

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-28780-2017 (O & M)
Date of Decision: 10.01.2019

Ram Niwas

.Petitioner

Vs.

State of Haryana and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

Present: - Mr. Vikram Singh, Advocate for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

Mr. Vishwajeet Singh, Advocate for respondent No.5.

ANUPINDER SINGH GREWAL, J.

This petition is filed against the order passed by the Assistant Collector Grade-I on 05.07.2011 (Annexure P-4); order passed in appeal by the Collector on 17.03.2015 (Annexure P-5) and order passed in revision by the Commissioner on 06.10.2017 (Annexure P-6).

It is the case of the Gram Panchayat that khasra No.118 is reserved for playground and the petitioner is in illegal possession of the same. The application for eviction of the respondent (petitioner herein) under Section 7 of the Punjab Village Common Lands (Regulation) Act was filed wherein on the ground that the land in dispute vests in the Gram Panchayat and the petitioner is in illegal possession thereof. The

application was allowed and the challenge of the petitioner thereto by

preferring an appeal and revision has also been negated.

Learned counsel for the petitioner has contended that the petitioner is in authorized possession of khasra No.118 and has constructed his house thereon. It is averred that the land of the school is situated in khasra No.124 while the playground is in khasra No.123, which is evident from the demarcation report dated 15.06.2011. It is submitted that the house of the petitioner has been constructed on the 'abadi deh' land and hence it cannot be said to be 'shamlat' land and, therefore, application under Section 7 of the Act was not maintainable.

Learned counsel for the respondents, however, has contended that the petitioner has illegally encroached upon khasra No.118 in village Bari and the orders passed by the authorities are in accordance with law.

The orders passed by the authorities which are under challenge in this petition are based upon the demarcation carried out for khasra No.118 by Girdawar Halqa vide report dated 15.06.2011 wherein the petitioner was found to be in unauthorized possession over khasra No.118 Gossa beh of eastern side 46 feet west 46 feet north 154 feet south 154 feet total area measuring 787 sq. feet and the land is owned by Gram Panchayat, Badi which is reserved for the purpose of playground and the petitioner has not been granted any allotment, lease or grant on the basis of which he could be in authorized possession.

However, it is the case of the petitioner that the demarcation was not carried out properly earlier and if a fresh demarcation is carried out by the Local Commissioner appointed by the Court at the expense of the petitioner, the true factual position would come to light. A Coordinate

this Court as Local Commissioner to supervise the demarcation which was to be conducted by Tehsildar exercising jurisdiction over village Badi, Tehsil Ganaur, District Sonapat or any other revenue officer to be appointed by him.

The Local Commissioner has submitted his report wherein it is stated that after issuing due notice, he reached the spot of demarcation on 24.05.2018 at 11.00 am and carried out the demarcation of khasra Nos.118, 123 and 124. In his report, it is mentioned that the fresh demarcation in terms of the order of this Court was carried out in the presence of both the parties, neighbours of the adjoining plots, elders of the village and the revenue official. It is also stated that Omkar Dutt, Kanungo who was present at the spot of demarcation, made available the jamabandi which revealed that khasra No.118 is 'abadi deh' land and the rough site plan depicting the concerned khasra numbers and the photocopy of latha has been annexed as Annexures A-2 and A-3 with the report. Presence memo to this effect duly signed by all those present at the spot has been annexed as Annexure A-4 and photographs in support thereof have been annexed as Annexure A-5 (colly). The relevant extract from the jamabandi qua the concerned khasra numbers has been annexed as Annexure A-6 (colly). It is also stated that in the khasra No.123 which is meant for playground of the school, illegal encroachment has been done and photographs of the same have also been annexed as Annexure A-7 colly. It is further stated that the Local Commissioner manually measured the area of khasra No.118 with the help of Patwari namely Parveen son of Kadhak Singh which was measured at 156 feet in length and 54 feet in width. The photographs regarding the area under the concerned khasra number No.123/1 as well as the playground

are also annexed as Annexure A-8 (colly) with the report. The photographs pertaining to Khasra No.124/1 which comprises the school are also annexed as Annexure A-9 (colly). The photographs of area under khasra No.118 where the house of the petitioner is situated has also been annexed as Annexure A-10 colly.

In conclusion the Local Commissioner has opined that from the inspection of the spot, it is evident that khasra No.118 is not meant for playground but is 'abadi deh' land. The house of the petitioner is also situated in khasra No.118 while in terms of revenue record, khasra No.123/1 is meant for playground and khasra Nos.124/1 and 124/2 are meant for the school. No objection has been filed to the report of the Local Commissioner.

In view of the above, we do not find any reason to disagree with the report of the Local Commissioner. As the land of the petitioner is situated in 'abadi deh', the application of the Gram Panchayat under Section 7 of the Act was not maintainable.

Consequently, the petition is allowed and the orders dated 05.07.2011 (Annexure P-4), 17.03.2015 (Annexure P-5) and 06.10.2017 (Annexure P-6) are set aside.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

10.01.2019
A.Kaundal