

CWP-13913-2023

2023:PHHC:119844-DB

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

CWP-13913-2023
Reserved on 12.7.2023
Date of Decision :11.9.2023

Dilawar Singh

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

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

Present : Mr. Sourabh Goel, Advocate with
Mr. Tej Bahadur, Advocate and
Ms. Shivani Sahni, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Rupender Singh, Advocate
for respondents No. 5 and 6.

KULDEEP TIWARI. J.

1. The petitioner has invoked the superintending jurisdiction of this Court as envisaged under Articles 226 and 227 of the Constitution of India for assailing the validity of concurrently made eviction order dated 11.1.2021 (Annexure P-2) passed by the Assistant Collector 1st Grade concerned, order dated 8.12.2022 (Annexure P-4) passed by the learned Collector concerned, whereby the statutory appeal was dismissed vide order dated 30.5.2023 (Annexure P-18) whereby, the statutory revision petition was dismissed by the Divisional Commissioner, Rohtak, and the

petitioner has been ordered to be evicted from *khasra No.146* which falls within the *abadi deh* of village Paposa, Tehsil Bawani Khera, Tehsil Bhiwani.

2. Respondent No.5-Nafe Singh filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as '**the Act of 1961**') with the allegations that the petitioner and other two persons, namely, Rajbir son of Balwant and Kartar son of Chander Bhan have illegally encroached upon *khasra Nos.146 and 250 of abadi deh* , as per the demarcation dated 8.5.2017 and report dated 8.3.2017, which was conducted by the Halqua Patwari concerned. In the application, the petitioner had alleged that his house is situated in the north direction adjacent to the common street of the village and in the east of which there is *khasra No.146 of abadi deh* owned by the Gram Panchayat concerned, and the petitioner and other respondents therein have illegally encroached upon the said land from the house of the petitioner to the paved road to the east of *khasra No.146* , thereby from *khasra No.146* owned by the Gram Panchayat concerned, upto the house of the petitioner. The petitioner was using this street without any restriction and even the other villagers were also using the said street. It was further alleged in the application that the petitioner had sold his ancestral house which was situated in the *lal dora* to one Jogender Singh son of Balwant Singh, resident of Paposa in the year 2013 and since then the petitioner had illegally occupied *khasra No.146* by constructing a house and enclosure

which is shown as 914 square yards in the measurement report and the map. Similarly, other respondents therein have also encroached upon *khasra Nos.146 and 250* by raising construction. The learned Assistant Collector 1st Grade concerned, after placing reliance upon the map and the field book of *abadi deh* which was presented before him by respondent No.5-Nafe Singh and had further concluded that the petitioner and other respondents therein had encroached upon *khasra Nos.146 and 250* and ordered for their evictions accordingly.

3. Having aggrieved against the eviction orders (Supra), the petitioner had made an unsuccessful attempt to challenge the illegality of eviction orders by filing a statutory appeal before the learned statutory Appellate Authority concerned. However, the learned statutory Appellate Authority concerned, while extending concurrence to the order (supra) made by the learned Assistant Collector 1st Grade concerned, and also by placing reliance upon the same demarcation report, proceeded to dismiss the appeal vide order dated 8.12.2022 (Annexure P-4). Moreover, subsequent thereto, the revision as filed by the petitioner against the order dated 8.12.2022 before the learned Commissioner concerned, also met the same fate and was dismissed vide order dated 30.5.2023.

4. The learned counsel for the petitioner has submitted that during the pendency of the statutory appeal before the learned Commissioner concerned, a specific report was called to apprise the details of unauthorized occupants by conducting spot inspection of the disputed *khasra numbers* and holding measurement(s), as described in the

revenue records, Masavi and other documents vide letters dated 10.5.2022 and 26.5.2022 (Annexure P-13). Whereupon a report(s) dated 8.7.2022 (Annexure P-14) submitted by the BDPO concerned, depicts that there was no certain or certified record relating to demarcation dated 8.3.2017 available in his office. Likewise, the Tehsildar, Bawani Khera vide letter dated 11.7.2022 (Annexure P-15) submitted his report saying that the map and the field book of the village concerned, are not approved and there is no signature of Sadhu Ram Patwari on the demarcation report (Supra). He further placed reliance upon the letter dated 11.7.2022 (Annexure P-16) whereby the Naib Tehsildar concerned, requested for guidance from the Deputy Commissioner, Bhiwani regarding the proceedings of demarcation as the Field Book of the village Paposa is not approved and the land mentioned in the letter is located in the *abadi deh*.

5. The learned counsel for the petitioner further argued that respondent No.5-Nafe Singh himself disputed the demarcation report dated 8.3.2017 wherein he was also found to be in an unauthorized possession. The learned counsel for the petitioner also draw the attention of this Court on the grounds of appeal wherein Nafe Singh-respondent No.5 has specifically stated that the disputed land falls within the *lal dora*, and as per Swamitva Scheme floated by the State of Haryana, a report was prepared in which the disputed land was shown in the *lal dora* and he has been given the ownership deed and the map in the above Scheme which was certified by the BDPO concerned.

6. On the other hand, the learned counsel for respondent No.5

has specifically argued that the petitioner has no legs to stand as he in his application filed before the learned Assistant Collector 1st Grade concerned, raising the issue of title has himself admitted the validity of demarcation report and in the said application he has also stated that he has no concern whatsoever with the land in question. He also laid more emphasis on the demarcation report to state that the petitioner has never objected to the submission of the demarcation report before the learned Assistant Collector 1st Grade concerned.

7. We have considered the entire records and the submissions made by the counsel for the petitioner and the learned counsel for respondent Nos.5 and 6 and as well as by the learned State counsel.

8. During the course of arguments, learned counsel for respondent No.5 has placed on record the vernacular copy of the application filed by the petitioner before the Asstt. Collector 1st Grade concerned, for deciding the issue of title prior to proceeding with the application for eviction. He has highlighted para No.3 of the application to submit that the petitioner himself has admitted that he has no concern whatsoever with the disputed land and this admission of the petitioner has totally demolished his case.

9. We have perused the entire application and find that the respondent No.5 has made misplaced reliance upon this application. On reading the application in its totality, it is clear that the dispute is with regard to land of 914 Sq. Yards and the petitioner has categorically made submission that only 24 inch of land on the east of the house of Nafe

Singh where the encroachment is alleged does not belong to the petitioner. In the entire application, it is nowhere stated that the petitioner has disowned the complete disputed land.

10. Even otherwise, we have also examined the entire record. The entire case is based upon the demarcation report as the land falls within the *abadi deh*. It is not in dispute that the author of the demarcation report has never stepped into the witness box or any chance was given to the petitioner to cross-examine the witness, rather the demarcation report, as is clear from the impugned orders, was submitted by respondent No.5-Nafe Singh. Further-more, from the official record, as appended by the petitioner with the instant petition, it is clear that the demarcation report (*supra*) was not prepared according to the Masavi and the field book was not approved. Even there is no signature of Sadhu Ram Patwari (the purported author of the demarcation report). The BDPO concerned, vide his report dated 8.7.2022 which was called by the Deputy Commissioner concerned, (during the pendency of the appeal) clearly shows that there was no certain or certified record available in his office relating to the demarcation. Since the eviction orders(*supra*) were passed merely relying upon the disputed demarcation report qua which the petitioner has validly raised objections before this Court, therefore, we do not find any ground to rely upon such demarcation report.

11. In view of the above, since the petition land(s) falls within *abadi deh* and the fate of this entire case depends upon the 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 Asstt. Collector 1st Grade concerned. Therefore, the impugned Annexures P-2, P-4 and P-18 are, hereby, set-aside and the *lis* is remanded to the learned Asstt. Collector 1st Grade concerned, with a direction to get conduct a fresh demarcation as per the Masavi and thereafter 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 into 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 the affected persons concerned.

- 12. Disposed of accordingly.
- 13. All the pending applications, if any, stand disposed of.

(SURESHWAR THAKUR) (KULDEEP TIWARI)
JUDGE JUDGE

11.9.2023

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