

133

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3833-2023

Date of Decision:- 19.12.2023

VINESH BATLA

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Gaurav Bhatia, Senior Advocate with Mr. Vivek Sheoran,
Advocate for the petitioner.

Mr. N.S. Behgal, AAG, Haryana.

AMARJOT BHATTI, J. (Oral)

1. The petitioner has filed present civil revision petition under Article 227 of the Constitution of India for setting aside the order dated 22.05.2023 passed by learned Additional District Judge, Gurugram in CMA-80-2023 in a case titled as 'Vinesh Batla Vs. State of Haryana and Ors.' whereby the application seeking injunction in Civil Suit No.488 of 2023 in the aforesaid case was wrongly dismissed by the trial Court vide order dated 10.03.2023, with a further prayer to stay the operation of aforesaid impugned order as well as for staying the notice dated 08.02.2023 issued by the respondent No.3, Annexure P-13, and further challenged the demarcation dated 07.11.2022, Annexure P-12.

2. Learned counsel for the petitioner argued that Vinesh Batla is owner in possession of land bearing rectangle No.22, killa No.21/2 (2-0), rectangle No.23, killa No.25/3/2 (0-10), measuring 2 kanals 10 marlas to

the extent of 30/450 share i.e. 3 marlas 3 sarsais situated in the revenue estate of Gwal Pahari, Tehsil Wazirabad, Gurugram, Haryana. Copy of jamabandi is Annexure P-1. The petitioner acquired this land from one Mr. Dharamvir son of Chetram on the basis of agreement to sell dated 15.01.2021 for a valuable consideration of Rs.28.50 lacs and the possession was also transferred in favour of present petitioner on 19.04.2022. The said agreement to sell dated 15.01.2021 is Annexure P-2. Copy of the letter vide which possession was given is Annexure P-3. Apart from this Dharamvir also executed registered Will dated 19.04.2022 and one special power of attorney dated 19.04.2022 in favour of the petitioner which are Annexures P-4 and P-5 respectively. Therefore, the petitioner is absolute lawful owner in physical possession of the aforesaid land. He had verified the revenue record and with due diligence the property was purchased. He obtained electricity connection on the said premises. The photograph of the electricity meter installed in the property is Annexure P-6. Thereafter, he started construction over his property. The structure is complete and some work is going on which is at final stage. On 15.09.2021, the Forest Revenue Officer, Gurugram wrote letter to Tehsildar, Wazirabad regarding encroachment of forest area in Gwal Pahari Dam in terms of one notification No.S.O.163 C.A. 16/27/5.29/72 dated 06.10.1972. Copy of said letter is Annexure P-7. Thereafter, Deputy Conservator of Forest, Gurugram wrote a letter to District Revenue Officer, Gurugram, which is Annexure P-8 and other correspondence is Annexures P-9 to P-11. Ultimately the property was demarcated at Gwal Pahari. As per the report, there was no survey stone on the site and the demarcation was done with DGVS machine. In-fact no proper demarcation was done on the spot. The

appellant was not served with notice. The said demarcation report, Annexure P-12, is challenged by the present petitioner, along with the notice dated 08.02.2023, Annexure P-13, issued by the Deputy Conservator of Forest, Gurugram as arbitrary, perverse and illegal and the same are liable to be set aside. Learned Courts below have wrongly relied upon the demarcation report regarding the alleged encroachment. Without proper appreciation of the documents on record, the said stay application was wrongly declined by the Courts below.

3. On the other hand, learned State counsel pointed out that the petitioner has not come to the Court with clean hands as he has suppressed the material facts. In-fact, the petitioner has encroached upon the forest land i.e. gair mumkin bandh illegally. On the request of respondents/defendants No.1 to 3 the property under forest area was demarcated and it was found that the petitioner had encroached upon the portion of the forest land. The property was demarcated by the revenue agency and the present petitioner has no locus standi to challenge the same. The facts of the case and the documents on record were rightly considered by the Courts below and the stay application filed by the petitioner was rightly declined by the Civil Judge (Jr. Divn.), Gurugram by passing order dated 10.03.2023, Annexure P-16, and the appeal preferred by him was also rightly dismissed vide impugned judgment dated 22.05.2023 by Additional District Judge, Gurugram, Annexure P-20. It is pointed out that civil revision preferred by the petitioner is without merits and deserves dismissal.

4. I have considered the arguments advanced before me and have gone through the documents annexed with the present civil revision

carefully. Vinesh Batla filed suit for declaration with consequential relief of permanent injunction and mandatory injunction against the State of Haryana through Collector, Gurugram, District Town Planner (Enforcement), Sector-14, HUDA Office Complex, Gurugram and Conservator of Forest, Sohna Alwar Road, opposite Panchayat Bhawan, Gurugram, who are arrayed as defendant Nos.1 to 3. The present petitioner claimed to have purchased 3 marlas 3 sarsai i.e. 100 square yards of land being 30/450 share out of khasra bearing rectangle No.22, killa No.21/2 (2-0), rectangle No.23 Killa No.25/3/2 (0-10) measuring 2 kanals 10 marlas on the basis of one agreement to sell dated 15.01.2021 for a valuable consideration of Rs.28.50 lacs from Dharamvir which is Annexure P-2. Thereafter, the petitioner has also relied upon one registered Will dated 19.04.2022 and one registered power of attorney dated 19.04.2022 which are Annexures P-4 and P-5. It is further claimed that he was given possession vide letter of possession also dated 19.04.2022 which is Annexure P-3. Till date, there is no registered sale deed in favour of the present petitioner regarding purchase of the aforesaid land from said Dharamvir. The said vendor Dharamvir is not impleaded as party to this case. The pleadings of the parties further indicate that the defendants are not claiming any right or title over the aforesaid khasra numbers. The record produced on the file indicates that the respondents/defendants are claiming encroachment over the land reserved as forest area bearing khasra Nos.85-90 Gwal Pahari Dam. The copy of jamabandi for the year 2013-2014 is Annexure P-1 where in the column of ownership there is name of 'Provincial Government', in the column of cultivation 'Makbuja District Board' i.e. khasra No.85-90 41 kanals 15 marlas Gair Mumkin Dam.

Thereafter, there is application addressed to Tehsildar by Forest Revenue Officer for demarcation of land dated 15.09.2021, Annexure P-7. The other correspondences initiated by the defendant No.3 are Annexure P-8 to P-10 and ultimately the District Revenue Officer wrote a letter to Tehsildar Wazirabad to investigate and sent his report vide letter dated 16.08.2022, Annexure P-11. There is demarcation report placed on record by the learned counsel for the petitioner, Annexure P-12 and notice dated 08.02.2023 issued by the Deputy Conservator of Forest, Gurugram is Annexure P-13.

The aforesaid record indicates that the present petitioner is claiming his title and possession over the khasra numbers as detailed in the plaint whereas respondents/defendants claimed encroachment in part of forest land bearing khasra No.85-90 on the basis of said demarcation report, Annexure P-12 which is not challenged by the petitioner in the civil suit filed by him. The matter can be settled only by way of demarcation of the property in the presence of both the parties. During the course of arguments, learned counsel for the petitioner stated that till date no such application has been filed by the petitioner/plaintiff. There is nothing on record to show that the respondents/defendants have got any claim over the khasra numbers which are mentioned in the agreement to sell dated 15.01.2021, Annexure P-2. Under these circumstances, the present petitioner/plaintiff does not have any apprehension of interference with regard to the aforesaid khasra numbers, since the claim of respondents/defendants is only pertaining to khasra No.85-90 which are different from the suit property detailed in the plaint.

Under these circumstances, I do not find any reason to interfere in the findings given by the Courts below vide which the application filed by the petitioner under Order 39 Rules 1 and 2 CPC was declined. Resultantly, the findings of Courts below as referred above are accordingly upheld and the Civil revision preferred by the present petitioner is accordingly declined.

The aforesaid observations are made only for the disposal of present civil revision and the same will have no bearings on the merits of the case.

Pending application (s), if any, also stands disposed of.

19.12.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No