

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

LPA No. 5 of 2020 (O & M)
Date of Decision: 17.03.2023

Sube Singh

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Tejas Bansal, Advocate,
for Mr. Sanjiv Kumar Aggarwal, Advocate,
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana,
and Mr. Saurabh Mago, AAG, Haryana.

Mr. Nipun Bhardwaj, Advocate,
for respondent No.5.

G.S.SANDHAWALIA, J. (Oral)

1. The challenge herein is to the interim order dated 18.12.2019 passed in CWP No. 25419 of 2019 whereby, the learned Single Judge had dismissed the application for the recall of the order dated 27.11.2019 on the ground that the writ petitioner had approached this Court on the basis of the sale deed dated 17.09.2019.

2. The said application had been filed by the present appellant who was arrayed as respondent No.5 and his grouse as such was that though he was party but no notice of motion had been issued and response had been sought from the State. It was further his grouse that in pursuance of the demarcation report dated 08.11.2019, it had been found that he was in illegal encroachment of approximately 1100 square yards of area and directions had been issued and the State had undertaken that they would remove the said encroachment within 4 weeks. Resultantly, directions had been

issued that report be submitted regarding the removal of the illegal

encroachment as has been found in the demarcation report which was carried out. It is submitted that without issuing notice of motion, effective directions could not have been issued and the appellant being a respondent, could not be denied his right to participate in the proceedings.

3. Counsel for the writ petitioner (respondent herein) fairly cannot counter the said argument.

4. While issuing notice of motion, the co-ordinate Bench had stayed the order dated 27.11.2019 whereby directions had been issued to dispossess the appellant. It has also been brought to our notice that now the learned Single Judge, in view of the said order, has adjourned the proceedings *sine die* in the writ petition, to be listed after the decision of the present appeal vide order dated 21.01.2020.

5. A perusal of the paper book would go on to show that the writ petition was filed on the ground since a letter dated 01.08.2019 (Annexure P-6) had been issued in reply to the legal notice by the BDPO submitting that there was a personal dispute between the writ petitioner and respondent No.5 and the land in question did not belong to them and did not come under the control of the Panchayat. Therefore, the Gram Panchayat has no objection and it had also been written by the Sarpanch that if the demarcation is to be done, then the Gram Panchayat has no objection.

6. On 11.09.2019, counsel for the State had accepted notice before the learned Single Judge and directions had been issued to seek instructions from the respondents as to how the response was in consonance with law. Thereafter, various orders were passed on 04.10.2019 and eventually, the order was passed on 27.11.2019 whereby, an adverse demarcation report

came on record qua the appellant and the State had undertaken to

demolish the same. It would also be a matter of issue whether demarcation was carried out in the presence of the appellant or not and his right to file objections to the same.

7. We are of the considered opinion that once the appellant was a party respondent as such, the question of denying the right to file the written statement could not arise to present his side of the story and necessary procedure should have been followed by the learned Single Judge. By passing orders at his back led him to file an application for recall and the dismissal of the said application would be violative of the principles of natural justice as he has pleaded that he has purchased 400 square yards by way of sale deed dated 17.09.2017.

8. Resultantly, we are of the considered opinion that the present appeal is liable to be allowed. Accordingly, the directions issued on 27.11.2019 that a report be submitted regarding the removal of the illegal encroachment and the undertaking of the State to remove the same are set aside. The appellant is given liberty to file his written statement. Thereafter, it will be open to the learned Single Judge to proceed afresh after hearing counsel for both the parties. Let the writ petition be listed for hearing before the concerned Bench on 18.04.2023.

(G.S. SANDHAWALIA)
JUDGE

17.03.2023
shivani

(SUKHVINDER KAUR)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No