

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-13542-2022****Date of decision : 22.05.2023**

RAJESH AND ANOTHER

-PETITIONERS

VERSUS

THE STATE OF HARYANA AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Ashwani Verma, Advocate
for the petitioners.

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

Mr. Subhash Ahuja, Advocate
for the respondents No.6 and 7.

KULDEEP TIWARI, J.

1. The private respondents No.6 and 7, through a petition instituted before the learned Collector concerned, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), sought ejectment of the petitioners from the petition land(s). The above relief was claimed, inter alia, on the grounds that the petitioners have encroached upon a common passage of the village concerned, by merging it within the boundaries of their house(s), by constructing a roof over the said passage. It was further alleged therein, that the said passage, which was paved with cement tiles and blocks by Gram Panchayat concerned with its funds, indeed vests in the Gram Panchayat concerned and is being used by the general public since times immemorial.

2. Controverting the claim as raised in the petition (supra), the petitioners claimed the petition land(s) to be their ancestral property, by virtue of its falling under “Lal Dora”, i.e. abadi deh, rather than its being a “*shamlat deh*” land, and thus, the maintainability of the petition was disputed.

3. The learned Collector concerned, during the pendency of the petition (supra), ordered for a demarcation of the site concerned, which resultantly was conducted by the Tehsildar, Bahadurgarh, on 05.11.2018 (Annexure P-5). Placing reliance upon the demarcation report (supra), the learned Collector concerned, vide order dated 14.06.2019, ordered for the eviction of the petitioners from the petition land(s).

4. Feeling aggrieved by the eviction order (supra), the petitioners made an unsuccessful effort to challenge the validity thereof, by filing a statutory appeal before the learned statutory appellate authority. However, the learned appellate authority, while extending concurrence to the order (supra) made by the Collector concerned and also by placing reliance upon the demarcation report (supra), proceeded to dismiss the appeal vide order dated 10.12.2019. Moreover, the subsequent thereto revision, as was filed against the order dated 10.12.2019, before the learned Commissioner concerned, also met the same fate and was dismissed vide order dated 11.10.2021.

5. It would be apt, at this stage, to note that since the question of title was neither raised nor adjudicated, during the eviction proceedings, therefore a revision, as was filed before the learned Commissioner concerned, thus was not maintainable. Nonetheless, since the final and aptly recoursesable statutory remedy available against an order of eviction, is the filing of a statutory appeal only, which remedy was indeed resorted by the petitioners

and whereupon, a dismissal order was made on the appeal, on 10.12.2019. Therefore, considering the order (supra) as made by the appellate authority concerned, to be a final and conclusive verdict, while ignoring the order of the revisional court (although relief claimed by petitioners therein was also declined), this Court proceeds to decide the present writ petition.

6. The learned counsel for the petitioners has vociferously argued that the eviction order (supra) has been founded merely on the strength of the demarcation report (Annexure P-5), whereas, neither this demarcation report was lawfully tendered into evidence, nor its author ever stepped into the witness box to prove its authenticity and therefore, the petitioners did not have any opportunity to cross-examine him. Further, by drawing attention of this Court towards the demarcation report (Annexure P-5), he contended that a perusal thereof, clearly reveals that there was no document available with the Tehsildar concerned at the relevant time, rather he conducted demarcation on the basis of the document(s) supplied by the private respondents No.6 and 7. The relevant extract of the demarcation report (supra) is extracted hereunder:-

“Because of non-availability of record the demarcation could not be held. The present Sarpanch and other person who were available there, we asked in this regard and they said that the street has been constructed by the previous panchayats over there and on the spot interlocking through tiles has been done, which is constructed till the house of applicant Naveed Mudgil, which has been subsequently covered by Rajesh and Rajender sons of Hukum Chand by constructing a roof and also constructed a wall in front of the house of Naveen and the street has been closed. It has been also stated that earlier there was a door frame out there and the family of Naveen used to ingress and outgress from there.

According to the document produce by Naveen i.e.

Registry Number 2943, present Sarpanch, and the person available, there was a Panchayati street over there, which has been forcibly closed by Rajesh and Rajender sons of Hukum Chand, which has been closed on the spot by constructing a wall and roof of girder. The report is being submitted for further proceedings.”

7. A perusal of the above extracted report makes it apparent that the Tehsildar concerned has not conducted the demarcation, as per the statutory guidelines issued by the Financial Commissioner, as neither did he establish any pucca point at the site concerned nor did he have the relevant revenue record(s) (either Masavi, Latha, or, Momi) with him, for conducting a valid demarcation. Rather, he conducted the demarcation, based upon the document(s), which was supplied to him by the private respondents No.6 and 7, which consequently makes the demarcation report to suffer from the vices of gross illegality. Therefore, this Court does not find any plausible reason to place any reliance upon the report of such an unlawfully and erroneously conducted demarcation.

8. Be that as it may be, during the pendency of the instant writ petition, this Court had also ordered for a fresh demarcation, whose report is now placed on record by the learned State counsel, by the way of an affidavit filed by Tehsildar, Bahadurgarh. Therefore, now there are two different demarcation reports available on record. However, the validity of the latest demarcation report, as placed on record, is required to be adjudicated, thus for assigning, or, for not assigning any credence thereto. For this purpose also, the author of the demarcation report is required to step in the witness box and an opportunity is also required to be afforded to the petitioners to cross-examine him, which cannot be done before writ Court.

9. In view of the above, since the petition land(s) falls within “abadi deh” and the fate of this entire case depends upon demarcation report, which as already observed above, was not conducted within the legal parameters, therefore this Court is left with no option except to set aside the impugned orders and to remand the lis to the learned Collector concerned. Accordingly, after quashing the impugned orders, the lis is remanded to the learned Collector concerned, with a direction to afford an opportunity to all the affected person(s) concerned, to raise objections in respect of the aforesaid newly conducted demarcation report, and, with a further direction to the remandee court to ensure that the demarcation report (supra) becomes validly proved, through the author thereof stepping in the witness box. Consequently, the remandee court is directed to restore the lis to its original number and thereafter, to make a lawful decision thereon, positively within four months hereafter, however, after hearing all affected persons concerned.

10. Disposed of accordingly.

(SURESHWAR THAKUR)

JUDGE

22.05.2023

devinder

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No