

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

113

CR No.213 of 2023

Date of decision: 22.02.2023

Faquir Singh Cheema

....Petitioner

V/s

Satnam Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sunny K. Singla, Advocate, for the petitioner.

VIKAS SURI, J. (Oral)

The challenge in this petition preferred under Article 227 of the Constitution of India is to the order dated 14.11.2022 (Annexure P-10), whereby the objections filed by the petitioner-defendant No.1 and the objections filed by the respondent-plaintiffs against the report of the Local Commissioner were dismissed.

The facts of the case are that respondent No.1 instituted a suit for declaration to the effect that the demarcation report dated 18.02.2017 qua the suit land bearing *Khasra* Nos.124/1 and 130 situated in Village Jhall, Tehsil Malerkotla, was not in accordance with the instructions and the same is liable to be set aside and for permanent injunction prohibiting the defendants themselves or through agents/servants or associates from taking further action/proceedings on the basis of the impugned demarcation of the aforesaid *Khasra* numbers.

In the said proceedings, defendant No.1-petitioner moved an application dated 31.01.2020 (Annexure P-5) for appointment of revenue official/tehsildar as Local Commissioner, to demarcate the suit land and to give its

report in that regard. Vide order dated 20.07.2021 (Annexure P-6), the aforesaid application was allowed, the operative part of which reads as under:-

“4. Heard. The plaintiff in this case is seeking declaration that demarcation report bearing No.239/reader-2 dated 18.05.2017 is null and void because the said demarcation was not conducted in accordance with the instructions of the Financial Commissioner. It is also the case of the plaintiff that suit property does not fall in Khasra Nos.124/1 and 130 whereas the suit property is a passage comprising in Khasra No.125. On the other hand, the defendants are alleging that the suit property falls in Khasra Nos.124/1 and 130 and the demarcation report bearing No.239/reader-2 dated 18.05.2017 is valid. Given the above said circumstances, it is clear that the real nature of dispute between the parties to the suit is qua the demarcation of the suit property. The said dispute can only be conclusively put to rest if a Local Commissioner is appointed by the court to demarcate the suit property and to report in what khasra numbers the suit property falls. From the said report of demarcation, a great assistant will be provided to the court to decide qua the validity of demarcation report which has been challenged by the plaintiff and the same will help this court to determine in what khasra numbers the suit property actually falls. The appointment of Local Commissioner in this case is no way will lead to collection of evidence however the same will elucidate before the court the actual and factual position at the spot. Accordingly, Halka Kanungo is hereby appointed as Local Commissioner in this case to demarcate the suit property and to report in which khasra numbers the suit property falls. Local Commissioner is directed to follow the instructions issued by Financial Commissioner from time to time in this regard while conducting the demarcation. Notice of this order be given to Halka Kanungo and his report be awaited till 18.08.2021.”

In compliance to the aforesaid order, the demarcation report was submitted to the trial Court, which is appended as Annexures P-7 and

P-8 with the present petition. Thereafter, the petitioner filed an application basically raising objections to the report but worded the same as one seeking clarification. It is specifically pleaded in the said application as under:-

“That in this regard the revenue official has submitted the report dated 12.11.2021 and 09.12.2021 and in the report dated 12.11.2021 the revenue officials has given details regarding the encroached area but has omitted to mention the name of the person who has encroached upon the same or inadvertently he has mentioned the same under the column “Naam Malak” as the case may be. The said factum is necessary to be clarified from the concerned official/agency.

Similarly in report dated 09.12.2021 the concerned official while submitting the report has omitted to mention the encroached area and the person who has encroached the same or inadvertently the encroached area has been got mentioned under the head “Raqba” and the name of the encroacher has been got mentioned under the head “Naam Malakan” as the case may be. The said mistake can be easily clarified by looking into the jamabandi pertaining to Khasra No.129 as the area of Khasra No.129 is not 0-13-8 as given in the report nor the area of Khasra No.128 is 0-12-8 and so on and in all eventuality and probabilities the area mentioned under the head “Raqba” is nothing but the encroached area.”

Heard learned counsel for the petitioner and with his able assistance, perused the paper-book.

I have given my thoughtful consideration to the matter and am not impressed with the submission advanced by learned counsel for the petitioner that the Local Commissioner was duty bound to specify in the report, the name of the person who has encroached upon the area in question.

Learned counsel for the petitioner is not in a position to deny

from the record that appointment of Local Commissioner was confined to the direction contained in the order dated 20.07.2021 noticed above.

Even otherwise, it is well settled that a commission cannot be appointed to collect evidence and in the case at hand the scope and purpose of appointing the Local Commissioner was only for demarcation of the suit property to assist the Court to determine that as to in which *khasra* number the suit property actually falls. It is also not disputed that pursuant to the impugned order, the demarcation of *Khasra* Nos.124/1 and 130 was carried out.

No other issue was raised or argued.

Keeping in view the totality of facts and circumstances, the present petition is liable to be dismissed being bereft of merit.

Accordingly, this revision petition is dismissed.

(VIKAS SURI)
JUDGE

February 22, 2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No