the Court has ample power to appoint local commissioner to make local investigation, which is necessary for the purpose of just decision of the case. However, the object of local investigation is not to collect the evidence on behalf of either party, but the purpose is to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to elucidate any point which is left doubtful on the evidence produced before the Court.

In the present case, petitioner has filed suit for decree of mandatory injunction directing respondent No.6 to demolish illegal construction raised by him. A perusal of the impugned order reveals that in order to prove its case, petitioner has examined officials of Municipal Council to depose with regard to the factual position existing at the spot. Thereafter, petitioner had closed his evidence and now the case is listed before the trial Court for rebuttal evidence of the petitioner, if any and arguments. The learned trial Court rightly held that the petitioner could not use the Court process to collect evidence on his behalf. In order to prove his case, petitioner was required to lead his evidence in the affirmative. Petitioner has already examined the officials of Municipal Council to prove his case. Hence, the application moved by the petitioner for appointment of local commissioner, has been rightly dismissed by the trial Court.

In these circumstances, no ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

April 06, 2015
m.singh