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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11649-2023

Date of decision:25.07.2023

PUNEET NAIN

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present: Mr. J.S. Ghumman, Advocate for
Mr. Neeraj Madaan, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner seeks the making of a mandamus, upon the respondents concerned, to enforce Annexure P-1. Annexure P-1 has been drawn by the District Magistrate, Fazilka, and, is addressed to the Chief Revenue Officer (Bodhiwala Peetha), Fazilka, and, with a mandate upon him to remove purported illegal possessions or constructions as are allegedly raised alongwith the banks on the canal on the left side from Burji 307410 of Bikaner Canal, to V.R. Bridge Upperstream Canal.

2. It appears that though the said direction was made in pursuance to a demarcation conducted by the Revenue Officer concerned.

3. However, if the source of power leading to the making of Annexure P-1, was validly established by the Officer, who drew Annexure P-1 inasmuch as, becoming well rested on an able statutory provision, as, encapsulated in the

apposite statute, thereby this Court would assuredly have made the asked for mandamus upon the respondents concerned.

4. However, it has been submitted by the learned State counsel, that the said areas, as lying outside the banks of the canal are purportedly revenue rastas thus meant for user of the villagers concerned. If so, the alleged encroachments, as, made thereons, thus by the purported encroachers concerned, were required to be established to be, as such made, but through the carryings of a valid demarcation of the sites concerned, thus by the competent Revenue Officer concerned. However, it is but manifestly clear from a reading of the demarcation report, that without inviting the apposite participations of the encroachers concerned, yet the Demarcating Officer concerned, proceeded to draw demarcation report (Annexure P-5). Therefore, the demarcation report concerned, is unilaterally drawn, thus rendering the encroachers concerned, to be condemned unheard, whereby the principles of natural justice, became breached, thereupon the reliance as made thereon by the Officer who drew Annexure P-1, thus also falls apart.

5. Therefore, given the statement made at the bar, by the learned State counsel, that some purported encroachment, is made on the revenue rasta, thereupon, the jurisdiction to make a valid order for eviction against the purported encroachers, upon the revenue rasta, thus is squarely vested in the Authority constituted under the The Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as “the Act of 1961”) and, was not required to be exercised in an unlawful manner, as has been done by the Officer, who Annexure P-1.

6. Therefore, the asked for relief by the petitioner is declined. However, liberty is reserved to the Sarpanch Panchayat of the Panchayat concerned, or to the BDPO concerned, to forthwith after securing a valid

demarcation, to thereafter forthwith institute an eviction petition under Section 7 of the Act of 1961, thus before the learned Collector concerned. On such a petition being filed, the learned Collector concerned, shall make a valid speaking decision thereon, but after hearing all affected persons concerned. Moreover, the said decision shall be made within 4 months from the date of its preferment.

7. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

25.07.2023

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(KULDEEP TIWARI)
JUDGE

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