

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

225

CWP-1947-2020(O&M)

Date of Decision : **February 23, 2023**

OM PARKASH

.....Petitioner

VERSUS

COMMISSIONER, ROHTAK DIVISION, ROHTAK & ORS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. S.S.Mor, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Sandeep Bhardwaj, Advocate
for respondents No.4 and 5.

Mr. Aakash Dalal, Advocate
for respondent No.6.

SURESHWAR THAKUR. J.(Oral)

1. The instant petition is directed against the concurrently made orders of eviction against the petitioner herein hence by both the statutory authorities below.

2. The disputed petition land(s) are enclosed in *khasra No.351 (0-9)*, and, the said land(s) are designated in the revenue entries as *gair mumkin street*. On the said *gair mumkin street*, some construction is alleged to be raised by the petitioner herein as well as by the other encroachers concerned. The challenge, as made to the above drawn concurrent orders of eviction, is a well founded challenge, as the reliance which has been placed by both the learned authorities, on the demarcation report rather is a misplaced reliance, as admittedly the said demarcation

report was drawn without any valid service being caused upon the petitioner, for ensuring, that the *gair mumkin street* becomes demarcated in his presence by the empowered Revenue Officer. Therefore, this Court finds merit in the petition, and, is constrained to accept the petition, and, is also constrained to quash, and, set-aside the concurrently made orders of eviction by both the statutory authorities below.

3. Be that as it may, during the pendency of the instant petition before this Court, a demarcation was ordered to be made by the Revenue Officer concerned. In the demarcation report which has been placed before this Court yet allegations are made therein, that not only the petitioner has made construction(s), upon, the disputed *khasra Numbers* but some other encroachers also have raised construction(s) thereon. Necessarily when the validity of the above demarcation report is required to be challenged not before this Court by the counsel appearing for the contesting litigants, given for ensuring the assigning of validity to the respective(s) contentions as made, or for assigning or not assigning credence to the said demarcation report, thus, there is a dire necessity of the author of the demarcation report stepping into the witness box, and, also his being cross-examined by the parties affected by the said report. Obviously, the above recourse cannot be adopted before the writ Court rather it can be adopted only before the learned Collector concerned. Therefore, after quashing, as above stated both the impugned orders, the *lis* is remanded to the learned Collector concerned, to qua the demarcation report which has been placed today before this Court, hence enable the persons affected by the said demarcation report, to raise

objections in respect of its validity, and, with a further direction to the remandee Court to ensure the facilitations of objections being reared thereagainst by the aggrieved concerned, hence through the author of the demarcation report being ensured to step into the witness box. Resultantly, the remandee Court is directed to restore the *lis* to its original number, and, thereafter, shall make a lawful decision thereon but after hearing all the affected persons concerned. The said decision be made positively within six months from today.

4. Disposed of accordingly.
5. All the pending applications stand disposed of.

**(SURESHWAR THAKUR)
JUDGE**

**(KULDEEP TIWARI)
JUDGE**

February 23, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No