

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

116+203

CWP-7630-2021 (O&M)
Date of decision: 05.07.2021

HARINDER SINGH

...Petitioner

Versus

FINANCIAL COMMISSIONER, RURAL DEVELOPMENT AND
PANCHAYAT DEPT., GOVT OF PUNJAB AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Manish Verma, Advocate for respondent no.7.

ANIL KSHETARPAL, J. (Oral)

The hearing of the case was held through video conferencing on
account of restricted functioning of the Courts.

CM No.7532 of 2021

Allowed as prayed for. Reply of respondent no.7 along with
Annexures R-7/1 to R-7/24 are taken on record, subject to all just exceptions.

Main Case

Through this writ petition, the petitioner who was elected as the
Sarpanch and continues to be under suspension assails the correctness of the
order by which he was suspended. He further assails the correctness of the

demarcation report dated 01.03.2021.

The petitioner has already filed as many as four writ petitions before the High Court. The present writ petition is the fifth one.

On 22.02.2021, in a previous writ, the learned Senior counsel appearing for the petitioner had contended that if on a fresh demarcation in the presence of the petitioner, he is found in the unauthorised possession of shamlat deh land, he is ready to undergo any punishment. Pursuant to the aforesaid undertaking, the following order was passed in CWP-1724-2021:-

“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 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.”

A fresh demarcation has been carried out on 01.03.2021 in the presence of the petitioner. In the present case, the allegations against the petitioner are that he has encroached upon shamlat deh land. Ms. Kanica Sachdeva, AAG, Punjab, has pointed out that the inquiry under Section 20 of the Punjab Panchayati Raj Act, 1994, has been completed and the petitioner has been given notice by the Director on 02.07.2021 in accordance with Section 20 of the Punjab Panchayati Raj Act, 1994, to explain as to why he should not be removed from the concerned land. However, the learned senior counsel appearing for the petitioner contends that the petitioner challenges the correctness of the demarcation report dated 01.03.2021. He submits that the petitioner has no alternative remedy. The learned senior counsel representing the petitioner contends that the demarcation report is not prepared during the inquiry.

It may be noted here that a fresh demarcation was ordered as per the order passed by the High Court on 22.02.2021 in CWP No.1724 of 2021. In any case, the petitioner, if so advised, can file objections to the demarcation report before the Director. The Writ Court is not expected to interfere at every step.

The report of the demarcation is to determine about the alleged encroachment. Such demarcation report does not in itself result in adjudication of the matter. The authority before whom such report is

produced as evidence can examine its correctness. In the present case, the demarcation was ordered in order to find out as to whether the petitioner herein has encroached upon shamlat deh land or not. Hence, the Director can accept or refuse to rely upon the report. As per Section 20 of the Punjab Panchayati Raj Act, 1994, the Director is required to form an opinion as to whether an elected panch or sarpanch is liable to be removed or not. In the process of that determination, the Director is entitled to adjudicate upon the validity of the demarcation report. The petitioner has a right to file an appeal under Sub Section 6 of Section 20 of the Punjab Panchayati Raj Act, 1994, against the order which may be passed by the Director. Thus, the demarcation report, by itself, is only a piece of evidence.

This Bench has considered the submissions, however, finds no substance. A demarcation of the land is in the process of regular inquiry which was carried out by the Director. The petitioner has a right to file objections against the report. The petitioner even has a right to assail the correctness of the report by filing reply to the show cause notice dated 02.07.2021. In a writ petition, a writ Court cannot be expected to adjudicate upon the correctness of the demarcation report, particularly at this stage when the matter is pending before the Director.

Keeping in view the aforesaid facts and without commenting upon the merits of the case, the writ petition is disposed of by granting an

opportunity to the petitioner to file reply to the show cause notice dated 02.07.2021 within the time stipulated. If no reply is filed, the Director shall be at liberty to proceed in accordance with law. However, the Director shall pass the order within 15 days from the date when the petitioner files his reply to the notice or in case the petitioner fails to file the reply within 15 days from the last day fixed for filing reply.

All the pending miscellaneous applications, if any, are also disposed of.

05.07.2021
ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No