

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

CWP 7434/2018

Date of decision:05.02.2019

Baljor Singh

.....Petitioner

v.

State of Haryana and others

.....Respondents

**Coram: Hon'ble Mr.Justice Jaswant Singh
 Hon'ble Mr.Justice Arun Kumar Tyagi**

Present:- Mr.Chanderhas Yadav,Advocate for
 Mr.Rishu Mahajan,Advocate for the petitioner

 Mr.Arun Beniwal,DAG Haryana for official
 respondents 1 to 3/State

 Mr.SK Hooda,Advocate for respondent no.4.

 Mr.SP Chahar,Advocate for respondent no.5-
 Gram Panchayat

Jaswant Singh,J.

Petitioner-Baljor Singh is a resident of Village Ishapur
Kheri,Tehsil Gohana,District Sonipat.

One Sudesh, co-villager, moved an application under Section 7
(2) of the Punjab Village Common Land (Regulation)Act,1961 (for short
the 1961 Act) before the Assistant Collector Ist Grade,Gohana alleging
therein that petitioner-Baljor Singh has encroached upon *Gair Mumkin*
Rasta, owned by Gram Panchayat, comprised in Khasra No.189 (0-15),
Khewat No.302,Khatauni No.376 by constructing a house. It was further
alleged that despite repeated requests petitioner-Baljor Singh did not
remove the said encroachment. Hence it was prayed that said encroachment

be got removed and penalty be imposed upon the petitioner.

Upon notice, petitioner and Gram Panchayat entered into appearance and contested the application. While the Gram Panchayat contested the application qua its maintainability, petitioner averred that there was no encroachment and the house in question was constructed from the times of his father/grandfather and not part of khasra no.189, as alleged by the applicant.

Assistant Collector Ist Grade,Gohana on the basis of evidence on record and hearing the learned counsel for the parties found that as per Jamabandi for the year 2004-05, the *Gair Mumkin Rasta* comprised in khasra no.189 was ownership of the Gram Panchayat and as per report dated 16.3.2011 of the Local Commissioner, petitioner had encroached upon 34 square yards of said *Rasta*. It was further found that besides petitioner other persons too had encroached upon said *Rasta*. Accordingly, Assistant Collector Ist Grade,Gohana vide order dated 31.10.2012 (P-6) ordered dispossession of the petitioner from the encroached area with further directions to BDPO,Mundlana to file cases against other encroachers.

Aggrieved against the said order P-6, petitioner filed an appeal before the Collector,Sonipat alleging therein that the demarcation was not done in his presence and the same was not reliable. However, Collector,Sonipat vide order dated 9.6.2015 (P-8) while relying on the demarcation report dismissed the appeal of the petitioner.

Still dis-satisfied, petitioner filed a revision petition before Commissioner, Rohtak challenging impugned orders P-6 and P-8. In his revision petition petitioner had challenged the validity of demarcation report on the basis of which impugned orders P-6 and P-8 were passed.

Vide order dated 22.12.2017 (P-10) Commissioner, Rohtak dismissed the revision holding that the case had been decided on the basis of summary proceedings and question of right of ownership had not been decided nor accepted.

Hence the present writ petition seeking setting aside of impugned orders P-6, P-8 and P-10.

The contention of the learned counsel for the petitioner even before this Court was that demarcation relied upon by the Courts below was contrary to the procedure and conclusion was arrived at without associating him with the process. Petitioner even showed his willingness to get the re-demarcation done at his costs and to face the consequences if during such re-demarcation it was found that he was in unauthorised occupation of some area of the Gram Panchayat. The said contention and undertaking of the petitioner was jotted down vide order dated 23.3.2018, which reads as under:-

“Learned counsel for the petitioner states that the demarcation relied upon by the courts below was contrary to the procedure and conclusion was arrived at without associating him with the process. He states on instructions from his client that petitioner will file an affidavit that he is willing to pay for the fresh demarcation and also face the consequences in case it is found that he is in unauthorised occupation of some area of the Gram Panchayat.

Let affidavit be filed within a period of two weeks from today.

List on 17.4.2018”

In compliance of the said order dated 23.3.2018, petitioner filed his affidavit vide CM 9130-CWP-2018 which was taken on record

vide order dated 6.7.2018 which reads as under:-

“In view of the affidavit that has been submitted by the petitioner expressing his readiness to bear the consequences including cost of demarcation, we issue notice of motion for 5.9.2018.

In the meantime, the Tehsildar Gohana is directed to either himself or through some other responsible officer get the demarcation of the disputed area indicated in the pleadings by associating the petitioner and other interested persons with it.

The petitioner shall bear the expenses of demarcation.

In case the demarcation report establishes the unauthorised occupancy by the petitioner, he would not only be ordered to be evicted forthwith but would also be burdened with costs of Rs.50,000/- for wasting the time of the Court.”

In compliance of aforesaid order dated 6.7.2018, on 16.1.2019 learned State counsel filed demarcation report dated 24.8.2018 according to which petitioner was found to be in illegal possession to the extent of 16 square yards., which fact, at the time of hearing today, has not been denied by the counsel for the petitioner. It was further told that the costs qua demarcation stand paid by the petitioner.

Counsel for the petitioner, in view of aforesaid undertaking given by the petitioner and the demarcation report dated 24.8.2018, concedes that no further adjudication is required in the matter and that the petitioner would remove his encroachment from 16 square yards without any further delay.

Accordingly, present writ petition is partly allowed and impugned orders P-6, P-8 and P-10 are modified to the extent that petitioner

is in unauthorised possession to the extent of 16 square yards comprised in khasra no.189 and hence liable to be dispossessed therefrom.

Ordered accordingly.

Both sides, in view of their stand taken before this Court shall abide by the same and any violation thereof would be viewed seriously.

Further, the petitioner is burdened with the costs of Rs.50,000/- (Rupees Fifty thousand only) to be deposited with the District Legal Services Authority, Sonipat within a period of two months from today, failing which the Deputy Commissioner, Sonipat shall ensure recovery of the same as arrears of land revenue.

(Jaswant Singh)
Judge

05.02.2019.
joshi

(Arun Kumar Tyagi)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No