

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 2177 of 2023
Date of Decision: 03.2.2023**

Harkrishan Singh

.....Petitioner

Versus

Director, Village Development and Panchayat
and others

....Respondents

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

Present: Mr. Naveen Batra, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. Gram Panchayat of village Gahoat, through its Sarpanch Hari Singh, instituted a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'The Act'), claiming therein an order of eviction, being made on the petitioner, and, respondents No. 3 to 9 herein, given theirs making encroachments, upon a gair mumkin rasta, occurring within the petition khasra numbers. On the said petition, the learned Collector concerned, through an order made on 18.2.2016, had declined the asked for relief. However, the aggrieved therefrom Gram Panchayat concerned, proceeded to make an appeal thereagainst before the competent appellate authority concerned. The learned appellate authority concerned, through an order drawn on 21.10.2022, upon Appeal No. 41 of 2016, accepted the appeal, and, proceeded to quash, and, set aside the order, as became initially rendered

by the learned Collector concerned. The above made order, as made by the

learned appellate authority concerned, brought pain to the petitioner, and, he has been led to institute thereagainst the instant writ petition.

2. Even if a revenue rasta, is existing on the petition land, and, also even if assumingly, any encroachment thereon was made, at the instance of the petitioner, but yet it became incumbent, upon both the authorities below, to ensure after a valid demarcation being conducted of the petition land, to subsequently ask the Gram Panchayat concerned, to ensure that the demarcation report becomes lawfully tendered, besides it becomes lawfully exhibited. Necessarily also with leave, also being granted to the aggrieved therefrom, to institute thereagainst objections, and, such objections being decided through a speaking order.

3. The above required imperative exercise, apparently has not been borne in mind, by both the authorities below. Resultantly, it was not possible for both the authorities below, nor is possible for this Court, to determine whether, as a matter of fact, any encroachments are made, upon the said revenue rasta. The above determination was to be made on the basis of the validly recorded dimensions of the encroachments, as purportedly made at the instance of the petitioner herein, upon the revenue rasta, which was as stated above, could be made only upon a validly drawn demarcation report, being filed, besides its becoming lawfully tendered, and, proven in accordance with law.

4. As above stated, the above has not been done. Resultantly, a grave miscarriage of justice has occurred, and, the same is required to be undone. Therefore, this Court is constrained to set aside the impugned order, rendered by the learned Appellate Court concerned, and, is also constrained to remand the lis to the learned Appellate Court concerned.

Court concerned, with a direction to it, to after restoring the appeal to its original number, to subsequently ask for a valid demarcation, being conducted of the petition land, and, thereafter to ensure that the author of the demarcation report steps into the witness box, and, is also permitted to lawfully tender, and, exhibit the said demarcation report.

6. However, the findings of the learned Appellate Court concerned, to the extent that the petition under Section 7 of the Act, is maintainable, is upheld.

7. With the above observations, the petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 03, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No