

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

CR-5354-2018

Date of Decision:- 25.09.2023

**UNION OF INDIA MINISTRY OF DEFENCE THROUGH ITS
ADMN. COMDT, STATION HEAD QUARTER PATIALA**

....Petitioner

Vs.

JAGATBIR SINGH AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Sunil Kumar Sharma, Advocate for the petitioner.

Mr. Arihant Jain, Advocate and Mr. Arun Jindal, Advocate
for respondent No.1.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Union of India, Ministry of Defence through its Admn. Comdt. Station Head Quarter, Patiala filed civil revision under Article 227 of the Constitution of India for setting aside the impugned order dated 18.07.2018, Annexure P-1, passed by the Court of the then Civil Judge (Jr. Divn.), Patiala vide which application filed by the respondents under Order 26 Rule 9 CPC for appointment of Local Commissioner was allowed.

2. Learned counsel representing the Union of India argued that the suit land bearing Khasra No.3 (88-0) and 13 (0-5) total 88 bighas 5 biswas situated at village Patiala, Tehsil and District Patiala is owned and possessed by the petitioner/plaintiff – Union of India, Ministry of Defence.

The copy of the jamabandi for the year 2011-2012 is Annexure P-2 and

copy of Naksha Tafavat is Annexure P-3. The respondent No.1 Jagatbir Singh is owner of some land at village Badungar, Tehsil and District Patiala which is adjacent to the suit land and taking undue advantage of the same, he took illegal possession of 5 bighas 15 biswas of land out of Khasra No.3 and 13 situated in village Patiala. The respondent No.1 gave in writing dated 03.06.2014 to the Union of India, Ministry of Defence that if he was found in illegal possession of the land then he shall be bound to vacate and handover its possession to the petitioner/plaintiff. The said writing is Annexure P-4. Thereafter, the land was demarcated and the report dated 04.11.2014 is Annexure P-5. The respondent No.1 left illegal possession and delivered the vacant possession of said 5 bighas – 15 biswas of land in favour of the petitioner/plaintiff. Thereafter, the respondent No.1 along with henchmen tried to grab the possession of the land and ultimately the petitioner filed suit for permanent injunction. Copy of plaint is Annexure P-6. Copy of written statement-cum-counter claim is Annexure P-7. In the meantime, the respondent No.1 filed application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner which is Annexure P-8. The reply to the application is Annexure P-9. Despite having demarcation report dated 04.11.2014 the application for appointment of Local Commissioner was allowed by passing impugned order dated 18.07.2018 which is Annexure P-1. The respondent No.1 cannot back out from the demarcation report dated 04.11.2014, Annexure P-5 as well as the undertaking dated 03.06.2014, Annexure P-4. Sufficient record is already there regarding the property in dispute, therefore, there was no occasion to appoint another Local Commissioner vide order dated 18.07.2018. It is prayed that the aforesaid

impugned order may be set aside and the trial Court may be directed to decide the case on merits.

3. On the other hand, learned counsel for respondent No.1/defendant No.1 argued that along with the written statement the respondent No.1 has also filed counter-claim which is Annexure P-7. In the said counter-claim the respondent/defendant No.1 has sought the possession of 5 bighas 15 biswas of land comprising of Khasra No.382/2/2/ (2 bighas 0 biswa) and 381/2 (3 bighas 15 biswas) situated in village Badungar, Tehsil and District Patiala which is adjoining to Khasra No.3 and 13 in the revenue estate of village Patiala as claimed by the plaintiff. It is pointed out that the said encroachment was done on 23.05.2015 by fixing barbed wire with a sign board claiming it on the basis of the wrong and illegal report dated 04.11.2014. He also filed suit for mesne profits. Therefore, in order to decide the matter in controversy, he had filed application for appointment of Local Commissioner, Annexure P-8, which was contested by the plaintiff by filing reply, Annexure P-9 and the said application was rightly allowed by passing order dated 18.07.2018. The present civil revision has been filed only to further delay the proceedings as they are in possession of his property. It is prayed that civil revision preferred by the petitioner is without merits and the same may kindly be dismissed.

4. I have considered the arguments and have gone through the record. The matter in controversy is clear from the pleadings of the parties. The Union of India has filed simple suit for permanent injunction for restraining the respondent/defendant No.1 from interfering in the peaceful possession of the land measuring 5 bighas 15 biswas whereas the

respondent/defendant No.1 contested the suit and filed counter-claim seeking possession of 5 bighas – 15 biswas of land by mentioning the khasra numbers which are allegedly adjoining to the land of the petitioner/plaintiff situated within Revenue Estate of village Patiala. Therefore, in the counter-claim there are allegations of encroachment of land and the matter in controversy can be decided only by appointment of Local Commissioner from the Revenue Department. The petitioner/plaintiff is relying upon the demarcation report dated 04.11.2014, Annexure P-5 which was prepared much prior to the filing of the suit for permanent injunction which was filed in the year 2016. So far as the writing of respondent/defendant No.1, Annexure P-4, it does not go against the respondent/defendant/counter claimant. Ultimately the matter can be adjudicated after the demarcation report prepared by Local Commissioner from Revenue Department. Under these circumstances, I do not find any illegality or irregularity committed by the then learned Civil Judge (Jr. Divn.) Patiala by passing the impugned order dated 18.07.2018, Annexure P-1, and the same is, accordingly, upheld. Resultantly, the civil revision preferred by the petitioner – Union of India is declined.

Pending application(s), if any, also stands disposed off.

25.09.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No