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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CR-7916-2018 (O&M)
Date of Decision : 11.03.2022

Modan Singh

....Petitioner

VERSUS

Gram Panchayat

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate for the petitioner.

Mr. H.P.S.Ghuman, Advocate, for the respondent.

ALKA SARIN, J. (Oral)

Taken up through video conferencing.

This is the petition under Article 227 of the Constitution of India for quashing of order dated 23.10.2018 passed by the Civil Judge (Junior Division), Nabha whereby the objections dated 22.12.2017 (Annexure P-7) filed by the plaintiff-petitioner have been dismissed.

The brief facts relevant to the present case are that the Trial Court on 04.09.2015 had appointed Field Kanungo, Ajnauda as Local Commissioner to demarcate the suit land of the plaintiff-petitioner being Khasra No.518 (7-0), 519 (6-5) and pahi comprised in Khasra No.521. The Local Commissioner was appointed on an application filed by the plaintiff-petitioner. The plaintiff-petitioner filed objections to the report of the Local Commissioner on which notice was issued and the defendant-respondents were also heard. The Trial Court vide the impugned order dated 23.10.2018 dismissed the objections filed to the report of the Local Commissioner holding that the plaintiff-petitioner

being the plaintiff had to prove his own case. Aggrieved by the said order the present petition has been filed.

Learned counsel for the plaintiff-petitioner would contend that the report prepared by the Local Commissioner is not as per the High Court Rules and Orders and the instructions issued by the Financial Commissioner and hence a fresh report ought to have been called for.

Learned counsel appearing on behalf of the defendant-respondents has relied upon a judgment by a Division Bench of this Court in **1989(1) PLR 677, Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander** to contend that there is no provision for inviting objections to a report of the Local Commissioner. In any case, even if objections are filed by either party, neither of the parties is entitled to claim any issue with respect to the report and the objection, if any, would be considered after the cross-examination, if any, of the Local Commissioner by the Court under Rule 10 of Order 26 of the Code of Civil Procedure and that too along with the other evidence at the time of final hearing. To a similar effect is the judgment in the case of **Chander Pal Vs. Pahlwan Daya Nand & Ors., 2015 (2) PLR 370.**

I have heard the learned counsel for the parties.

In the present case the short point to be considered is whether objections are maintainable against the report of the Local Commissioner and secondly whether the present revision petition at this stage would be maintainable against an order rejecting the objections filed. A Division Bench of this Court in the case of **Balbir Dewan Cold Storage and General Mills** (supra) while dealing with the issue has held as under :

“Thus, from the provisions of Order 26, Rule 10, it is quite evident that there is no provision for inviting any objection to the report of the local Commissioner appointed under

Rule 9 thereof. In case, any such objections are filed by either of the parties to draw the attention of the Court as to the inherent defects therein, the Court may consider the same and if for any reasons dissatisfied with the proceedings of the Commissioner, may direct such further inquiry to be made as it shall think fit but neither of the parties is entitled to claim any issue with respect to the report. The only provisions under Sub-rule (2) of Rule 10 of Order 26 of the Code is to examine the Commissioner personally in open Court either by the Court itself or by any of the parties with the permission of the Court. The objection, if filed by the parties, shall be considered after the cross-examination, if any, of the local Commissioner by the Court under Rule 10 of Order 26 of the Code and that too along with the other evidence at the time of final hearing.”

Yet again in the case of **Chander Pal** (supra) it has been held as under :

“5. I am of the view that the learned trial Court is quite right in making the above observations that the challenge to the report of Local Commissioner could be made only during the trial of case, after the Local Commissioner is cross-examined by the parties about correctness or otherwise of his report. In view of the above, there is no merit in the instant petition and the same is dismissed.”

The law stands crystallized that firstly there is no provision in law for inviting any objections qua the report of a Local Commissioner and even if any such objections are filed by either of the parties, the same can only be gone into after the Local Commissioner has been cross-examined by the Court under Order 26 Rule 10 CPC that too along with the other evidence at time of final hearing.

Keeping in view the law laid down that that objections, if any, to a report by the Local Commissioner can only be considered at the time of final hearing of the case, the present petition itself at this stage would not be maintainable and is liable to be dismissed. So ordered.

It would, however, be open to the plaintiff-petitioner to raise all objections taken herein at the time of final hearing of the case before the Trial Court.

Pending application, if any, also stand disposed off.

March 11, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO