

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.1811 of 1993
Date of Decision: December 22, 2015

Randhir Singh

....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Sunil K.S.Panwar, Advocate, for the petitioner.
Mr.Anil Mehta, Deputy Advocate General, Haryana.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The petitioner has laid challenge to the order dated 10.03.1989 and the revisional order dated 25.09.1992, holding him in unauthorized occupation of the land comprising Ahata No.65 which is shamlat deh and vests in Gram Panchayat.

[2] These orders came to be passed pursuant to a petition moved by private-respondents under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana. The case of petitioner was that he had constructed a residential house in the year 1964 and the subject-land was owned by him since his fore-fathers' time. It appears that while private-respondents filed eviction petition under Section 7 of the 1961 Act, the petitioner alongwith his father filed a declaratory petition claiming ownership over the suit-land. The Assistant Collector, 1st Grade,

Mohindergarh vide order dated 17.05.1988 (P12) allowed the declaratory petition filed by the petitioner and his father and declared them owners in possession of the disputed house.

[3] The private-respondents filed an appeal before the Collector, Narnaul who vide order dated 10.03.1989 (P-15) allowed their appeal and set-aside the order of the Assistant Collector 1st Grade dated 17.05.1988. The Collector held that since the Assistant Collector 1st Grade himself had inspected the spot on 07.11.1987 and as per the said inspection report, a chabutra (plat-form) measuring 6'-3" on north side, 5'-6" on south and 51 feet on east and west sides was found to have been constructed by the petitioner, there was no legal basis to decree their declaratory petition.

[4] The aggrieved petitioner filed revision petition before the Commissioner, Gurgaon Division, who dismissed the same vide order dated 25.09.1992 (P-17).

[5] The aggrieved petitioner approached this Court. His dispossession was stayed vide order dated 08.02.1993.

[6] When this writ petition came up for final hearing, the following order was passed by a Coordinate Bench on 03.03.2015:-

“.....A perusal of the impugned order as well as the paper-book reveals that the dispute, in the present case, is whether the petitioner has encroached upon any part of Ahata no.65, situated within the abadi deh of village Jhagroli, Tehsil and District Mohindergarh. The Assistant Collector 1st Grade, vide interim order dated 9.11.1986, held that the petitioner has encroached upon the Ahata to the extent of 6 feet x 3

inches in the North, 5 feet x 6 inches in the South and 51 feet in the East and West, but while passing the final order, recorded a contradictory finding and held that the local commissioner's report cannot be accepted as it has not been recorded after identifying three pucca points. The order passed by the Assistant Collector 1st Grade was set aside on the ground that vide order dated 09.11.1986, he had himself recorded a finding that the petitioner was in unauthorised occupation of a part of Ahata. The appeal filed by the petitioner has been dismissed.

We have perused the entire record and are inclined to hold that in view of the conflicting findings recorded by the Assistant Collector 1st Grade, Mohindergarh, the appellate authority should have either remitted the matter or called for a fresh report from a local commissioner and, therefore, we would have remitted the matter but as the writ petition has been pending since 1993, desist from remitting the matter and direct the Tehsildar, Mohindergarh, to demarcate the street, the petitioner's house and Ahata no.65, situated within the abadi deh of village Jhagroli and submit a report, whether the petitioner has encroached upon any part of Ahata no.65. A report be filed well before the next date of hearing. The Tehsildar shall associate the petitioner or his duly authorised

representative as well as the Gram Panchayat at the time of demarcation. The petitioner will be duty bound to appear before the Tehsildar for the purpose of demarcation and in case the petitioner fails to appear before the Tehsildar, an adverse inference shall be drawn against the petitioner.....”

[7] In deference thereto, Manbir Singh, Tehsildar, Mohindergarh has filed his affidavit dated 01.05.2015 alongwith demarcation report. Para No.2 of the affidavit reads as follows:

“... That in compliance of order passed by this Hon'ble Court, the deponent fixed 03.04.2015 for demarcation of the disputed land and written notice was sent through Halqa Patwari to both the parties to be present on the spot. But demarcation could not be done as the petitioner failed to produce relevant record viz-a-viz the certified copies of Map and Khasra Abadi. The disputed land falls in “old Abadi” (Lal Dora) and the record of this land was not available with Halqa Patwari Incharge. Fresh notices were sent to the parties to be present on spot for demarcation on 8.4.2015. The comparison of settlement map of old abadi was done on the spot in the presence of parties. But no pakka point could be identified as the settlement map is prepared about 140 years back and now houses are

built on it. Still pakka points were tried to be established by using measuring tape, but there also pakka points could not be ascertained. Hence, the demarcation could not be carried. A copy of report alongwith Annexures is attached as A-1 and A-2 for kind reference to this Hon'ble Court.....”

[8] The concluding paras of the demarcation report also say that:-

“.... So, the point on the spot are not in symmetry with the settlement map. Streets are present but they are also not symmetrical with the map.

The land in question is situated in “Lal Dora” and the settlement is based on Non-Square-System. And according to Hon'ble Court's direction the demarcation in such a system can only be done after identifying three “Pucca” points. But in village Jagroli no “Pucca” points were identified nearby the disputed land. Hence the demarcation can not be done. It is for your kind information....”

[9] It may thus be seen that in the absence of identification of permanent fixed-point, coupled with the fact that entire area has been constructed and is now a part of old abadi, the demarcation could not be carried out.

[10] At this stage, it becomes relevant to refer to the order of the Assistant Collector 1st Grade who though inspected the site but was not sure about the encroachment, if

any, made at the spot. As on today, even the revenue authorities are unable to carry out demarcation to find out whether or not any encroachment has been made.

[11] The Appellate and the Revisional Authorities have held on conjectures and surmises that the Local Commissioner had identified the encroachment and his report could not be discarded by the Assistant Collector 1st Grade. There is no positive finding by both the authorities that there is any encroachment made by the petitioner or his family on the shamlat land owned by Gram Panchayat. There is only a doubt of such encroachment which certainly falls short of a conclusive proof to pass an eviction order.

[12] While no eviction order can be passed against the petitioners on presumption, the declaration of ownership also cannot be granted in his favour on the same analogy. It is thus obligatory on the parties, namely, the petitioner and private-respondents to lead further evidence in respect of their respective claims.

[13] If the revenue authorities have failed to carry-out demarcation it is for the Assistant Collector 1st Grade to see as to what else can be the alternative mode of demarcation to determine the encroached area.

[14] For the reasons afore-stated, we allow this writ petition in part; all the orders namely one passed by the Assistant Collector 1st Grade in favour of the petitioner as well as the Appellate and Revisional orders being unsustainable are set-aside and the matter is remitted to the Assistant Collector 1st Grade, Mohindergarh to re-determine the question of encroachment and/or ownership of the petitioner, in accordance with law and after giving opportunity of hearing to

the parties as well the Gram Panchayat to lead material evidence.

[15] However, if the Gram Panchayat or the private-respondents do not come-forward to contest the petitioner's claim, the matter shall be disposed of as infructuous.

[16] The parties are directed to appear before the Assistant Collector 1st Grade, Mohindergarh on 01.02.2016.

[7] Dasti.

[SURYA KANT]
JUDGE

December 22, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE