

[CWP-10845-2019]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10845 of 2019 (O&M)

Date of Decision: 31st August, 2020

Hem Raj Arora

....Petitioner

VERSUS

Union of India and others

....Respondent

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Gurinder Pal Singh, Advocate for the Petitioner.

Ms. Puneeta Sethi, Senior Standing Counsel for Respondent
No. 1/UID

Mr. Chetan Mittal, Senior Advocate with Mr. Sunil Sahore,
Advocate for Respondent Nos. 2, 3 and 6.

Mr. Aman Bahri, Advocate for Respondent No. 4.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. On 5th August, 2020, the following order was passed in the present
petition:

“Having considered the submissions made by the counsel for the parties and keeping in view the arguments, which have been raised, wherein learned senior counsel Mr. Chetan Mittal appearing for the National Highways Authority of India, has put forth a suggestion that fresh demarcation be carried out in the presence of the petitioner, National Highways Authority of India officials and the officials of the Municipal Corporation, Gurugram, by the District Revenue Officer.

Counsel for the petitioner states that the petitioner would have no objection to the said proposal, which has been put forth by Mr. Chettal Mittal in case the land of the petitioner is identified and found to be a part of the land, which is required by the NHAI, the same be acquired in accordance with law. He further states that in case it is found that the petitioner has encroached upon some land,

which is not owned by him, he would voluntarily remove the said encroachments.

Mr. Chetal Mittal states that it will be done accordingly and if need be and it is found that the land owned by the petitioner is to be required by the NHAI for the purpose of constructing the road, the same will be acquired.

In the light of the above, let the parties, referred to above, appear on the site firstly on 13.08.2020 or any subsequent date, which may be thereafter finalized by the District Revenue Officer in case of any difficulty because of the prevailing pandemic.

List on 20.08.2020.

Let the State produce on record the demarcation report.

Copy of the report be handed over to the concerned parties as well.”

2. Subsequent thereto, the District Revenue Officer, Gurugram has on 26th August, 2020 filed an affidavit, enclosing as Annexure R-1 (Colly) thereto, a copy of the demarcation report dated 15th August, 2020. The demarcation report *inter alia* states that Khasra No. 339/2 as well as surrounding Khasra numbers were fed into the Differential Global Positioning System (‘DGPS’) machine in the presence of the Petitioner and other concerned parties. The feed map was compared with *shajra*, field book and mutations. The reference points were thereafter affixed.

3. The demarcation report goes on to state as under:

“After demarcation of Khasra No. 339/2, it was found, that the Khasra No. 339/2 at present is being used for road and foot path on spot, while plaintiff (sic Petitioner) Hemraj Arora has constructed two storeys shop on spot, which according to D.G.P.S. machine has shown in map and report that this falls in Khasra No. 339/3. But as per jamabandi 2005-2006, the plaintiff is owner of Khasra No. 339/2 while Municipal Corporation Gurugram is owner of Khasra No. 339/1, 339/3 as per revenue record. When asked from Punit Khanna, Deputy Manager (T) NHAI, who was present

on spot about the acquisition of Khasra Nos. 33/1, 339/2, 339/3, then he could not present any document to show that the land has been acquitted. In this regard, when asked from Sh. Shamsheer Singh SDE, PWD B&R, Gurugram. About the acquisition of above Khasra No. and asked for documents, then he could not produce any document for acquisition of above Khasra No. Revenue (sic record) was also seen. There is no entry in revenue record about the acquisition of above numbers. For demarcation, Tehsil masavi was also seen. In Tehsil masavi, Khasra No. 339/1, 339/2, 339/3 are not entered, while in revenue record room (sadar) masavi, the above Khasra No. have been incorporated. Therefore, after demarcation by the D.G.P.S. machine, it was found that plaintiff has constructed shop on spot are in Khasra No. 339/3 in area 50.66 sq. yd rest of area is vacant. Municipal Corporation, Gurugram is owner and plaintiff Hemraj Arora is owner of Khasra No. 339/2. This Khasra No. is being used for road and footpath, which is shown at Sr. Nos. 1 and 2 in the map prepared by D.G.P.S. machine.”

4. Mr. Gurinder Pal Singh, learned Counsel for the Petitioner took the Court through the documents enclosed with the petition and sought to urge that the Petitioner is the owner of the entire land in Khasra No. 339 and not just of the land in Khasra No. 339/2, as stated in the above demarcation report. He further states that if the National Highway Authority of India (‘NHAI’) seeks to acquire the land in which the Petitioner has built a shop, the Petitioner should be compensated by being provided some alternative land.
5. It is seen from a copy of the sale deed (Annexure P-3) relied upon by the Petitioner, assuming the same to be correct, that he claims ownership of land measuring 37 square yards in Khasra No. 339, village Badshahpur, Tehsil Gurgaon, whereas the demarcation report referred to above states that he has constructed a shop in Khasra No. 339/3 over an area of 50.66 square yards. It would, therefore, *prima facie*, appear that the Petitioner

[CWP-10845-2019]

has sought to construct over an area, which is larger than what he himself claims to be the owner of in terms of the abovementioned registered sale deed.

6. In the considered view of the Court, the claims of the Petitioner and the response thereto of the Respondents give rise to highly disputed question of facts, the adjudication of which cannot be possibly undertaken in the present writ petition under Article 226 of the Constitution. Consequently, leaving it open to the Petitioner to seek appropriate remedies in the Civil Court, this Court disposes of the present writ petition. It will be open to the parties to rely upon the pleadings and the documents in the present writ petition in support of their respective contentions before the Civil Court. The Court further directs that for a period of one week from the date of uploading of the present order, status quo as of date shall be maintained qua the land in question.

7. The petition is disposed of in the above terms.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

31st August, 2020
Sachin M.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No