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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10566-2018

Date of decision:20.02.2023

MANGA AND ANR

...Petitioners

Versus

COMMISSIONER, HISAR DIVISION, HISAR AND ORS

...Respondents

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

Present: Mr. Ravinder Singh Dhull, Advocate
for the petitioners.

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

None for respondent No.4.

Mr. Jagjeet Beniwal, Advocate
for respondent No.5.

SURESHWAR THAKUR, J. (ORAL)

1. One Kuradia son of Datu, resident of Dharodi, Tehsil Narwana, District Jind, filed a petition under Section 7(2) of The Punjab Village Common Lands (Regulation) Act, 1961. To the said petition became assigned file No.2. In the said petition, the petitioner claimed the eviction of the respondent No.1 from the *Gair Mumkin Rasta* carried in Khasra No.254/1. The said revenue *rasta*, was meant for the benefit of the entire village proprietary body concerned, and, but obviously was not meant for any raising(s) of construction thereon(s), at the instance of respondent No.1. The above petition was decided on 17.04.2009, and, through the verdict drawn thereons, the learned Collector concerned, ordered for the eviction of respondent No.1, hence from the *Gair Mumkin Rasta*.

2. The respondent No.1 became aggrieved from the verdict of eviction, as became pronounced on 17.04.2009, upon File No.2 by the learned Collector concerned. Thus, he reared thereagainst a statutory appeal bearing No.66/EDC before the learned Appellate Court concerned. The learned Appellate Court concerned, decided the above statutory appeal, but in the manner as becomes extracted hereinafter.

“The arguments of both sides were heard, and, record was perused. Appellant has argued that the application was regarding less land and the order of ejectment is way beyond that and there is difference in the demarcation reports. All the demarcation reports available on the file provide for the illegal encroachment of the appellants, though their area may be different for all. Accordingly this fact is clear that no interference is called for in the decision rendered by the Assistant Collector First Grade, Narwana. The appeal filed by the appellants is rejected but in the interest of justice it is ordered that before execution; a demarcation be conducted in supervision of senior circle revenue officer and the encroachment found thereafter be removed from the spot.”

3. The decision as made by the learned Appellate Court on 17.09.2010 remained unchallenged by one Manga Ram before this Court. Therefore, the above extracted operative part of the order, as became drawn by the learned Appellate Court on the statutory appeal (supra), does thus acquire finality, and, conclusivity.

4. In the year 2015, the petitioner obviously moved an execution petition, for ensuring the efficacious execution of the verdict, as became made by the learned Appellate Court concerned. Since in the above referred statutory appeal, it became but directed by the learned Appellate Authority concerned, that the Executing Court, shall before proceeding to record an objective satisfaction, that as a matter of fact, an encroachment occurs on the *Gair*

Mumkin Rasta, hence order for a fresh lawful demarcation being made of the petition lands. The said order resulted in a demarcation report being drawn on 09.07.2016, with a revelation therein that an encroachment to the extent of 1 Marla rather was made by the judgment debtor on the *Gair Mumkin Rasta*, as, comprised in Khasra No.254/1. On the basis of the said demarcation report, the learned Executing Court proceeded to draw warrants of possession. The order for the drawing of the said warrants of possession was made by the learned Executing Court, on 16.09.2016, and, a reading of the said order also reveals, that the officer executing the warrants of possession was directed to make a report to the learned Executing Court, whether the said warrants of possession have been efficaciously executed. However, during the pendency of the execution petition before the learned Collector concerned, it appears that the judgment debtor, had ensured the makings of a demarcation report, at the instance of Tehsildar, Narwana as as Local Commissioner, and, the said demarcation report is appended as Annexure P-10 to the petition. In Annexure P-10 there is rather no echoing that any encroachment was made upon the *Gair Mumkin Rasta*, at the instance of the judgment debtor.

5. The learned counsel for the petitioners, argued before this Court that since, the learned Collector concerned, was required to assign credence to Annexure P-10, rather than his proceeding to on 16.09.2016, order for the issuance of warrants of possession, for ensuring that an efficacious eviction of the judgment debtor rather is made from the petition lands. Therefore, he argues before the Writ Court, that a direction be made upon the learned Collector concerned, to not ensure the efficacious execution of the warrants of possession, which became ordered to be executed, through an order drawn on 16.09.2016, and, which were made returnable on 17.10.2016. As above stated the above

argument cannot be accepted by this Court. The simple reason for making rejection of the above argument is rested, upon the factum that since conclusivity became acquired by the order (supra) drawn by learned Appellate Court concerned, order whereof stands extracted hereinabove. Therefore, the learned Executing Court concerned, was required to be meteing the completest compliance thereto. The learned Executing Court did make compliance thereto hence through its drawing an order on 16.09.2016. In the said order it made dependence upon a demarcation report which is appended as Annexure R-5/2, and, which became drawn on 09.07.2016, hence obviously Annexure R-5/2 became drawn prior to the making of an order on 16.09.2016, by the learned Collector concerned. As above stated, even if Annexure P-10 which comprises a demarcation report, and, though it reveals that no encroachment has been made, at the instance of the judgment debtor, on the *Gair Mumkin Rasta*, yet when the said demarcation report was then procured, or became obtained by the judgment debtor, obviously during the pendency of the execution petition before the learned Collector concerned. Thus, it was imperative for the judgment debtor concerned, to both tender it before the learned Executing Court concerned, and also ensure its being proven in accordance with law rather before the learned Executing Court concerned.

6. However, the above endeavour was not re-coursed by the judgment debtor concerned. Resultantly, the demarcation report which becomes appended to the petition as Annexure R-5/2, and, which was drawn prior to the making of order of 16.09.2016, besides whereupons the order of 09.07.2016 became passed, and, it is revealing that an encroachment to the extent of 1 Marla, is made, by the judgment debtor, on the *Gair Mumkin Rasta*, rather does become, the only demarcation report to which reverence is or was to be meted, as aptly

done by the learned Executing Court concerned. As but a natural corollary Annexure P-10 which has been placed only before this Court has no legal consequence at all.

7. In summa, this Court finds no merit in the petition, and, is constrained to dismiss the same. Accordingly, the present petition is dismissed. However, the learned Collector concerned, is directed to forthwith ensure an efficacious, and, completest execution of the warrants of possession, as have been issued by him through an order drawn on 16.09.2016. However, it is open to the petitioners herein to move an appropriate application before the Authorities concerned, seeking assignment to him, but in accordance with the relevant rules and instructions, of 1 Marlas of land which has been encroached upon by him, on the *Gair Mumkin Rasta*, as, carried in Khasra No.254/1. The decision on the said motion be made by the Competent Authority after hearing all concerned, but within three weeks from today. Till a decision on the said application is made by the Competent Authority, thereupto the learned Collector concerned, may not enforce or ensure the completest execution of warrants of possession, as became issued by him through an order drawn, on 16.09.2016.

(SURESHWAR THAKUR)
JUDGE

20.02.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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