

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

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CWP-17940-2020 (O&M)

Date of Decision : **January 16, 2023**

SUMITRA DEVI

.....Petitioner

VERSUS

**COMMISSIONER, GURUGRAM DIVISION, GURUGRAM
AND OTHERS**

.....Respondent

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

Present : Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Harshvardhan Ranga, Advocate
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Aditya Yadav, Advocate
for the respondent No.5.

SURESHWAR THAKUR, J. (ORAL)

1. The learned counsels appearing for the contesting litigants do not wrangle over the right factum that one Rajender Parsad and co-respondent Nos.1 to 4 are co-abadi owners and/or they hold abadis on land, described in the revenue record as abadi deh.

2. Therefore, the effect of the above submission, is that, the above category of land was excluded from vestment in the panchayat deh concerned.

3. Since, the cause of action, which becomes ventilated, by one Rajinder Parsad, in the petition instituted under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act), is that, qua co-respondents Nos.1 to 4 making illegal and

unauthorized constructions upon a *gair mumkin rasta*, hence occurring within the abadi deh, and, which was rather meant for the exercising of easmentary rights thereons by all the co-abadi owners. The learned Collector concerned, through an order made on 21.08.2017, and, which becomes carried in Annexure P-3, came to a conclusion that there is no merit in the petition filed under Section 7 of the Act and therefore, became constrained to dismiss it.

4. It appears on a reading of the last paragraph of the said order, that the learned Assistant Collector concerned, had relied upon a spot visit made by him on 18.08.2017, in his making a conclusion that there is no encroachment upon the *gair mumkin rasta*, as it was existing within the abadi deh concerned, and, which was meant for the exercising of easmentary rights thereons by the co-abadi owners. The order carried in Annexure P-3 became appealed by the aggrieved before the learned Appellate Authority, who relied upon the report made on 26.03.2018, by the District Development and Panchayat Officer, Rewari.

5. The effect of the above reliance, is that, since there is no report of the demarcating officer rather accompanying the above respectively made personal spot visit, and, the report of the District Development and Panchayat Officer, Rewari, therefore, unless a valid demarcation of the relevant site was made by the demarcating officer concerned, and, also the same became tendered into evidence, besides, became proven in accordance with law, thereupon alone, the learned Assistant Collector concerned, and, thereafter the learned Appellate Authority, could proceed to draw succor from the respective personal spot visit, and/or, from the report of 26.03.2018, as became drawn by the District Development and Panchayat Officer, Rewari. However, in the absence of the above, both yet untenably, relied respectively upon the above personal spot visit report, and, upon the report of the District Development

and Panchayat Officer, Rewari, and, made an untenable conclusion that there is no encroachment upon the *gair mumkin rasta* concerned.

6. Though, the Revisional Court, dismissed the apposite revision petition on the ground of it being not maintainable, than taking to pass appropriate orders, that the *lis* be remanded to the learned remandee court concerned, to ensure that only after valid demarcation, is made of the relevant site concerned, and thereafter, the drawn demarcation report becomes proven in accordance with law, that an order be made in respect of the illegal encroachment purportedly made on the *gair mumkin rasta* concerned.

7. In the face of the above, the orders as challenged before this Court, and, as respectively made by the learned District Collector concerned, and, the learned Revisional Court concerned, are quashed and set aside. The *lis* is remanded to the learned Assistant Collector concerned to, after asking for a valid demarcation of the relevant site being made by the competent revenue officer concerned, hence ensure, that the drawn demarcation report, is tendered and is also proven in accordance with law. The above *lis* shall be positively decided within 3 months from today, but, only in accordance with law and after assigning an opportunity to all concerned.

8. With the above observations, the instant petition stands disposed of, and, all the pending applications, if any, also stand disposed of accordingly.

January 16, 2023
devinder

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

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