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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-28844-2017 (O&M)

Date of decision:04.05.2023

SADHU SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ORS

...Respondents

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

Present: Mr. Vinod Kumar, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. H.S. Tohra, Advocate
for respondent No.5.

Mr. M.S. Virk, Advocate
for respondents No.7 to 9.

SURESHWAR THAKUR, J. (ORAL)

CM-17572-CWP-2022

Allowed as prayed for.

MAIN CASE

1. The present petitioner, who was not a party, in the memo of parties carried in an order (Annexure P-1) recorded on 27.02.1998, upon file No.36/VCL, whereby the Gram Panchayat's petition for seeking eviction of the respondents therein was allowed, thus accesses this Court for executing the said decree of eviction.

2. In pursuance to the making of Annexure P-1, the learned Collector concerned, issued warrants of possession (Annexure P-2). The effect of the present petitioner not being impleaded, as a party in Annexure P-1, but as a *performa* respondent therein, to aid the Gram Panchayat concerned, to secure a decree of eviction in respect of the panchayat lands, results in an inference that thereby he has no *locus standi* at all to ensure that a valid execution be ensured to be made qua Annexure P-1. In consequence, the effect of the instant petition, at this stage, as moved, on behalf of the un-arrayed party in the lis, is that, the petition moved, at his instance to seek the execution of Annexure P-1, is an ill-constituted endeavour on his part.

3. The order of eviction (Annexure P-1) became challenged by one of the aggrieved respondents one Tarlochan Singh, before the learned Appellate Authority, but the said challenge as revealed by Annexure P-8, was completely unsuccessful.

4. Be that as it may, the exercise of jurisdiction by the learned Collector concerned, on the lis (*supra*), may have been construed to be a valid exercise of jurisdiction, but only in the event of, thus before him a valid demarcation report being placed, and, also a lawful exhibition mark becoming made thereon. However, even without a demarcation report being placed, before the learned Collector concerned, which for reasons (*supra*), but was imperative, as only on its basis, a decree of eviction was validly renderable. Since the apposite report was not placed before the learned Collector concerned, thereby the rendition of a decree of eviction, thus is in complete derogation of the requirement of law, that only when a validly drawn demarcation report is presented, and, is tendered or is lawfully exhibited, and, it reveals that the encroachments are made, at the instance of the respondents, over the petition lands, that a valid decree of eviction is renderable thus on the apposite petition.

Therefore, then it could be said that the exercise of jurisdiction by the learned Collector concerned, thus become a validly exercised jurisdiction. Since the above has not been done, therefore, in the making of Annexure P-1, the exercise of jurisdiction by the learned Collector concerned, is completely flawed, and/or, the exercising of jurisdiction by him, is with complete lack of application of mind, besides becomes exercised with a material illegality and gross impropriety.

5. The result of the above conclusion, is that, Annexure P-1 is not enforceable, and, even if in the warrants of possession, there is a direction that the demarcation be carried out of the petition lands, prior to the warrants of possession becoming enforced. However, yet even the said direction, is not a valid substitute to the necessity of the learned Collector concerned, imperatively during the pendency of the apposite petition, thus being seized with a valid demarcation report, and on its basis, his ably concluding, that encroachments are made on the disputed lands, by the encroachers concerned. Though, the said direction could have been incorporated in the warrants of possession, but only when prior thereto, even in the case (supra), there existed the requisite demarcation report, which however was neither tendered nor was lawfully exhibited nor any conclusion became arrived, that encroachments are made, at the instance of the respondents concerned, on the panchayat lands.

6. In consequence, this Court deems it fit, and, appropriate not to order for the enforcement of the order comprised in Annexure P-1, and, also deems it fit, and, appropriate that the warrants of possession, be not executed against the respondents concerned.

7. Irrespective of the above, the Gram Panchayat concerned, may subsequently institute a petition appending there alongwith, the valid demarcation report, and, thereons the learned Collector concerned, may pass a

lawful decision, but after hearing all affected persons concerned, but imperatively within 6 months of its preferment.

8. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

04.05.2023

(KULDEEP TIWARI)
JUDGE

Ithlesh

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