HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 306 of 2018

Ashok Kumar Tiwari S/o Late Shri Rajendranath Tiwari Aged About 57 Years R/o Village Nayapara, Bodri, Tahsil Belha, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Mohit Kumar S/o Late Kamal Nayan Tiwari R/o Through M/s Shrishti Infrabuilt, Second Floor, Krishna Sonchhatra Compound, Near Kotak Mahindra Bank, Shiv Talkies Chawk, Tahsil And District Bilaspur Chhattisgarh.

2. Manish Jain S/o Madan Lal Jain R/o Through M/s Shrishti Infrabuilt, Second Floor, Krishna Sonchhatra Compound, Near Kotak Mahindra Bank, Shiv Talkies Chawk, Tahsil And District Bilaspur Chhattisgarh.

---- Respondents

For petitioner - Shri Abhijeet Mishra, Advocate.
For Respondents -Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

20/06/2018

Heard.

1. Learned counsel for the petitioner would submit that demarcation was initially carried out without following the mandate of Section 129 and 124 of the C.G. Land Revenue Code and the demarcation was carried out for the land without giving any notice to the petitioner. It is stated that subsequently, notice was served and while demarcation was carried out it was subject of challenge before the Board of Revenue. Board of Revenue by its order dated 18/06/2015 ordered for fresh demarcation and in its order itself observed that after demarcation according to the Land Revenue Code and rules made compliance report be submitted before the Board of Revenue till 30th July, 2015. It is stated that despite such order compliance report was not submitted within specific period of time and only on 16/12/2015 compliance report was submitted. In such compliance

report demarcation though was carried out it was the mandate of Land Revenue Code and Rules made there under were not followed as reference point and the boundary mark of the land was not pointed out to identify the land. It is stated that the demarcation was carried out abruptly resulting that part of the land of petitioner was enveloped to the share of the respondents. It is submitted that therefore another application was filed before the Board of Revenue as order itself had directed for the complaince report of demarcation. Therefore, the Board of Revenue was very much in seisin of the matter having jurisdiction which also gets its support under Section 8 of the Land Revenue Code which empowers the Board to exercise the supervisory jurisdiction in respect of the things done under the Act of the Land Revenue Code. It is stated that under the circumstances Board of Revenue may be directed again to rehear the matter as itself has retained jurisdiction by making specific order with regard to compliance report of demarcation.

2. Per contra, learned counsel for the respondents would submit that once order under the revision has been passed, Board of Revenue looses its efficacy to pass any further order and if subsequent demarcation order is passed it cannot be directly challenged before the highest authority i.e. Revenue Board in any circumstances. It is contended that order infact is operating as restrained order for construction for the respondents which may be vacated.

3. Perused the documents. Perusal of the documents would show that by an order dated 18/06/2015 Board of Revenue has directed Tahsildar for demarcation of the land by annulling the order of the Tahsildar of demolition dated 17/11/2014. It was further observed that joint team may be appointed of the Revenue Inspector and giving reference of the earlier judgment which include mandate of the High Court and process of

demarcation be followed. Importantly it also observed that after demarcation compliance report should be given till 30 July 2015 before the court i.e. Revenue Board. Plain reading of the order would therefore show that Board of Revenue retained its jurisdiction to check the legality of order of demarcation so as to see that compliance is made according to the Section 129 and 124 of the Land Revenue Code. Subsequently, when compliance report was filed in the month of December 2015, with respect to demarcation objection were filed by the petitioner raising objection that without reference point and boundary mark which is popularly known as 'Chanda Munara' demarcation of the land could not be done.

4. Section 124 of the Land Revenue Code mandates that boundaries of all villages shall be fixed and demarcated by permanent boundary marks. The Rules have been framed under section 124 of the Land Revenue Code which is termed as Rules Regarding Boundaries and Boundary Marks, Survey Marks. The relevant extract of Rules are reproduced here under:-

> “1. In these rules-
>
> (a) “Code” means the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959);
>
> (b) “Form” means a form appended to these rules;
>
> (c) “Section” means a section of the Code.
>
> 2. The boundaries of all villages and boundaries of survey numbers or plot numbers in villages notified under sub-section (2) of section 124 shall be demarcated by-
>
> (a) an unploughed strip 1.50 metre in width; or
>
> (b) a dhura .50 metre high, 1.50 metre wide at the base and 1.00 metre at the top; or
>
> (c) a strong fence or wall, or

(d) boundary stones.

3. Near each corner of a survey number or plot number shall be erected two mounds or teelas pointing along the field boundaries. The dimension of such teelas shall be-

	Metre	
Length.....	2.00	To be distributed equally on both the sides of a field boundary
Breadth at base....	0.50	
Breadth at top.....	0.25	
Height........	1.00	

Provided that it shall not be necessary to erect such teelas if a wall is constructed right up to a corner of a field.”

5. Therefore, reading the Rules and Act together would show that in order to demarcate a particular land the boundary mark i.e. reference point or 'Chanda' would be necessary. Which necessarily means that boundary marks would be necessary to carry out the demarcation from a certain point. It cannot be on the unilateral and subjective satisfaction of the Patwari or Tahsildar or Revenue Inspector. They have to follow the mandate of the Act and the Rules which necessitated that boundary stone and mark are to be established. If Act and Rules are not followed then in such case it will lead to a situation that anybody can claim and trench upon the right of the others as the land itself do not bear any number engrafted with them.

6. In the instant case, apparently two demarcation was carried out. No reference point i.e. chanda munara was made out and only on the oral submission of the parties demarcation was carried out. If the reference point and the foundation stone are ignored then entire map of the land of particular village shall stand disturbed and one land may move from one position to the other at the wish and will of the Revenue Inspector or Partwari. In these facts the Revenue Board while passing the order dated 18/06/2015 had specifically pointed out that after demarcation according

to the Act and Rules necessary compliance is to be reported to the Board within specific period of time. Therefore, by implication Revenue Board retained its jurisdiction under Section 8 of the Land Revenue Code which reads as under:-

> “8. Powers of superintendence of Board.- The Board shall, in respect of all matters subject to its appellate or revisional jurisdiction, have superintendence over all authorities in so far as such authorities deal with such matters and may call for returns.”

7. Therefore, in the facts of this case subsequently when order dated 1/07/2017 was passed whereby Revenue Board has refused to exercise its jurisdiction qua the demarcation report which was submitted on 16/12/2015, the Revenue Board failed to exercise it's jurisdiction vested in it by way of supervisory jurisdiction which was earlier retained by it in it's order dated 18/06/2015.

8. In the result, order dated 1/07/2017 passed by the Revenue Board is set aside whereby Revenue Board failed to exercise it's jurisdiction cannot be protected by ignoring the specific provisions of Land Revenue Code. In the circumstances, case is remanded back to the Revenue Board afresh for adjudication with a direction to give a finding as to whether compliance of the subsequent demarcation was made according to the Act and Rules of 121 to 124 of the Land Revenue Code and Rules framed thereunder and may direct fresh demarcation of the land by compliance of Section 121 to 124 of the Act and Rules thereof within further period of 45 days from the date of receipt of the order. In the meanwhile, till further demarcation is carried out the parties shall maintain status quo in respect of the disputed land in question.

Sd/-

(Goutam Bhaduri)

JUDGE

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