

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 10171 of 2022

Date of decision : June 01, 2023

SATYABIR

....PETITIONERS

VERSUS

COMMISSIONER, ROHTAK DIVISION, ROHTAK AND OTHERS

....RESPONDENTS

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

Present : Mr. Mani Ram Verma, Advocate, for the petitioner

Mr. P.P. Chahar, DAG, Haryana
for respondents No. 1 to 3

Mr. Rajesh K. Sheoran, Advocate,
for respondents No. 5 and 6

KULDEEP TIWARI, J.

1. The petitioner has invoked the superintendence jurisdiction of this Court envisaged under Articles 226/227 of the Constitution of India, seeking quashing of orders dated 12.4.2021, (Annexure P/4), 23.12.2021 (Annexure P/5) and 1.2.2022 (Annexure P/6) passed by the Assistant Collector Ist Grade, Tosham at Siwani, District Bhiwani, the Collector, Bhiwani and the Commissioner, Rohtak Division, Rohtak, respectively, whereby, he was found to be in illegal possession of *Khasra No. 269 (0-16)*, which is a *gair mumkin gali* in *Khewat No. 124, Khatoni No. 174*. The petitioner has challenged the above made concurrent eviction orders on the

premise that the demarcation, on the basis of which, he has been held to be in illegal possession of *gair mumkin gali*, is defective as the author of the demarcation report has never stepped into the witness box for thereby giving the petitioner a chance, to cross-examine him, thus, to establish the illegality, if any, in the demarcation report.

FACTUAL MATRIX

2. The Gram Panchayat, respondent no. 4, has filed an application dated 5.6.2018 under Section 7(1)(2) of the Punjab Common Lands (Regulation) Act, 1961 (hereinafter to be referred as “the Act of 1961”) for removal of unauthorized construction upon its land which is recorded in the revenue record as *gair mumkin gali*. The learned Assistant Collector Ist Grade while relying upon the demarcation report dated 9.3.2018, ordered for removing the illegal encroachment of 64.55 sq. yards over *Khasra No. 269*. Thus, being aggrieved from the above eviction order, the petitioner made a successful challenge to the eviction order before the Collector concerned. The learned appellate authority accepted the appeal and remanded the case but after setting aside the order dated 28.8.2018 with a direction to decide the *lis* afresh after hearing all the concerned parties and after carrying out the spot inspection. During the pendency of the matter before the Assistant Collector Ist Grade, another demarcation was carried out on 8.4.2021 and this time, the petitioner was found to be in unauthorized possession of 38 sq. yds. over *Khasra No. 269*. Upon relying the above demarcation report

dated 8.4.2021, the Assistant Collector 1st Grade vide order dated 12.4.2021, again ordered for removal of unauthorized possession. The petitioner, this time made an unsuccessful challenge to the above orders of eviction passed by the Assistant Collateral 1st Grade. The learned Collector while observing that as per the *jamabandi* for the years 1916-17, *khasra no.* 269 is recorded as *gair mumkin rasta* and the petitioner was found to have encroached upon the *gali* by the Assistant Collector 1st Grade, therefore, he maintained the order of eviction passed by the Assistant Collector 1st Grade concerned. The petitioner challenged the above two concurrent orders of eviction by filing revision under Section 13AA (1) of the Act of 1961. However, the same was also dismissed and the concurrent orders of eviction made by the authorities below were held to be legal, thus, were maintained. Feeling aggrieved with all the three orders, the petitioner has filed the present writ petition.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

3. Learned counsel for the petitioner has made specific submission that the petitioner is owner of *khasra no.* 270 which is adjacent to *khasra no.* 269 and he has not encroached upon any portion of *khasra no.* 269. Rather due to the defective demarcation conducted by the authorities below, rather construction of the petitioner was shown on *khasra no.* 269, whereas, he has constructed his house only on his own land which is comprised in *khasra no.* 270. On his averment, this Court vide order dated 25.5.2022, ordered for demarcation through the Global Differential

Positioning System machine. The relevant extract of the order is read as under:-

“XXX XXX XXX XXX

In the light of the above, a direction is issued to the Tehsildar, Siwani, District Bhiwani to carry out the demarcation through the Global Differential Positioning System machine within a period of six weeks.

The costs which is to be borne by the petitioner for carrying out the said demarcation through the Global Differential Positioning System machine be intimated to the petitioner within a period of one week. On deposit of the said amount within a further period one week, the exercise of demarcation be carried out and the report submitted to this Court within a period of two weeks subsequent to the expiry of initial period of six weeks.

In case the petitioner is found to be in illegal possession as per the said demarcation report, he shall hand over the vacant possession of the said land within a period of 10 days as per their undertaking, failing which it would be the responsibility of the authorities to take over the possession of the said land by removing the encroachments and handing it over to the Gram Panchayat.

The compliance report be submitted to this Court prior to the next date of hearing.

List on 04.08.2022.

Status quo with regard to the possession, as it exists today, be maintained upto ten days from the date of receipt of demarcation report in Court.”

4. In compliance of the order passed by this Court, the demarcation was conducted and report through State counsel was submitted before this Court. According to this report, the petitioner had been found to have encroached upon the *Rasta* in *khasra no.* 269 to the extent of 1'1" in the East and 1'8" in the West.

ANALYSIS

5. There are total four different demarcation reports available on the record. The result of all the demarcation reports is different. Therefore, we can safely conclude that the proper demarcation has not been carried out in this case. Therefore, it is imperative to first establish the authenticity and correctness of the demarcation report. The record further reveals that though demarcations were carried before the authorities below, but the authors of such demarcations not stepped into witness box to prove those reports. Even qua the demarcation which was conducted, on the directions of this Court, the author of that demarcation report, is also required to be stepping into witness box, to prove such demarcation, and, the petitioner has a right to cross-examine such witness. Obviously, the above recourse cannot be adopted before the writ Court rather it can be adopted only before the learned Assistant Collector Ist Grade concerned. Therefore, the impugned orders Annexures P/4, P/5 and P/6 passed respectively by the Assistant Collector Ist Grade, Tosham at Siwani, District Bhiwani, by the Collector, Bhiwani and by the Commissioner, Rohtak Division, Rohtak, are quashed and the *lis* is remanded to Assistant Collector

Ist Grade, Tosham at Siwani, District Bhiwani. He shall allow the author of the demarcation report submitted before this Court, to step into witness box, to prove the same, and, thereafter give an adequate opportunity to the petitioner to cross-examine such witness. He is required to make positive finding with regard to the demarcation not only with regard to *khasra no. 269 gair mumkin gali* but also give finding with regard to *khasra no. 270* and its dimensions upon which the petitioner has constructed the house. Resultantly, the Assistant Collector Ist Grade concerned is directed to restore the */is* to its original number, and, thereafter, to make a lawful decision thereon but after hearing all the affected persons concerned. The said decision be made positively within six months from today.

- 6. Disposed of accordingly.
- 7. All the pending applications stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

June 01, 2023
'dalbir'

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>