

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

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CWP-3769-2023

Date of decision: 06.11.2023

JITENDER KUMAR

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Karambeer Singh Randhawa, Advocate
for Mr. Satbir Singh Gill, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J. (ORAL)

1. One Sanjay Verma instituted case No. 390/VCL, on 29.01.2013, before the Assistant Collector concerned. The said case was instituted against the respondents therein, one of whom is petitioner herein. Moreover, the said case was instituted under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana). Therein a claim was raised that the respondents in the said petition are in illegal and unauthorized possession of the petition land/public street, as depicted in

mark A-B-C-D in site plan, situated in the *abadi* of Mohalla Kanhaya Lal, Chhachhrauli, District Yamunanagar.

2. The learned Collector concerned, through an order made thereons on 28.04.2016, (Annexure P-4), after assigning credence to a spot examination report conducted on 21.03.2016 by the Block Development and Panchayat Officer, Chhachhrauli alongwith Panchayat Secretary, concluded that the respondents in case (*supra*), had made encroachments upon the land owned and possessed by the Gram Panchayat concerned. Thus, he ordered for the eviction of the respondents from the petition lands besides imposed penalty @ Rs. 4,000/- per acre on respondents No. 1 to 3 in order to compensate the loss caused to Gram Panchayat.

3. The aggrieved respondents instituted thereagainst, separate appeals, before the statutory Authority concerned, and the said statutory Authority, through a common decision made on 28.07.2016, on the appeals (*supra*), decision whereof becomes enclosed in Annexure P-6, after concurring with the decision, as became earlier recorded by the Assistant Collector concerned, thus, dismissed the said statutory appeals.

4. Feeling aggrieved, the respondents instituted separate revision petitions before the Revisional Authority concerned, and the said Revisional Authority, through a common decision made thereons, on 05.07.2022, thus, dismissed the revision petition(s) (*supra*).

5. The afore concurrently made orders of eviction has caused pain to the aggrieved-petitioner herein and has led him to file the

instant writ petition before this Court.

6. The gravamen of the entire lis is grooved in the tenability or otherwise of three spot inspection report(s) respectively conducted by the Panchayat Secretary concerned, the Tehsildar, Chhachhrauli and by the BDPO Chhachhrauli in association with Social Education and Panchayat Officer concerned, thus revealing that encroachment(s) were made upon the public street, rather at the instance of the present petitioner, respondents therein.

7. The learned State counsel submits, that the spot inspection report though became tendered in evidence as Mark E. However, the same never became proven, in accordance with law. He also further appreciably, and, fairly submits that, thus no probative sanctity was to be assigned to the said spot inspection report, as it remained unproven by its author, rather through his stepping into the witness box.

8. The imperative norm for validating a demarcation report, is but that, it was required to be evidently proven, that at the site concerned, the revenue officer concerned had carried the apposite Masavi, and, had therefrom, ascertained the fixed points, and, subsequently had relayed them onto the ground. Moreover, the said demarcation report was required to be tendered into evidence, by the revenue officer concerned, who drew it, and thereons, an exhibition mark was required to be also made. The reason for the above being done, arose from therebys able proof rather would become garnered by the demarcation report, whereas only upon, its being per se placed on record, rather would not mobilize any conclusion, that merely thereby it

has some evidentiary sanctity.

9. However, an incisive scrutiny of the record discloses, that irrespective of the fact, that even if the relied upon spot inspection report, was purportedly prepared in terms of the relevant norms (*supra*), and was tendered into evidence, that as a matter of fact, thus for it being thus read as valid evidence against the encroacher(s) concerned, rather required its becoming proven, by its author, through his stepping into the witness box, and the aggrieved therefrom, being permitted to cross examine, the author of the said spot inspection report, for thereby the aggrieved ensuring theirs' making elicitation from him, which may ultimately impinge, upon, the correctness of the spot inspection report (*supra*), as became prepared, and, also became relied upon, by the statutory authorities below.

10. Consequently, when the said spot inspection report was not proven by its author, through his stepping into the witness box. Necessarily also when no adequate opportunity was assigned to the litigant concerned, to raise objections about the speakings as were made therein. Therefore its becoming merely placed on record, does not lead this Court to infer, that thereby evidentiary solemnity, as became assigned thereto, thus was assignable thereto.

11. Be that as it may, in the larger interest of justice, thus for an infirmly drawn spot inspection/demarcation report, and, also for the same being not assigned creditworthiness, this Court deems it fit and appropriate to quash the impugned orders (*supra*).

12. Nonetheless, also in the larger interest of justice, since

thereby, the encroachment(s), if any, if yet made on the public street, at the instance of the present petitioner, rather would remain undetected, whereupon prejudice may ensue to the Gram Panchayat concerned. Therefore, for also enabling the Assistant Collector concerned to, after the remand of the *lis*, to him, thus make a decision afresh thereon.

13. Resultantly, for thus facilitating the makings of a valid fresh decision thereon, it is deemed fit and appropriate, that the decision on remand of the *lis*, shall be preceded by the Assistant Collector concerned, thus ordering for an able demarcation of the disputed sites, thus being made by an empowered revenue officer concerned. Therefore, the present writ petition is allowed, and, after quashing the impugned orders (*supra*), the *lis* is remanded to the learned Assistant Collector concerned, who shall, before making a lawful decision, on the remanded *lis*, ensure that an independent demarcation becomes carried by an empowered revenue officer, who shall before proceeding to the site concerned, issue notices to all aggrieved and thereafter shall in accordance with law, make a valid/lawful demarcation of the site concerned.

14. After the drawing of the demarcation report by the officer concerned, he shall forthwith transmit his report to the Assistant Collector concerned, who shall ensure that the said report is proven in accordance with law, but after giving an opportunity to the aggrieved therefrom, hence the litigants concerned, rather to make cross examination(s) upon the author of the demarcation report.

15. All the above exercises shall be ensured to be completed

within six months from today but after hearing all affected concerned.

16. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.11.2023

kavneet singh

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