

CWP No. 1724 of 2021 (O&M)

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

(118+217)

CWP No. 1724 of 2021 (O&M)

Date of Decision : 22.02.2021

Harinder Singh

....Petitioner

Versus

Financial Commissioner and others

.....Respondents

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate for the petitioner.

Ms. Sunint Kaur, Assistant Advocate General, Punjab.

Mr. Manish Verma, Advocate for respondent No. 9.

Harsimran Singh Sethi, J. (Oral)

CM-2749-CWP-2021

Present application has been filed for placing on record reply filed on behalf of respondent No. 9 alongwith Annexures R-9/1 to R-9/25 and for seeking exemption from filing certified copies of the same.

Application is allowed and reply filed on behalf of respondent No. 9 alongwith Annexures R-9/1 to R-9/25 is taken on record.

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In the present petition, though the State is yet to file the reply but keeping in view the facts which will be narrated hereinafter, the present writ petition can be disposed of.

The main argument, which has been raised by the learned senior counsel appearing on behalf of the petitioner is that the petitioner has been suspended on an allegation of encroachment upon the Panchayat land and in respect of the said allegation, a demarcation report dated 06.12.2019 (Annexure P-4) has been taken into account. Learned senior counsel submits that the demarcation report dated 06.12.2019 (Annexure P-4) has been objected to by the petitioner by filing objection before the Deputy Commissioner concerned but the same was returned to the petitioner after the passing of the impugned order to avail the remedy before the Collector concerned, hence the demarcation report has not attained finality so as to give the jurisdiction to the respondents to rely upon the said report to take any action under the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as 'the 1994 Act').

Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is ready to undergo any punishment as envisaged under the 1994 Act in case, he has violated any provisions of the same but as per his instructions, the petitioner has not encroached upon any land belonging to the Gram Panchayat and this fact can be proved in case a fresh demarcation is done in the presence of the petitioner, complainant and the members of the Gram Panchayat once again by the revenue authorities.

Learned senior counsel appearing on behalf of the petitioner

further submits that in case the fresh demarcation of the area is done and the petitioner is found to have encroached any land and the same is found to be in his possession, not only the encroached area will be returned but any construction on the encroached land will also be demolished forthwith and the respondents will be within their jurisdiction to take action against the petitioner under the 1994 Act.

Learned counsel appearing on behalf of respondent No. 9, who is the complainant, submits that he has already submitted in his reply and also before the Financial Commissioner that as the petitioner disputing the findings of the demarcation report dated 06.12.2019 (Annexure P-4) and as the complainant is sure that petitioner has encroached upon the Panchayat land, he has no objection in case, the demarcation of the disputed area is done again in the presence of all the concerned by the revenue authorities.

Learned State counsel submits that she has instructions from the authorities that a fresh demarcation of the area, as being requested by the petitioner, is agreeable to the authorities, in case the petitioner cooperates.

As all the parties are ready for the fresh demarcation of the area so as to ascertain the actual fact whether the petitioner has encroached upon any Panchayat land and the same is in his possession, let a fresh demarcation of the area be done by the revenue authorities on 01.03.2021 at 11:00 a.m. The demarcation of the area will be done in the presence of the petitioner, respondent No. 9, Members of the Gram Panchayat, Patwari and Halqa Kanungo concerned of the area as well as

the Naib Tehsildar of the said area.

No fresh notice is required to be given either to the petitioner or to the complainant/respondents in this regard. The State counsel is directed to inform the authorities, the details of whom, have been given hereinbefore about the demarcation of the area to be undertaken on 01.03.2021 at 11.00 a.m. on the site.

In case after the demarcation of the area, it is found that the petitioner has encroached upon area of the Gram Panchayat and the same is in his possession, as undertaken by the learned senior counsel appearing on behalf of the petitioner, the said encroached area will be immediately vacated and the possession of the same will be given to the Gram Panchayat again and any construction done on the said encroached area will be demolished by the petitioner himself. In case, the said construction on the said encroached area is not demolished by the petitioner within a period of four weeks, the Gram Panchayat will be within its jurisdiction to demolish the same.

In case after the demarcation of the disputed area, it is found that some area belonging to the Gram Panchayat is encroached but the same is not in the possession of the petitioner, but is in the possession of somebody else, learned senior counsel appearing on behalf of the petitioner undertakes that the appropriate proceedings for getting the said encroachment vacated will be initiated by the Gram Panchayat expeditiously without any fail by adopting the proper procedure as envisaged under law against the said encroacher by the petitioner being the Sarpanch of the village.

As the fresh demarcation is being ordered with the consent of all the parties so as to ascertain whether the petitioner has encroached upon any Gram Panchayat land or not, the order suspending him on the said allegation i.e. Annexure P-11 dated 10.02.2020 will not be given effect and will be kept in abeyance till the fresh demarcation report is given by the revenue authorities concerned as noticed hereinbefore. In case the petitioner is found to have encroached upon any Government land, the said suspension order dated 10.02.2020 (Annexure P-11) will automatically come into force once again. In case, the petitioner is not found in the possession of any encroached land, the respondents will not give effect to the said suspension order dated 10.02.2020 (Annexure P-11) and the Director Local Government will pass appropriate order in this regard withdrawing the said suspension order.

Writ petition is disposed of in above terms.

February 22, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*