

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

**CWP-3108-2017 (O & M)
Reserved on: 25.04.2023
Pronounced on: 02.05.2023**

Balbir Singh and another

.....Petitioners

Versus

Joint Development Commissioner, Punjab and ors.

....Respondents

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

Argued by: Mr. Amrik Singh, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. B.S.Khaira, Advocate
for respondent No. 4.

Mr. Ranjivan Singh, Advocate
for respondent No. 5.

Mr. J.S.Bhandohal, Advocate
for respondent No. 6.

SURESHWAR THAKUR, J.

Factual Background.

1. The Gram Panchayat Niamia, Block Kharar, District SAS Nagar (Mohali) through its Sarpanch Jaswinder Kaur instituted on 28.05.2014, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter for short called as 'the PVCL Act', claiming therein relief that the respondents therein be evicted from the petition lands.

Facts relevant for adjudication of the case.

2. In the petition (supra), the petitioners averred that the *abadi* of the village concerned, falls in khasra No. 381, but the dirty water of the *abadi* area falls in three ponds of the village. However, it was averred that respondents therein have raised *kacha pacca* illegal construction over and around the ponds, owing to which there is an obstacle against the dirty water of the *abadi* area entering into the ponds, with an consequential effect, that the said dirty water gushes, into the homesteads of the *abadi* owners concerned. Moreover, it was also alleged that, on the northern pond and on the southern pond, illegal constructions have been raised by the residents of the village, over khasra numbers 370, 372, 373, 200, 380, 378, 176, 177 and 178. Though, it was averred that the said khasra numbers, are adjacent to the pond, but in the central pond of the village, on the southern side, a street has been made with bricks. Moreover, on the northern side of the street, co-respondent No. 16, by putting sand in the pond, has raised illegal construction. In addition, Gurdev Singh, Gurmail Singh, Harnek Singh, Nirmal Singh, Pargat Singh i.e. respondents No. 10 to 14, are also alleged to have raised illegal construction, whereas, Karam Singh, Darshan Singh, Gurmeet Kaur and Amarjeet Kaur, co-respondents No. 19, 20, 21 and 22, thus, are alleged to have raised a wall. Thus, it was averred in the petition that owing to the above said illegal constructions over the said three ponds, there is an impediment against the disposal of dirty water(s) into the pond concerned.

4. Through a decision made upon the petition (supra), on 06.10.2015 (Annexure P-7), the learned Collector concerned, proceeded to allow the petition (supra), and, ordered for the encroachments, as,

encroachers concerned.

5. The aggrieved therefrom instituted an appeal thereagainst before the Appellate Authority concerned. However, the Appellate Authority concerned, through a decision made on the statutory appeal, on 19.10.2016 (Annexure P-9), dismissed the said statutory appeal, and, thus affirmed the verdict Annexure P-7, as became drawn by the Collector concerned. Both the learned Statutory authorities below, in theirs' making concurrent decisions against the petitioners herein, premised them, on a demarcation report dated 24.11.2014, which became prepared by a panel of three *kanungoos*. Resultantly since the said demarcation report (*supra*), revealed that on khasra no. 186, occurs a *gair mumkin rasta*. Therefore, besides on its basis, it also became concluded that the owners of khasra no. 193, have raised house over the *rasta* existing on khasra no. 186. Further, on the basis of the said demarcation report, it was concluded that Balbir Singh, Kulbir Singh son of Raj Singh but have raised illegal construction over temporary passage occurring over khasra No. 381 and going towards khasra no. 368, 378 and 372, thus resulting in the passage, through khasra No. 368, and, on the backside of khasra no. 372, which runs through khasra no. 381, rather becoming closed. The above concurrently made decisions (Annexures P-7 and P-9), against the petitioners, have led them to raise thereagainst, the instant petition before this Court.

Submissions of the learned counsel for the petitioners.

6. i) The learned counsel for the petitioners argue, that since the disputed lands, do not come within the ambit of *shamlat deh* lands, inasmuch as, Section 2(g)(i), provisions whereof are extracted

deh lands, thus given the petition lands being *abadi deh lands*, which occur but on those khasra numbers owned and possessed by the petitioners. Therefore, in respect of the above nature of the disputed lands, the authorities below could not make a valid order of eviction against the petitioners.

ii) That the reliance, as made upon the demarcation report (*supra*), is an inapt reliance.

iii) That the *rasta* which is alleged to have been encroached upon by the petitioners concerned, is not a recorded *rasta*. Thus, the authorities below could not untenably create a passage to any of the owners of the *abadies* concerned.

“(g) ***“shamilat deh”*** includes-

(1) xxxxxxxxx;

(2) xxxxxxxxx;

(3) xxxxxxxxx;

[(4) xxxxxxxxx;]

[(4a) xxxxxxxxx;]

(5) xxxxxxxxx;”

“but does not include land which:-

(i) becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records;

(ii) xxxxxxxxx;

[(ii-a) xxxxxxxxx;]

(iii) xxxxxxxxx;

(iv) xxxxxxxxx;

(v) xxxxxxxxx;

(vi) xxxxxxxxx;]

(vii) [-----]

(viii) xxxxxxxxx;

(ix) xxxxxxxxx;”

Analysis of the above made submissions and reasons for rejecting the said submissions.

7. Though, the submission addressed before this Court, by the learned counsel for the petitioners, that, in respect of lands which become entered in the revenue records, as *abadi deh*, thus, the above extracted exclusionary clause to the definition of the *shamlat deh lands*, rather obviously becomes applicable thereto. However, the said savings from vestment of the lands owned and possessed by the petitioners, cannot pave way for them, to also make encroachments upon the lands, which are outside the said khasra numbers, and or, which are skirting the ponds concerned, thus adjacent whereto purportedly but since time(s) immemorial, a common passage rather exists, thus for exercising thereons of easementary rights by the owners of the *abadies* concerned.

8. Therefore, even if no recorded *gair mumkin rasta* exists adjacent to the ponds concerned, but yet when the petitioners herein, who though own their *abadies* adjacent to such ponds, rather cannot proceed to make encroachments thus, even on the said *gair mumkin unrecorded rasta*, but meant for exercising thereons of easementary rights by the *abadi* owners concerned. The above obstacle against the exercising of easmentary rights, on a temporary unrecorded passage thus, skirting the ponds concerned, and, adjacent to the lands of the petitioners, would be vindicated only, when after a valid demarcation being made of the disputed lands, it is but revealed, that the petitioners became well enabled, to make constructions, upon, the said *rasta*, as it fell within the boundaries of their respectively owned estates.

9. Be that as it may, therefore, the demarcation report (*supra*), as became prepared by a panel of revenue officers assumes importance.

said demarcation report. The assignment of vigor to the said demarcation report, appears to become generated, from the factum that, *prima facie*, no objection became reared thereagainst by the aggrieved nor obviously, it became encumbered upon the statutory authorities below, to, through a speaking decision thus, either accept or reject the said objections. The further effect, of the said no objections being not raised by the aggrieved from the demarcation report (*supra*), is that, the echoings made therein, about encroachments being made, upon, the said unrecorded *gair mumkin rasta*, but at the instance of the encroachers concerned, through theirs exceeding the boundaries of their respectively owned estates, resultantly acquires evidentiary vigor. Therefore, since the encroachers concerned, de-facilitated the *abadi* owners concerned, in theirs' exercising thereons, their imperative easementary rights to access their respective *abadies*, thus, they became amenable to become evicted from the encroached *rasta*.

10. Though the said fact did not become pleaded, in the eviction petition, but when evidence in support of the above factum, did emerge in the demarcation report (*supra*). Therefore, even if on the basis of a valid unprotested demarcation report, concurrent orders were made against the encroachers concerned, for theirs' removing the relevant constructions, on the unrecorded *gair mumkin passage*. Thereins, though the said granted relief is beyond pleadings, however, when it is planked upon an un-protested demarcation report, besides enables the *abadi* owners to exercise their easementary rights, on the said unrecorded passage, but only after the encroachments being made thereons, at the instance of the encroachers concerned, thus becoming

11. Necessarily hence, the said relief, though appears to become granted beyond pleadings, but for the reasons (supra), is required, to be assigned to the Gram Panchayat concerned, which but is required to protect the easementary rights of the *abadi* owners concerned, thus, in its capacity, as an able manager, and, controller of the disputed lands, which are *shamlat* lands.

Final Order

12. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders are maintained and affirmed.

13. No order as to costs.

14. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

02.05.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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