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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : August 02, 2023

BALJIT SINGH AND OTHERS

-Petitioners

V/S

STATE OF PUNJAB AND OTHERS

-Respondents

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

Present : Mr. J.S. Bhandohal, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners are pained from the issuance of Annexure P-3, whereby, the Deputy Magistrate, Fatehgarh Sahib, has made a communication to the Senior Superintendent of Police, Fatehgarh Sahib, for providing police assistance, for removal of alleged illegal possessions of the petitioners, at Village Baraichan Noorpur.

2. The drawing of Annexure P-3, appears to be made in pursuance to a notice issued by the Sarpanch of the Gram Panchayat concerned, and, as became drawn in terms of Section 34 of the Punjab Panchayati Raj Act, 1994.

3. Though the alleged encroachment(s) as purportedly made by the petitioners are allegedly outside their abadis, and, through theirs raising a boundary wall encircling their abadis. Though thereby, when allegedly outside their abadis, the said construction(s) has taken place, and, which but allegedly is an open place in the abadi deh. Therefore the said construction(s), as allegedly made on an open place, within the abadi deh, thus prima facie makes

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the said allegedly encroached upon open lands to fall within the definition of shamlat deh.

4. Be that as it may, though there is jurisdiction vested in the Sarpanch of the Gram Panchayat concerned, to draw action against the present petitioners. However, the summarily drawn proceedings by the Sarpanch of the Gram Panchayat concerned, which led to the issuance of Annexure P-3, are not an efficacious substitute, to the launching of an eviction petition, against the present petitioners, thus before the learned Collector concerned. The reason being, that only before the learned Collector concerned, and, wherebeforewhom, the said eviction could have been well supported by a validly drawn demarcation report, especially upon its also becoming tendered into evidence, besides, upon its carrying the relevant evidentiary vigour, besides thus it could be concluded, that as a matter of fact, the above construction(s), thus allegedly raised on an open place in the abadi deh, was as a matter of fact, raised thereon.

5. Consequently, in the absence of the said drawing of a valid demarcation report, the petitioners have been disabled to contend, which otherwise they could have contended, before the learned Collector concerned, in thus detailed elaborate proceedings being drawn therebefore, that the said boundary wall occurs within the domain of their abadis. However, since they have been thus forbidden, thereby thus prima facie at this stage, it appears that the notice (supra), which led to the making of Annexure P-3, was drawn arbitrarily and capriciously.

6. In consequence, the present writ petition is disposed of with liberty to the B.D.P.O. concerned, to forthwith institute a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961,

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before the learned Collector concerned, but prior thereto, a valid demarcation shall be made of the relevant sites, by the empowered revenue officer. On such a petition being filed, it shall be decided most expeditiously, but after hearing all affected persons concerned.

7. Till the said petition is filed, thereupto the parties are directed to maintain status quo, in respect of the disputed lands. However, it is open to the petitioners to, within the said petition, institute an application claiming interim relief, relating to their possession in respect of the disputed lands being not disturbed, till a decision is made on the said petition.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 02, 2023
devinder

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