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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-29363-2019

Date of Decision : July 26, 2023

RAMESH CHAND @ RAMESHWAR

-Petitioner

V/S

COMMISSIONER GURUGRAM DIVISION AND OTHERS

-Respondents

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

Present : Mr. Gopal Sharma, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Varun Suman, Advocate
for the respondent No.5.

SURESHWAR THAKUR, J. (ORAL)

1. Through the present writ petition, the petitioner impugns the concurrently drawn verdicts of eviction, which are respectively embodied in Annexures P-6, P-8, and, P-10. Through the verdicts (supra), the petitioner was ordered to be evicted from the petition lands.

2. One Ashok, Ex. Sarpanch, Village Khetiyawas, Tehsil Pataudi, District Gurgaon, instituted a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), and, therein he impleaded the present petitioner as respondent. The petition (supra), seeking the eviction of the respondent therein, was premised on the ground, that the respondent therein had made an encroachment, upon, a *gair mumkin phirni*, therefore he is amenable to be evicted therefrom.

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3. To sustain the above averment, a demarcation report, as became drawn prior to the filing of the petition (supra), thus became relied upon by the petitioner therein, and, also credence thereto was assigned, by the statutory authorities below. If the said demarcation report was a validly drawn report, and, that could have taken place only when the said report was drawn in terms of the relevant canons and norms, thus governing the conduct of, and, the consequent thereto drawing of the said demarcation report, thereupon it was amenable for credence being assigned thereto.

4. The imperative norm for validating a demarcation report, is but that, it was required to be evidently proven, that at the site concerned, the revenue officer concerned had carried the apposite Masavi, and therefrom, he had ascertained the affixed points, and, subsequently had relayed them onto the ground. Moreover, the said demarcation report was required to be tendered into evidence, by the revenue officer concerned, who drew it, and thereons, an exhibition mark was required to be also made. The reason for the above being done, arose from thereby's able proof would become garnered by the demarcation report, thereupon its being per se placed on record, rather would not mobilize any conclusion, that merely thereby it has some evidentiary sanctity.

5. However, an incisive scrutiny of the record discloses, that irrespective of the fact, that even if the said demarcation report, was purportedly prepared in terms of the relevant norm (supra), that as a matter of fact, thus for it being read as valid evidence against the encroacher(s) concerned, rather it became not tendered into evidence by the author of the said demarcation report. Since the tendering of the demarcation report, by its author, was but imperative, as thereupon alone the ablest proof qua its valid drawings, would thus spur. Consequently, when the said demarcation report

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was not tendered into evidence by its author, therefore its becoming merely being placed on record, does not lead this Court to infer, that thereby evidentiary solemnity, as became assigned thereto, thus was assignable thereto.

6. Be that as it may, in the larger interest of justice, since for an infirmly drawn demarcation report, and, also for the same not being assigned creditworthiness, this Court deems it fit and appropriate to quash the impugned orders (supra). Nonetheless, also in the larger interest of justice, since thereby, the encroachment, if any, if yet made on the *gair mumkin phirni*, at the instance of the present petitioner, rather would remain undetected. Therefore, for also enabling the Assistant Collector concerned to, after remand of the lis, to him, thus make a decision afresh thereon. Resultantly, for thus facilitating the makings of a valid decision thereon, it is deemed fit and appropriate, that the decision on remand of the lis, shall be preceded by the Assistant Collector concerned, thus ordering for an able demarcation of the disputed sites, thus being made by an empowered revenue officer concerned.

7. In addition to the above infirmity, as is carried in the impugned orders (supra), the further pervasive infirmity, which grips the impugned orders (supra), is comprised in the factum, that though the encroachment, at the instance of the present petitioner, is alleged to be made on a *gair mumkin phirni*, which but is entered in the revenue records, to be owned by the panchayat deh. Therefore it was but imperative for the petitioner concerned, to also, apart from impleading the present petitioner as respondent, to along with him, also implead therein but as co-respondent also the Gram Panchayat concerned, through its Sarpanch. The necessity of impleadment of the afore, thus became sparked from the factum, that the Gram Panchayat concerned, being the owner of the disputed property, thus was both a just and a necessary party to the lis. Consequently, for its non-impleadment, there has been an

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apposite untenable ouster from the array of litigants, in the relevant lis. In consequence, when for non-impleadment of a just and a proper party to the lis, thus has disabled the said party, thus to ably contest the lis. Therefore, this Court is of the firm opinion, that the said infirmity, thus also leads this Court to quash and set aside the impugned orders (supra).

8. Therefore cumulatively the present writ petition is allowed, and, after quashing the impugned orders (supra), the lis is remanded to the learned Assistant Collector concerned, who shall, apart from summoning from an empowered revenue officer, a validly drawn demarcation report, shall thereafter permit him to step into the witness box, to prove the said report, but after granting an opportunity to the aggrieved therefrom, to make a protest thereagainst, and, shall also thus make a decision on such an objection(s) or protest(s). Moreover, the Assistant Collector concerned shall also receive an application on behalf of the Gram Panchayat concerned, through its Sarpanch, for the said Gram Panchayat concerned being impleaded as a party respondent, in the memo of parties. On such an application being filed, since the Gram Panchayat concerned is both a just and a necessary party to cause its impleadment, as such in the array of respondents in the relevant lis, thus the Assistant Collector concerned, after causing the apposite impleadment, shall positively make a decision, within six months hereafter, upon the remanded lis, but after hearing all affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 26, 2023
devinder

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