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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13849-2014 (O&M)
Date of decision : 16.02.2017

Ajit Singh and others

... Petitioners

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.K. Mutneja, Advocate
for the petitioners.

Mr. B.S. Icchewal, Advocate
for the respondent(s)-Union of India.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Ms. Garima Hooda, Advocate for
Mr. G.S. Attariwala, Advocate
for respondent No.6.

AMIT RAWAL, J. (ORAL)

CM-1755-CWP-2017

Prayer in this application under Section 151 of the Code of Civil Procedure is for placing on record the Compact Disc (CD) of Annexures R-11 and R-12.

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the Compact Disc (CD) of Annexures R-11 and R-12 is taken on record subject to all just exceptions.

CM stands disposed of.

CWP-13849-2014

The petitioners are aggrieved of the demarcation report dated 20.05.2014 (Annexure P-21) conducted in pursuance to the order dated 22.01.2014 passed by this Court, whereby a fresh demarcation was ordered to be carried out by associating the both Archaeological Department and as well as the the private parties being the petitioner(s) in CWP No.14417 of 2009 and all other occupants. It was also stated by this Court that on completion of fresh demarcation, if the petitioners were found within the area, then they are liable to be removed.

Mr. P.K. Mutneja, learned counsel appearing on behalf of the petitioners submits hat there is a categoric averment in paragraph Nos. 20 and 21 of the writ petition that in pursuance to the aforementioned order, the petitioners were served with registered notices for effecting the demarcation, but the Sub-Divisional Magistrate did not hear the petitioners nor associated them, thus, demarcation report is nothing, but a farcical exercise. The flags were also not put in straight-line, thus, it cannot be construed to have conformed with the High Court Rules and Regulations.

On the contrary, the stand of the State in the written statement i.e. in paragraph No.1 of preliminary objection is that on the date of the demarcation i.e. 20.05.2014, the notices though were issued to all the concerned connected, but on that date, a call for closing of entire bazaar was given, which fact is evident from the News Paper 'Ajit' dated 18.05.2014. It has also been stated that the demarcation was carried out under the supervision of the Sub-Divisional Magistrate, Phillaur by three Naib Tehsildars, who were associated by five Kanungos along with Patwari

Halqa. The Officers and employees of Archaeological Survey of India, Chandigarh Circle, Chandigarh were also present. The petitioners according to the respondent(s) were raising unnecessary objections with a view to create hindrance at the time of demarcation, in essence, the whole purpose was that they are/were not interested in the demarcation. The videography and photography of this demarcation was also got done. In spite of fact that the occupants including the petitioners were very much present at the spot, but refused to sign the attendance sheet before the process of demarcation. The process of initiating the demarcation has been narrated in paragraph Nos.5 and 6 of the written statement which reads thus:-

"5) That in the presence of petitioners, the demarcation was started from the stones fixed by the Consolidation Department at the time of consolidation in the year 1968-69 and these stones are intact. The detail of which has been explained at para 3 of the demarcation report Annexure P-21. And this fact has been admitted by the petitioners at para 20 that flags were affixed. With a view to conduct accurate demarcation three pucca mauka were located which were Mark-A at khasra No.33//25, Mark-B at khasra No.34//25/2 and Mark-C at khasra No.49//25. The flags were affixed on these marks and a base line was prepared. The Jarib (chain of measurement) was checked and then the demarcation was started and measurement was done, the detail of which has been given at para 3 of the demarcation report (Annexure P-21).

6) That 'Noormahal Sarai' is located at Khasra No.110 measuring 52 kanal 16 maral. On the east-north corner of this khasra number, there is a path of 7 karms wide which has been given number khasra 108/2 which intact. Thereafter abadi in the form of old houses exist there. From this east-north corner

to the Eastern side Gate there is length of $7+43+8=58$ karms as per revenue record and it has correctly been demarcated at the spot. Likewise the gate towards western side there is length of $8+43=51$ karms as per revenue record which has been correctly demarcated at the spot. The above measurement stands mentioned in field book of khasra No.110 and also in the Aks Shajra prepared during the consolidation proceedings. Copy of field book relating to khasra No.110 is attached as Annexure R-5 and 7/3, whereas copy of Aka Shajra of surrounding area of khasra No.110 is attached as Annexures R-5 and 7/4."

Mr. B.S. Icchewal, Advocate and Ms. Garima, Hooda, learned counsel appearing on behalf of the respondent(s) submits that for similar relief, the petitioners had availed the remedy of civil suit bearing No.264 of 2009 claiming the following relief:-

"Suit for declaration to the effect that plaintiff is owner in possession of the double storeyed premises/shop marked ABCD shown red in the site plan attached, marked as Annexure A measuring about 2 marlas consisting of a big hall consisting of floor mill on the ground floor and one room and varandah along with the open courtyard and a common staircase attached to it bounded as follows:

North: Naya Bazaar

South: Old Sarai known as "Sarai Noormahal"/old monument

East: Shop premises owned and possessed by Gopal Krishan son of Madan Lal bearing Municipal No. B-V/403/shop

West: Property/shop of Baldev Krishan son of Ram Lal/relative of the plaintiff bearing Municipal No. B-V/401

situated within the municipal limits of Nurmahal Town,

known as Naya Bazaar, owned and possessed by the plaintiff bearing No. B-V/402 as per house tax assessment register maintained by Municipal Council, Nurmahal after declaring that defendants no.1 and 2 have got no right, title or interest in it and the alleged bearing notice No. 10-8/M-2008/CHD-4748 dated 25.07.2009 issued by defendants no. 1 and 2 thereby directing the plaintiff to remove and demolish the above said premises shown red in the site plan attached is illegal, null and void and the defendants have got no right to demolish and evict the plaintiff from the suit premises above mentioned marked ABCD shown red in the site plan attached, owned by the plaintiff as exclusive owner.

WITH CONSEQUENTIAL RELIEF *of permanent injunction to the effect that defendants may be restrained from demolishing/evicting the plaintiff from the said premises marked ABCD shown red in the site plan attached, fully depicted in the site plan marked Annexure A as detailed above, now owned and possessed by the plaintiff, bounded as follows:*

North: Naya Bazaar

South: Old Sarai known as "Sarai Noormahal"/old monument

East: Shop premises owned and possessed by Gopal Krishan son of Madan Lal bearing Municipal No. B-V/403/shop

West: Property/shop of Baldev Krishan son of Ram Lal/relative of the plaintiff bearing Municipal No. B-V/402

situated withing the municipal limits of Nurmahal Town, known as Naya Bazaar owned and possessed by the plaintiff bearing No. B-V/402 as per house tax assessment register maintained by Municipal Council, Nurmahal illegally, forcibly except in due course of law or otherwise in any

manner forever."

The aforementioned civil suit has been dismissed vide judgment and decree dated 09.12.2015.

In rebuttal, Mr. P.K. Mutneja, learned counsel appearing on behalf of the petitioners submits that the appeal is stated to be pending. He also submits that factum of pendency of the suit has been disclosed, in essence, there was no concealment.

I have heard the learned counsel for the parties and appraised the paper book. The specific averments in the written statement filed on behalf of the State have not been rebutted by filing any replication particularly with regard to the refusal of the petitioners in not marking the presence. Once the petitioners had already availed the remedy in a suit and the demarcation is dated 20.05.2014, nothing prevented the petitioners to amend the suit and challenge the aforementioned demarcation report as this Court would not be having jurisdiction to decide the disputed question of fact as the demarcation report can only be proved through the testimony of the person, who is the author of the report which would be subject to the cross-examination.

Be that as it may, since the appeal is pending, the petitioners shall at liberty to seek the amendment of the suit and also challenge the same by moving an appropriate application, but not in the manner and mode, as indicated above. This Court under Article 226 of the Constitution of India cannot act as civil court for deciding the demarcation .

For the foregoing reasons, I do not find any illegality and perversity in the impugned order, under challenge, much less, no ground is

made out for interference.

With the aforesaid observations, the present appeal is dismissed with liberty aforementioned.

16.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

✓
Yes/ No

Whether Reportable

✓
Yes/ No