

CR No.1680 of 2018(O&M)
Date of decision :18. 12.2018

.....Petitioner

....Respondents

attested by the concerned Patwari/Kanungo and 'concerned authority'.

By this petition, the petitioner has challenged the order of the learned executing court (Civil Judge, Jr. Divn.), Sunam, dated 07.12.2017, by which the respondents-decree holders have been directed to deposit fee for the demarcation of the suit property by "satellite machinery", other than asking them to deposit the fee of the local commissioner and to cooperate in getting the demarcation done.

The petitioner-judgment debtor is aggrieved of the aforesaid order, with learned counsel for him submitting that 'satellite machinery' is not a method of demarcation provided in the High Court Rules and Orders, in support of which he refers to sub-clauses (i) to (vii) of Rule/Clause 4 of Part (i) (procedure in "*Hadd Shikni* cases), contained in Chapter 1-M of Volume 1 of the High Court Rules and Orders, which actually is a reproduction of the Financial Commissioners' instructions, (issued upon a motion made by this Court).

He specifically points to sub-clause (i) which reads as follows:-

“(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputes land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the

map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater art of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.” (emphasis applied)

Thus, in brief the contention is that the only method of demarcation is by first identifying three points on different sides of the property in dispute, such points to be determinable as near as possible to the disputed area in question and if such points are not available absolutely near the disputed area then with the distance of such points not to be more than 200 *kadams* apart; with such points to be shown shown in any map which the parties admit to, and which points have been undisturbed.

In the present case, it is not in dispute that as a matter of fact in view of the extensive construction that has taken place in the area, three such points are not determinable, in terms of the aforesaid instructions.

It is to be specifically noticed that upon query to both learned counsel, they are *ad idem* at least on that issue.

That being so and there being no determinable fixed points near the disputed area, I see absolutely no error in the order of the learned executing court in directing that the demarcation to be taken by way of satellite imagery.

The Sub-Divisional Officer (Civil), Sunam, was present in Court on the previous date (06.12.2018) in response to the direction of this

court dated 27.11.2018, along with the Tehsildar and the area Patwari, who had informed this Court that as a matter of fact even satellite imagery is taken from fixed points that are determinable, though they may not be within the proximity given in the aforesaid instructions.

Learned counsel for the petitioner-judgment debtor had also relied upon an order of a coordinate Bench of this Court passed in ESA no.42 of 2017 on 18.08.2017, which reads as follows:

“Learned counsel for the appellant contends that the demarcation dated 15.03.2016 was lawful as the same was conducted after fixing three pucca points with reference to revenue record viz Feeta, Aks Sizra, field book etc. Demarcation dated 15.09.2016 was based on satellite imaginary and a smallest error in that system would give huge variance at the spot. Concept of light standing machine is not a recognized phenomenon in High Court Rules and Regulations.

Notice of motion for 14.11.2017.

In the meanwhile, Executing Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

Firstly, it is to be noticed that the aforesaid order is only that (an order and not a judgment) that can be taken to be *ratio* binding on a coordinate Bench (unless on difference of opinion, it is referred to a larger Bench), and as such, there being no *ratio* laid down and only a prima facie opinion expressed in the aforesaid case while issuing notice of motion, I see no reason to not hold that in the absence of any fixed determinable points in terms of what is stipulated in the Financial Commissioners' order as reproduced in the High Court Rules and Orders, that demarcation by satellite imagery should be undertaken, especially if the said imagery is again with reference to specific determinable points, though they may not be in absolute proximity to the disputed area.

The instructions of the Government dated 13.02.2015 having

been brought on record and there being no immediate determinable points in the vicinity of the suit property, I see no reason to interfere with the impugned order.

Consequently this petition is dismissed.

The first execution petition having been instituted in the year 1977 and thereafter another application having been filed in the year 2004, the learned Executing Court is directed to ensure that proceedings before it are concluded positively within a period of four months from today.

Before parting with this case, it needs to be noticed that this issue comes up time and again, with counsel for the parties taking a defence against satellite imagery on the basis of the aforementioned contents of the High Court Rules and Orders.

Firstly, of course, as already noticed hereinabove, sub-clauses (i) to (vi) of Rule/Clause 4 as contained in Part (i) of Chapter I-M in Volume I of the High Court Rules and Orders, (i.e. the procedure to be adopted in *Hadd Shiknis'* cases), is actually a reproduction of the Financial Commissioners' instructions, such instructions having been issued upon a motion made by this Court.

The issue seen to be a recurring one, with the Government of Punjab itself now having issued the aforesaid instructions (copies Mark 'A' and Mark 'B' taken on record today), and this Court having been otherwise informed that even the Government of Haryana has already provided for demarcation by satellite imagery, and the High Court Rules and Orders referred to by learned counsel for the petitioner actually being based on the Financial Commissioner's instructions earlier existing, a copy of this order

be forwarded to the Hon’ble Rules Committee of this Court, for their Lordships' consideration as to whether an appropriate amendment needs to be made in Sub-clauses (i) to (iv) of Rule/Clause 4 contained in Part (i) of Chapter 1-M contained in Volume 1 of the High Court Rules and Orders (and in any other Rule), allowing for such demarcation by way of satellite imagery, where determinable points are no longer available in any particular area for reasons of too much construction having taken place, or for any other valid reason.

(AMOL RATTAN SINGH)
JUDGE

18.12.2018
sunita/nitin

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No