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

CR No. 6895 of 2018 (O&M)
Date of Decision: 21.11.2019

Shishpal

-Petitioner

Vs

Jaimal @ Jaipal and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Ritesh Tomar, Advocate,
for the petitioner.

Mr. Jarnail Singh Saneta, Advocate,
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has challenged the order dated 28.08.2018 passed by Civil Judge (Junior Division), Karnal vide which the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint was rejected.

In essence, the dispute is with regard to river action and has its origin in Dikshit Award i.e. Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979.

A co-ordinate Bench of this Court had an occasion to deal with the controversy in CWP No. 8979 of 2009 decided on 17.08.2011.

Paras no.5,6,7,9 and 10 of the order read as under:-

“5. Shri Hooda, learned Advocate General, Haryana in deference thereto has placed on record the affidavits of the Deputy Commissioners of Panipat and Palwal districts along with the similar worded notifications issued by the Commissioners of the competent jurisdiction, the contents whereof read as follows:-

“Now, therefore, I, T.K. Sharma, IAS, Commissioner, Gurgaon Division, Gurgaon in exercise of powers conferred upon me under Section 32 of the Punjab Land Revenue Act, 1887, do hereby order that following action be taken to prepare the record of rights pertaining to the land of village Uttasani [UP State] to be included in the revenue estate of villages Maholi [Hadbast No.103] of Hodal Tehsil Palwal District [Haryana State]:-

1. That the Settlement Officer shall get the measurement of above mentioned land done as per rules and regulations.

2. That after proper measurement, Shajra Plan shall be got prepared.

3. That the record of rights of proprietors so prepared shall be made available to the public and the claims and objections, if any, shall be invited as per provisions of law.

4. That after hearing claims and objections, the process to make the final revenue record of rights will be started as per

provisions of Section 32 of the Punjab Land Revenue Act, 1887.”

6. *It may be seen that the Notification[s] contemplate the mandatory procedure to be followed, namely, [i] measurement of the land in accordance with the rules and regulations; [ii] preparation of Shajra Plan after proper measurement; [iii] preparation of Record of Rights to be made available to the public; [iv] to invite claims and objections against such proposed Record of Rights and [v] thereafter to notify the final Record of Rights after deciding the claims/objections.*

7. *The proposed procedure obviously provides an opportunity of being heard and to participate in the process of measurements to the petitioners or other aggrieved parties as well.*

9. *Learned Advocate General assures the Court that the Revenue Authorities of all the Districts, wherever the disputes have arisen, shall leave no stone unturned and make an endeavour to complete the process and publish the final Record of Rights within the stipulated period of two years.*

10. *In order to enable the Revenue Authorities to complete the process in a time-bound manner and as prayed for by learned counsel for the parties, it appears expedient to direct that no Civil Court shall entertain a dispute of like nature or grant any ad-interim*

injunction in the matter so as to enable the aggrieved person, if any, to approach this Court directly. Ordered accordingly.”

Perusal of the aforesaid order would show that a mandatory procedure has been provided in the notification which contemplates that the measurement of the land shall be done in accordance with Rules and Regulations. Sajra Plan shall be prepared after proper measurement. Record of right shall be prepared and made available to public and invite claim/objections against such proposed record of right and thereafter, invite the final record of right after deciding the claims and objections of the parties in accordance with law.

The aforesaid procedure also contemplates right of audience of the aggrieved persons.

On the basis of consensus arrived at between the contesting parties before the Writ Court, it was decided by this Court that the revenue authorities shall do the needful in completing the process in a time-bound manner and no Civil Court shall entertain a dispute of like nature or grant any ad-interim injunction, however, aggrieved person (if any) would be at liberty to approach the High Court directly.

Plaintiff has alleged violation of the aforesaid guidelines while preparing record of right in respect of his claim. Issue of jurisdiction goes to the very roots of this case. Factum

of passing of directions by the Writ Court in CWP No.8979 of 2009 vide order dated 17.08.2011 is not in dispute, rather admitted by the parties.

The contention of learned counsel for the petitioner that under Section 32 of Punjab Land Revenue Act, while undertaking the assignment of preparation of record of right, jurisdiction of Civil Court is barred in terms of Section 158 of Punjab Land Revenue Act which would be in consonance with the spirit attached to the order dated 17.08.2011 passed by the Writ Court.

In view of aforesaid facts, it would be just and appropriate to relegate the plaintiff to the remedy of writ before this Court in accordance with law. The time consumed before the Civil Court and in this revision petition would be set off while computing limitation (if any) for espousing the cause before the Writ Court.

Even otherwise, learned counsel for the petitioner very fairly states that in the event of filing Civil Writ Petition by the plaintiff in the High Court, petitioner would not raise any such issue of limitation or latch of this type except to contest the lis on merits.

In view of above, impugned order dated 28.08.2018 passed by the Civil Judge (Junior Division), Karnal is set aside.

Plaint is ordered to be returned to the plaintiff in terms of Order 7 Rule 10 CPC with a liberty to the plaintiff to approach the High Court in the manner as discussed above.

Disposed of.

21.11.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No