

108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

CWP-14694-2022
Date of decision:17.04.2023

SURENDER SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

(2)

CWP-17328-2022

RAJBIR 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. Neeraj Sheoran, Advocate
for the petitioner (in CWP-14694-2022) and
for respondent No.6 (in CWP-17328-2022).

Mr. Vikram Singh, Advocate
for the petitioners (in CWP-17328-2022) and
for respondents No.5, 7 and 8 (in CWP-14694-2022)

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

SURESHWAR THAKUR, J. (ORAL)

1. Since both the writ petitions arise from a common thereto order(s) made by the Assistant Collector Ist Grade, Narwana, and, which thereafter becomes affirmed by the learned Collector concerned, thus, both the writ petitions are amenable for being decided through a common verdict.

2. In CWP-14694-2022 the relief as asked for from this Court, is that a mandamus, be made upon the respondents concerned, to enforce the concurrently made verdicts of eviction, as became rendered by the Competent Statutory Authorities below.

3. On the contrary, the relief asked for, in CWP-17328-2022, is for this Court, setting aside the concurrently made orders of eviction, as passed by the Competent Statutory Authorities below. In so far as CWP-14694-2022 is concerned, wherein, the making of the above mandamus, upon the respondents concerned, is prayed, the said writ petition would be amenable to be decided in favour of the petitioners, only when this Court after considering the merits of CWP-17328-2022, is constrained to dismiss the above writ petition.

4. However, for the reasons to be assigned hereinafter, this Court is of the firm view, that the orders challenged before this Court, in CWP-17328-2022 may not be, at this stage become amenable for theirs being sustained. Thus the resultant effect of the above conclusion, is that, at this stage, the relief prayed for in CWP-14694-2022, rather for enforcing the concurrently made orders of eviction, as passed by the Statutory Authorities below, but cannot become granted to the petitioner therein.

5. The dispute which arose amongst the contestants in the Annexure P-1, relates to the respondents therein making an encroachment, upon the suit khasra numbers. The Authority who made Annexure P-1 after considering the demarcation reports, which became placed before it, formed a conclusion that, as a matter of fact, the respondents therein, had made an encroachment, on the land owned by the Panchayat Deh. Resultantly, an order of eviction was made against the respondents therein. The aggrieved therefrom made an appeal thereagainst before the Competent Appellate Authority, which however, as revealed by

Annexure P-2, deemed it fit to concur with the verdict embodied in Annexure P-1.

6. Thus, obviously through drawing of Annexure P-2 the order enclosed in Annexure P-1 became affirmed.

7. Therefore, leading to the aggrieved concerned, instituting CWP-17328-2022 before this Court.

8. Though normally this Court would, in case the demarcation reports were ably proven in accordance with law, before the Competent Authorities concerned, become constrained to, dismiss CWP-14694-2022. However, this Court only proceed to accept such validly proven demarcation reports, only when the said demarcation reports were prepared in terms of the Musavi, as appertains to the writ khasra numbers. However, on a reading of order drawn by this Court, on 25.08.2022, order whereof becomes extracted hereinafter, it appears, that this Court had ordered for a fresh demarcation of the petition khasra numbers being carried by the Demarcating Officer concerned.

“Affidavit dated 24.08.2022 of petitioner no.1 in terms of order dated 08.08.2022 in CWP No. 17328 of 2022, filed in Court today, is taken on record subject to just exceptions.

In view of said affidavit dated 24.08.2022 wherein it is stated that petitioners are ready to bear the costs of demarcation through Differential Global Positioning System (DGPS) and that in case they are found to be in illegal possession of the Gram Panchayat land, they would voluntarily handover the vacant, peaceful possession of the encroached area as may be found therein, to the Gram Panchayat within a period of ten (10) days, respondent no.3 is directed to ensure demarcation of the area in question through DGPS after associating all concerned and affected parties. Cost of demarcation be intimated to the petitioners in CWP No. 17328 of 2022 within one week, who shall deposit the same within the next two working days. Demarcation be

carried out as above thereafter within six weeks.

Report be submitted before the next date of hearing.

List on 31.10.2022.

Interim order to continue till the next date of hearing.”

9. The said order however, did not result in compliance thereto becoming meted, and, the reason for no compliance thereto becoming meted, is comprised in the factum, that a status report became instituted by respondents concerned, revealing that there is a discrepancy *inter-se* the assignment of areas to the various khasra numbers rather in the field book, but concomitantly resulting in corresponding thereto assignments being made in the Musavi concerned.

10. In the reply/status report which has been filed today in the Court, and, which is taken on record, an extensive reference is made to the errors appertaining to assignments of karams, to various khasra numbers, assignments whereof are unfolded to not completely tally, with the assignments of karams to other khasra numbers, as mentioned in the field book, and, whereafters reflections are made in the Musavi concerned. Moreover, it also becomes spelt therein, that such inaccurate dimensional assignments to the apposite khasra numbers, would result in a grave difficulty occurring in ascertaining the exact fixed points, and/or concomitantly in holding a correct, and, accurate demarcation. The relevant portion of the reply on affidavit which makes the above reflections, is extracted hereinafter.

“In the field book the northern line of Khasra No.135 (Gosa/Sub part of Khasra No.135) from point A to B is recorded as 15 Karam (82”.5’) and if 6 Karam of main part of Khasra No.135 is added then it becomes $15+6=21$ Karam which does not fit into other calculation. On the spot northern line of Khasra No.135 (Gosa/Sub part) is 9 Karam. It is also necessary to mention here that as per Massavi this land (Western side of Khasra No.136) is recorded as 15 Karam. As such the northern side of total Khasra No.135 (Gosa+main part) would be apportioned as $6+9=15$ Karam. If the demarcation is carried out by considering

northern line of Khasra No.135 (Gosa) which is recorded as 15 Karam instead of 09 Karam, then demarcation point shifts by 6 Karam in another Khasra.

The Eastern side of Khasra No.136 is 14 Karam but in the field book the same has been recorded as 17 Karam which also does not fit into calculation. In fact, three (3) Karam in Eastern side of Khasra No.135(Gosa/Sub part) has been erroneously added during calculation in Eastern side in Khasra No.136. This 03 Karma land has been added twice i.e. in Eastern side of both the Khasra No.135 and 136 and therefore difference of 03 Karam in eastern side of Khasra No.136 comes.”

11. The effects of the errors in assignments of karams, to various khasra numbers in the field book, and, thereafter, such errors also making their existence in the Musavi concerned, would obviously result in, incorrect measurements being made of the various khasra numbers, as are reflected in the field book concerned, and, which also thereafter become reflected in the Musavi concerned. Resultantly, when for an accurate, and, precise measurement, and, thereafter for the making of an accurate and precise demarcation of the writ khasra numbers, rather there is a dire necessity of precisely made/recorded accurate apposite dimensions thereof, hence tallying, with the assignments of areas/dimensions, to the other related khasra numbers, whereas, when qua the said precise assignments, there is an admission in the reply on affidavit, that there are inaccurate assignments of karams, to certain khasra numbers, which have fallen in controversy, and, that thereafter there is also an erroneous reflection in the Musavi concerned. Since obviously, then there would occur inaccurate measurements of the disputed khasra numbers, besides when there would concomitantly be no valid accurate demarcations of the disputed khasra numbers. Resultantly, the demarcation reports, as, became prepared, and, even if they became proven in accordance with law, and, became relied, upon, by the Competent Statutory Authorities concerned, thus cannot be construed to be providing an accurate legal assistance to the Statutory Authorities below, to in

any manner make a firm conclusion, as has been untenably done, that there are encroachments on the disputed lands, at the instance, of the respondents, in the petition for eviction, as, filed before the learned Assistant Collector concerned.

12. At this stage, this Court has to consider whether the jurisdiction to make corrections in the field book, and, also to the corresponding errors in Musavi concerned, vests in the Authorities contemplated in the The Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”) or whether the said jurisdiction vests, either in the Settlement Officer concerned, or in the Consolidation Officer concerned.

13. For determining the above facet, obviously, the Assistant Ist Grade, Narwana who made the order for eviction on the Section 7 petition, as, filed under the Act of 1961 would, not be having any jurisdiction at all, to order for the making of corrections either in the field book pertaining to the disputed khasra numbers, or to make an order for corrections being made in the Musavi concerned.

14. The Settlement Officer, would be validly vested with the said jurisdiction, only if the *Mohal* concerned, fell for settlement, and, in pursuance thereof a Misl Hikiat became prepared. Since, it is firmly stated at the Bar, by the appearing litigants that the *Mohal* concerned, fell for consolidation, and, whereafters the consolidation proceedings, became completed, thus resulting in updation of records, in terms of Section 22 of The East Punjab Holdings (Consolidation and Prevention of Fregmentation) Act, 1948, (hereinafter referred to as “the Act of 1948”). Resultantly, the updation of records as made by the Consolidation department, does appear to cause the anamolies (supra). Therefore, the jurisdictional competence to make the apposite updations rather vests in the Consolidation Authority, functioning under the Act of 1948.

15. Since in the reply on affidavit furnished today, it is revealed that a petition under Section 42 of the Act of 1948 has been filed before the Director concerned, for seeking the makings of correction(s) to the above stated erroneous revenue records. Therefore, the demarcation reports, which are prepared, on the basis of inaccurately drawn records, and, also became relied, upon, by the Competent Authorities concerned, do not constitute, any valid permissible evidence, for empowering the Authorities below to make a valid order of eviction, against the petitioners. In consequence, writ petition No.17328-2022 is allowed, and, the impugned therein orders are quashed, and, set aside, whereas, CWP-14694-2022 is dismissed.

16. However, in the event of the Director, Consolidation concerned, within a period of 6 months from today, concluding proceedings, on the Section 42 of the Act of 1948, thereupon, it is open to the respondents in CWP-17328-2022, and, the petitioners in CWP-14694-2022, to forthwith re-institute a fresh petition under Section 7 of the Act of 1961, before the learned Assistant Collector, Narwana. However, preceding the institution of the said petition, a fresh demarcation report be ensured to be drawn strictly in terms of the updation of the apposite records, as ordered, by the Director concerned. The said freshly instituted petition shall be decided within 6 months of its preferment but after hearing all affected concerned.

17. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

17.04.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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