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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17926-2022

Date of decision:24.01.2023

GURSHARAN SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

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

Present: Mr. J.P.S. Sidhu, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. Since alternative remedies are available for being re-coursed by the writ petitioner, therefore, when the said remedies are also efficacious, resultantly the encroachments, if any, as made upon the pond concerned, or if any encroachments are made on those lands, which are vested in the *Panchayat Deh* concerned, thereupon such encroachments as made thereons are amenable to be removed, but only after a valid demarcation being conducted by the Revenue Officer concerned, besides whereafter the report of the Demarcating Officer becomes tendered and, also becomes lawfully proven in accordance with law rather before the Statutory Authorities concerned.

2. It appears that the petitioner has skipped the above re-coursings, and, has directly moved this Court which, would result in grave *prejudice* being caused to the purported encroachers concerned, upon the panchayat land. The reason becomes comprised in the factum that even if the asked for mandamus, is

made, yet the said encroachments can become validly detected only through a valid demarcation being conducted of the relevant sites concerned, and, also such demarcation reports becoming tendered and proven in accordance with law. The report(s) prepared in consequence to above said demarcation, if any, conducted of the relevant sites, and, which are existing on records, would not at this stage rather render them to be proven in accordance with law. Contrarily they would become proven in accordance with law, only if the demarcation reports, are tendered into evidence, become lawfully exhibited, and, but necessarily after giving an opportunity to the aggrieved therefrom, to raise a protest against their acceptance, and, such objections are lawfully determined through a speaking order becoming made by the learned Collector concerned. Only in the above event credence would be assignable to them.

3. Therefore, this Court, at this stage, does not deem it fit, and, appropriate to make any determination with respect to the validity of the demarcation report, as in the instant writ proceedings it would not be possible to ensure that the author of the demarcation report, steps into the witness box, for his proving the report nor its is impermissible in the writ proceedings, that the aggrieved therefrom, is granted an opportunity to cross-examine the author of the demarcation report. Reiteratedly, the above can be done only before the learned Collector concerned.

4. Therefore, this Court, at this stage, finds no merit in the writ petition, it being completely mis-constituted.

5. Hence, the writ petition is disposed of with a direction to the Gram Panchayat concerned, to move a petition either under Section 7 or under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 before the learned Collector concerned. The above be done positively within a period of

two weeks hereafter, and, subsequently the said petition shall be decided through a speaking order, but only after an opportunity becoming granted to all affected concerned.

(SURESHWAR THAKUR)
JUDGE

24.01.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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