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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8338-2022

Date of decision:16.01.2023

KISHAN SINGH AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Manvinder Sidhu, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant writ petition, the petitioners seek the making of a *mandamus*, upon the respondents concerned, as also, upon the purported encroachers concerned, for theirs therethrough causing removal(s) of the encroachments, as purportedly made, on the panchayat street/gali.
2. Though the above motion was permissible, even at the instance of the petitioners, through theirs re-coursing the apposite mandate contemplated in The Punjab Village Common Lands (Regular) Act, 1961 (As applicable to Punjab & Haryana), but yet they still rushed to this Court for a *mandamus* being made for the above purpose, upon the respondents concerned.

3. The imperative necessity of compliance being made by the aggrieved concerned, against the encroachments, if any, as occurred on panchayat land rather qua the statutory mechanism hence alternate to the instant writ petition, becomes spurred from the dire necessity, that prior thereto a valid demarcation of the relevant site, has to be conducted, and, thereafter the demarcation report, as becomes authored by the Demarcating Officer concerned, is required to be tendered, and, is also required to be proven, in accordance with law.

4. Necessarily, the assignments of any creditworthiness to any demarcation report, also stems from, *qua* only when the encroachers concerned, become granted an able opportunity to rebut the validity of the making(s) of the demarcation report rather by the Demarcating Officer concerned, and, when the said opportunity would occur only when the author of the Demarcation Report, steps into the witness box or upon, objections to the demarcation report being permitted to be filed, and, also theirs being considered in accordance with law, through a just decision being made by the Competent Authority.

5. Therefore, the above legal necessity, is required to be complied with at the instance of all concerned, especially when in the face of the Writ Court, rather making an order for demarcation being made of the encroached land concerned, thereupon the Demarcating Official would never step into the witness box, before this Court, as he would, otherwise normally do, before the learned Collector concerned, nor obviously he would be put to any cross-examination rather for determining, whether the reliance, if any, to be made by the Writ Court, upon the demarcation report, is a validly placed reliance or not. In the absence of the above any reliance upon the demarcation report would be ridden with a vice of arbitrariness. Even otherwise, in case the above alternative

re-coursing, is strived to be usurped by the Writ Court, thereupon obviously grave *prejudice* would ensue to the encroachers concerned.

6. In the wake of the above, the availability of a remedy alternative to the instant writ petition, especially when the same is also an efficacious remedy, does leave this Court to decline the asked for mandamus to the petitioners.

7. Therefore, liberty is reserved to the respondent-Gram Panchayat concerned, and, also to the petitioners herein, to move an appropriate petition under the relevant statutory provisions, before the learned Collector concerned, seeking therein relief *qua* the encroachments as allegedly made on the panchayat street/gali, rather being removed.

8. On the above motion being made, if not already made, the same, shall be decided, within two weeks, but only in accordance with law, and, after hearing all affected concerned.

9. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

16.01.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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