

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

CR No.5602 of 2015.

Date of Decision: 31.08.2015.

M/s Trilochan & Sons

....Petitioner.

VERSUS

The Deputy Commissioner, Rohtak and others

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Madhu Ranjan, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for quashing the order dated 11.08.2015 passed by learned Civil Judge, Meham, District Rohtak, vide which the application filed by the petitioner for appointment of local commission, was dismissed.

The submissions made by Mr. Madhu Ranjan, learned counsel representing the petitioner have been considered.

As pleaded a suit for permanent injunction seeking to restrain respondents No.1 and 2 from shifting the petitioner and proforma respondents No.3 to 26 (plaintiffs in the suit) from the old vegetable market

to the new vegetable market without providing the basic facilities i.e. shed, separate entrance and exit gate etc. was filed. The suit was being contested by respondents No.1 and 2 and during the trial the petitioner filed an application for appointment of local commission for the purpose of ascertaining the existing position of the facilities provided at the new vegetable market. Respondents No.1 and 2 resisted the application. Considering the submissions made on behalf of the parties, the application was dismissed by the trial Court vide impugned order dated 11.08.2015.

Learned counsel for the petitioner argued that appointment of local commission is necessary for deciding the controversy between the parties. In case the facilities are already existing at the site of new vegetable market, it will be no use for the petitioner to continue with the suit. Unless the basic facilities are provided at the new vegetable market, the petitioner (plaintiffs) cannot be forced to shift there. To support his argument that where the evidence in its peculiar nature can only be taken on the spot, a local commission should be appointed, learned counsel relied upon **Yeshwant Bhaduji Ghuse v. Vithobaji Laxman Ladekar, 2010(3) Mh. L.J. 956** where it has been held as under:-

“The Court has discretion to order local investigation. The object of local investigation is not so much to collect evidence which can be taken in the Court, but to obtain evidence which from its peculiar nature can only be had on the spot. Cases of boundary disputes and disputes about identity of lands are instances when a Court should order local

investigation under Order 26, Rule 9 of the Code. In order to determine whether there has been an encroachment, it is always desirable to get the fields measured by an expert and find out exact area encroached upon, oral evidence cannot conclusively prove such an issue.”

The facts in hand are on a different footing. The petitioner alongwith proforma respondents had filed a suit for permanent injunction alleging that the Government of Haryana has constructed a new vegetable market on the Ganga Nagar Road, Meham but in the new vegetable market complex the Government has failed to provide the basic facilities i.e. shed, separate entrance, booths etc. The respondents contesting the suit alleged that as compared to the old vegetable market which stands de-notified having only 800 square yards area, the new vegetable market, Meham is spread over a very spacious area 6.40 acres of land having all model facilities such as sewerage, toilet, drinking water, disaster management, firefighting equipment, light, open platform, covered shed and shops measuring 20 x 50 feet.

From the rival contentions of the parties, it is clear that the petitioner intended to get a local commission appointed to collect evidence to support their contention. The Court has the discretion to order for local investigation to obtain peculiar evidence which can be taken only on the spot but in no case a local commission can be appointed to collect evidence which the party is required to produce to prove the alleged facts. The matter in dispute cannot be left to be decided on the enquiry to be held or the

evidence to be collected by a local commission. When the main issue between the parties revolves on allegation of the petitioner and proforma respondents No.3 to 26 that the basic facilities as per their submissions had not been provided in the new vegetable market, it was for them to substantiate their contentions by producing relevant evidence. Certainly, a local commission cannot be appointed to collect evidence for them.

Accordingly, there being no illegality or perversity in the order of learned trial Court warranting intervention, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

31.08.2015.

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