

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-20700-2017

Reserved on: 19.04.2023

Pronounced on: 26.04.2023

BALDEV SINGH AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

.....Respondents

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

Argued by: Mr. Ashok Paul Batra, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

Factual Background.

1. Gram Panchayat Hedo Bet instituted File No. 25/Collector, on 09.11.2005, before the Collector concerned. The said case was instituted against the respondents therein, petitioners herein. Moreover, the said case was instituted under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter for short called 'the PVCL Act'. Therein a claim was raised that the respondents in the said petition are in illegal and unauthorized possession of the petition lands comprised in Khewat No. 75, Khatuni No. 85, 107, 98, 132, 91, 144, 113, 136, Khasra Nos. 13/15 (7-16), 16(5-5), 17(8-0), 18(8-0), 24 (7-14), 14/10(8-0), 20(8-0), 21(8-0), 15/6(7-8), 14(8-0), 15(7-8), 17(8-0), situated at village Hedobet, Had

2. The learned Collector concerned, through an order made thereons on 22.03.2012, (Annexure P-7), after assigning credence to a demarcation report drawn on 28.10.2005, concluded that the respondents in case (supra), had made encroachments upon the land owned and possessed by the Gram Panchayat concerned. Thus, ordered for the eviction of the respondents from the petition lands.

3. The aggrieved respondents instituted thereagainst appeal No. 129/2012 before the Appellate Authority concerned, and the said Appellate Authority through a decision made on 18.12.2015, on the appeal (supra), decision whereof become enclosed in Annexure P-8, after concurring with the decision, as became earlier recorded by the Collector concerned, thus, dismissed the said statutory appeal.

4. Admittedly, the above stated khasra numbers are entered in the revenue records to be owned and possessed by the Gram Panchayat concerned. However, the respondents though did not claim title to the said khasra numbers, but claimed title to the property enclosed in Rect. No. 16, Khasra No. 2, 3, 4, 5, 6, 7 and 13/2/2, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, Rect No. 18, Khasra No. 9, 10, 11, 20, 21, Rect No. 15, Khasra No. 24, 25, Rect. No. 16, Khasra No. 8, 9, 12, 13/1, 13/2/1, Rect. No. 17, Khasra No. 16/24, Rect. No. 25 Khasra No. 1, 2, 3 and 2, 3, 9, Rect. No. 17, Khasra No. 10, 11, 12/1, 12/2, 13, 14 Khewat No. 6, 7, but on the basis of registered deeds of conveyance becoming executed, in their favour by their respective vendors concerned. However, the said executed registered deeds of conveyance did not become questioned. Therefore, the respondents concerned, in case No. 25/Collector, made a claim for theirs' holding valid title to those khasra

registered deeds of conveyance in their respective favour by their respective vendors. Obviously, the disputed khasra numbers over which the respondents in case No.25/Collector, are alleged to make encroachments, thus are those khasra numbers, which are admittedly owned and possessed by the Gram Panchayat concerned. Therefore, the demarcation report of 28.10.2005, as became assigned credence by both the authorities below thus, does assume a grave importance.

5. A reading of the impugned orders, as became concurrently drawn against the petitioners herein, by both the statutory authorities concerned, thus reveals that though both assigned credence to the said demarcation report. However, there is no complete discussion in both the impugned verdicts, about the said demarcation report becoming drawn in accordance with law, by its author, nor is there any further discussion whether after the aggrieved therefrom, being permitted to cross examine, the author of the said demarcation report, thereupon, the aggrieved ensuring theirs' making elicitation from him which may ultimately impinge, upon, the correctness of the demarcation report (supra), as became prepared, and, also became relied upon, by both the statutory authorities below. Moreover, on a reading of the orders drawn by both the authorities below, reveals that the demarcation report dated 28.10.2005, appears to become neither lawfully tendered into evidence nor any valid exhibition mark was made thereons. Therefore, prima facie, it appears that the apposite reliance(s), as became made by both the authorities below, on the demarcation report of 28.10.2005, was, prima facie, an inapt reliance thereons. The reason for the above, reiteratedly is premised, upon, the said demarcation report appearing to

exhibition mark being made. Moreover, reiteratedly, obviously the aggrieved therefrom were not permitted to cross examine the author of the demarcation report, to enable them to ensure that during a grilling cross examination, being made upon, the author concerned, they are thus, able to make elicitations from him, but relating to the relevant terms/norms governing the making of a valid demarcation, rather becoming infringed. The norms relating to the drawing of a valid demarcation report are carried in **Chapter 1 Part- M, Volume 1 of the High Court Rules and Orders**, relevant portions whereof, become extracted hereinafter:-.

"(i) Procedure in "Hadd Shikni" cases.

1. Local inquiry:- *In "Hadd-Shikni" suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:*

(a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under section 101 (1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;

(b) by appointing a local Commissioner, and

(c) by the Court itself making a local enquiry.

2. Enquiry by Revenue Officer:- *An order of the Revenue Officer made under Section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice to, the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result, it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.*

3. Appointment of Commissioner:- Similarly the report of the local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it. No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local Commissioner. The appointment of retired Revenue Officers is to be preferred as these Officers have the spare time and the inclination for completing the work with expedition. A commission issued to a Revenue Officers in service necessitates the obtaining of permission of the higher authorities and this along with the fact that such Revenue Officers are usually busy often results in delay in the disposal of the case. The wishes of the parties in regard to the appointment of a particular individual as commissioner for local investigations should be taken into consideration while making such appointments.

4. Instructions for the guidance of Commissioners:- On the motion of the Judges, the Financial Commissioners have issued the following detailed instructions for the guidance of Revenue Officials or Field Kanungos appointed as Local Commissioners in Civil suits of this nature.

(Financial Commissioner's Instructions)

(i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set

out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

(ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current Settlement field map of the village showing the fields, if any, with their dimensions (karu kan) of which he took measurements, situated between the points mentioned in Instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.

(iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement, that also should be demarcated on the ground, so far as this may be possible,

and also shown in the copy of the current field map to be submitted under Instruction No. (ii).

(iv) On the same copy should be shown also, the limits of existing actual possession.

(v) The areas of the fields, abutting on the boundary, in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.

(vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effect that they have seen and understood the measurements that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

(vii) The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

6. Moreover, though there is a reference of demarcation report dated 28.07.2006, Exhibit R1, but there is no discussion about the validity of the drawing of the said demarcation report but in terms of the hereinabove extracted canons governing the drawing of a valid demarcation report.

7. In aftermath, the necessary principles which can be culled out or the necessary norms governing the makings of a valid demarcation of the disputed sites, are;-

1. The demarcating officer is required to be carrying the apposite *musavi* to the site concerned.
2. He is required to be making an intimation to all the affected parties about the date when he chooses to make demarcation of the disputed sites.
3. The demarcating officer is required to decipher from the *musavi*, rather the accurate fixed points, wherefrom he proposes to commence, the demarcation(s) and thereafter, he is required to be relaying onto the ground(s), the said ascertained fixed points, thus from the *musavi*.
4. The method for relaying of the fixed points as ascertained from the *musavi*, are mentioned in the hereinabove extracted rules.
5. In his making measurements of the relevant fields, and, or after his making measurement(s) of the relevant disputed fields, or khasra numbers, he is required, to, in case he notices any encroachment by any person on land owned, and possessed by the adversary litigants, rather prepare a *tatima qua* such encroachment(s).

8. The impact of the above culled out norms from the above extracted regulatory principles governing the making of a valid demarcation of the disputed sites, is that, the said norms are also required to be inked by the demarcating officer, besides the report of

demarcation report, through his stepping into the witness box. Only on the author of the demarcation report stepping into the witness box, would be led to make an able testification, qua his obeying the above norms, hence in his preparing the demarcation report, but leading to an exhibition mark being made on such a tendered demarcation report, before the Court/authority concerned.

9. Since, the demarcation report is a documentary evidence, and, though it is prepared in the discharge of official duties, and, as such enjoys a rebuttable presumption of truth, hence within the realm of Section 35 of the Evidence Act. However, since only a rebuttable presumption of truth, is assignable to the demarcation report. Therefore, but to ensure that said presumption, is not assigned any further ex-parte conclusivity, thus an adequate opportunity qua adduction of rebuttal thereto evidence, rather is required to become also afforded to the aggrieved from the demarcation report, but necessarily through, the author of the demarcation report, after his recording his testification in his examination-in-chief, becoming subjected to the ordeal of a cross examination, wherein, suggestions may be put to the author of the demarcation report, rather to bely his stating in his examination-in-chief, that he had applied the norms (supra), in his preparing the demarcation report. The above would definitely dispel any aura of doubt, in respect of any purported procedural departures, rather being made by the demarcating officer concerned, in his making demarcation(s), besides, would allay the apprehension of the aggrieved concerned that the demarcation is not validly carried out. Moreover besides, would obviously enable the Courts concerned, to after making

hence analyse whether the norms (supra), as regulate the holding of a valid demarcation, becoming complied with or becoming transgressed or departed from, rather by the demarcating officer concerned.

10. Moreover in case, the aggrieved from the demarcation report prefers to raise objections, then the said permission is to be imperatively granted to the aggrieved, and, also subsequently a reasoned order, rejecting his objections to the demarcation report rather is to be recorded. However, in case the objections are allowed, thus, the Civil Court concerned, or the statutory authority concerned, can proceed to make a valid order for the making of a fresh demarcation report.

11. Since in purported breach of the above norms, the demarcation report (supra) has yet become believed by both the learned statutory authorities below, despite its neither become tendered into evidence nor any valid exhibition mark been made thereons, nor when the aggrieved therefrom became permitted to cross examine, the author of the said demarcation report, especially for ensuring that elicitation then are made from him, but relating to his infracting or breaching the norms (supra). Therefore, the reliance, as made upon the demarcation report drawn on 28.10.2005, is an inapt reliance, and, is required to be not vindicated by this Court.

Final order by this Court.

12. In consequence, this Court after setting aside the impugned orders, makes an order of remand upon the learned remandee Court, to after its restoring the *lis* to its original number, to permit the tenderings into evidence of the demarcation report (supra) i.e. of

28.10.2005, by its author, so that subsequently he is subjected to cross examination, by the aggrieved therefrom, but with suggestions to him, appertaining to, qua in his preparing the demarcation report(s), his departing or transgressing from norms (supra). The remandee Court, also is directed to after restoring the lis to its original number, hence issue notice(s) to all the litigants concerned, in the said petition, and, thereafter, is directed to issue summons to the author of the demarcation report, for ensuring his stepping into the witness box to prove the same, whereafter it shall permit the aggrieved therefrom to cross-examine him. Subsequently, the remandee Court, shall make a fresh lawful decision, on case No.25/Collector. The said exercise be ensured to be completed within six months from today.

13. A copy of the order be forthwith sent to the Secretary Revenue, Punjab, for his thereafter making direction(s) to the revenue officers in the State of Punjab, and, also his ensuring that directions are likewise issued to the Collectors concerned, who are dealing with petitions filed under Section 7 of 'the PVCL Act'. Compliance to the above direction(s) be intimated by the above to the Registry of this Court, but within a period of two weeks hereafter.

14. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

26.04.2023

KAVNEET SINGH
2023.04.28 16:21
I attest to the accuracy and
authenticity of this order/judgment

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No