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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : September 11, 2023

NARINDER SINGH

-Petitioner

V/S

STATE OF PUNJAB AND OTHERS

-Respondents

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

Present : Mr. Chetan Bansal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. B.S. Khaira, Advocate
for the respondent No.6.

SURESHWAR THAKUR, J. (ORAL)

1. Notice of motion.
2. Mr. Maninder Singh, DAG, Punjab, waives service of notice on behalf of the respondents No.1 to 3.
3. Mr. B.S. Khaira, Advocate, waives service of notice on behalf of the respondent No.6, who appears under a validly executed power of attorney, which is taken on record.
4. The present petitioner along with one Avtar Singh and one Avtar Kaur, who are arrayed as co-respondents No.4 and 5 in the instant petition, are alleged to make encroachment(s), upon, a 'gair mumkin rasta' carried in Khasra No.25(2-5), Khatoni No.136, Hadbast No.140, situated in Village Mehandipur, Block Hoshiarpur, Tehsil and District Hoshiarpur.
5. The above made encroachment(s), by the present petitioner and co-respondents No.4 and 5, led the Gram Panchayat Mehndipur, Block Hoshiarpur-I, Tehsil and District Hoshiarpur, to through its Sarpanch Kulwant Kaur, thus institute a petition cast under Section 7 of the Punjab Village Common Lands

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(Regulation) Act, 1961, thus before the learned Collector concerned, whereby, it sought the eviction of the respondents therein from the 'gair mumkin rasta', whereon, unauthorized construction(s) was raised at the instance of the judgment debtors concerned.

6. Both the statutory authorities below, through concurrently made verdict(s) becoming pronounced on the petition (supra), ordered for the eviction of the present petitioner from the disputed lands.

7. The premise for the statutory authorities below, concurrently recording a decision against the present petitioner, became rested upon a demarcation report, but revealing, that the 'gair mumkin rasta' had been encroached upon, through the raising of construction(s) thereon, at the instance of the present petitioner.

8. This Court would accept the above demarcation report, but only when it was lawfully tendered into evidence, but only by its author, and thereafter, the aggrieved therefrom becoming permitted to make cross-examinations, upon, the author of the demarcation report.

9. Moreover, the tendering of the above demarcation report before the learned Collector concerned would make it admissible, besides may have ensured a protest being made against an exhibition mark being made thereon, thus may have led the learned Collector concerned to, on the said demarcation report, thus emboss a mark or assign an exhibition endorsement thereon. However, it is noticed that the author of the demarcation report, did not tender the said demarcation report into evidence, rather the demarcation report became tendered into evidence by the Sarpanch of the Gram Panchayat concerned.

10. Since the Sarpanch of the Gram Panchayat concerned, did not author the demarcation report. Therefore he was not bestowed with any right to tender the same into evidence, nor any opportunity to make any cross-examinations upon him, even if was declined, thus could neither become fruitfully availed, nor could

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result in some elicitations being made from him, thus displaying that there were gross departures in the preparation of the demarcation report.

11. It is in the wake of the non stepping into the witness box of the author of the demarcation report, that the recitals made therein adversarial to the present petitioner, rather make such recitals to be unamenable for becoming imputed any credence.

12. In consequence, the writ petition is allowed. Though the impugned verdicts are quashed and set aside, but, in the larger interest of justice, so as to not prejudice the right, title and interest of the Gram Panchayat concerned, over the disputed lands, that this Court deems it fit and appropriate to, after quashing the impugned verdicts, make an order of remand, upon, the learned Collector concerned to, after eliciting a fresh demarcation report from an empowered revenue officer concerned, but not below the rank of an Assistant Collector, 1st Grade, to thereafter permit the said demarcation report being tendered into evidence by its author. Moreover, the learned Collector concerned shall also permit cross-examinations being made, upon, the author of the demarcation report. Subsequently, the learned Collector concerned shall make a fresh decision in accordance with law, upon, the remanded lis, but only after his restoring the same to its original number. The decision on the remanded lis is directed to be made within four months from today, but, after hearing all affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 11, 2023
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No