

CWP-29514-2022

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2023:PHHC:094260-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-29514-2022

Date of Decision : July 25, 2023

RACHHPAL SINGH AND ORS.

.....Petitioners

VERSUS

DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT AND
ORS.

.....Respondents

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CWP-7823-2023

SATNAM SINGH (SINCE DECEASED) THROUGH LRS

.....Petitioner

VERSUS

STATE OF PUNJAB AND ORS

.....Respondents

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

Present : Mr. Inderjit Sharma, Advocate
for the petitioners in CWP-29514-2022.

Mr. Dheeraj Mahajan, Advocate
for the petitioner in CWP-7823-2023.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR. J.(Oral)

1. Since both the writ petitions arise from a common verdict of eviction, as became passed by the learned Collector concerned, verdict whereof became also affirmed by the Appellate Authority concerned, thereby both the writ petitions are amenable for being decided by a common thereto verdict.

2. A petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '**the Act of 1961**'), became thus filed by the Gram Panchayat concerned, causing therein impleadings of certain respondents, whereby the eviction of the respondents concerned, was asked to be made from the petition land(s). The learned Collector concerned, through a decision made on 27.1.2021, upon case no.GSP/DDPO/LUR/2019/000179 (Annexure P-4), thus ordered for the eviction of the respondents thereins from the petition land(s). The above verdict of eviction was premised on the ground, that the respondents concerned, have made encroachments upon Share-aam Rasta, as, comprised in *khasra No.179*.

3. The aggrieved respondents concerned, from Annexure P-4 made an appeal thereagainst before the Appellate Authority concerned, and the latter on the apposite statutory appeal, through the drawing of Annexure P-5, made a verdict thus concurrent with the verdict, as became made by the learned Collector concerned (Annexure P-4). The above concurrently made verdicts against the present petitioners has led them to institute the instant petition(s) before this Court. The gravamen of the entire *lis* is entered upon the evidentiary worth of the demarcation report, upon which reliance became placed by both the statutory authorities below. The same has been placed today before this Court by the learned State counsel. The report of the demarcating Officer is required to be verbatim extracted, and, is as such extracted hereinafter:-

“Today on dated 22-1-2018, I reached at village Bhatoya, H.B.673, Tehsil & Distt. Gurdaspur, for

making demarcation, as per orders of Tehsildar Sahib, Gurdaspur. Patwari Halqa is present at spot alongwith record. In the presence of concerned parties and respectable, the proceedings of demarcation was started while fixing burjis as permanent spots and Khasra No.179 was demarcated. From which it was found on the spot that since long time, over it, the abadi means houses were constructed. Above Khasra No.179 measuring OK-4M, breadth of which is 1 Karam and on its both sides, Khasra No. 170, 171, 173, 174, 175, 176, 180, 181, ownership of which is of Sh. Rachpal Singh S/o Ami Chand S/o Bua Lal, 1/6 share of Santosh Kumari widow, Naresh Kumar, Manoj Kumar sons of Harbans Lal S/o Ami Chand equal share, 1/6 share of Manoj Kumar S/o Harbans Lal, 1/6 share of Gian Chand S/o Bua Lal, ½ share and Khasra No. 177 (0-3), 182/1 (0-2), kitta 2, OK-5M is in ownership of Subash Kumar S/o Punna Ram S/o Sewa Ram and Khasra No. 178 (0-4), 182/2 (0-5) kitta 2, OK-9M is ownership of Satnam Singh S/o Amar Chand S/o Jagat Singh. Above mentioned all owners, except Sh. Subash Kumar, have possession over Gair Mumkin passage in Khasra No. 179. Special burjis have been fixed. Nobody has presented any stay on the spot. During demarcation, there raised no dispute. These proceedings my only & only be considered as proceedings of demarcation and not of Dakhal. After demarcation report is presented for proper orders.

Sd/-
22/1/18.”

4. The underlined portion of the demarcation report (Supra) reveals that though the demarcating Officer proceeded to ascertain fix points thus at the relevant sites, thus wherefrom he proceeded to

commence the demarcations of the disputed sites concerned. However, it is not at all clear from a reading of the entire demarcation report, that whether the said fixing of permanent points by the demarcating Officer concerned, wherefrom he commenced the demarcation of the disputed lands, thus ensued from theirs becoming as such ascertained from the Musavi concerned. The absence of the above speakings in the demarcation report, has a consequential effect, upon the creditworthiness of the demarcation report, inasmuch as, since there is a dire necessity cast, upon the revenue Officer concerned, to only from the Musavi concerned, ascertain fixed points, and, thereafter to relay them on to the relevant sites, as thereupon only he can be construed to be making or commencing a valid demarcation of the disputed sites. Therefore, in the absence of the said speakings in the demarcation report (Supra), leads to an inference that the fixing of the relevant points at the relevant sites, thus were not made from the Musavi concerned, and, rather were made most ideally and mechanically, whereupon the demarcation proceedings become legally flawed. Resultantly, the above pervasive flaws in the said report, thus makes it unreliable.

5. In consequence since the demarcation report (Supra), thus became the foundation of both the statutory authorities below, rather making concurrent orders of eviction against the encroachers concerned, and, when this Court concludes that the said demarcation report is infirmly drawn. Resultantly, this Court accepts both the writ petitions and proceeds to quash and set-aside the impugned order dated 10.6.2022

(Annexure P-6) and order dated 27.1.2021 (Annexure P-4).

6. Be that as it may, since only for want of a valid demarcation being conducted of the relevant sites, by the competent Officer concerned, this Court has proceeded to quash the impugned Annexures but yet for ensuring that substantial justice is done besides to ensure that the encroachers upon the Panchayat land are not benefitted only because of any legally infirm demarcation being conducted, thereupon after quashing the impugned Annexures, this Court also deems it fit and appropriate to remand the *lis* to the learned Collector concerned, who shall then restore the relevant *lis* to its original number. Moreover, the learned Collector concerned, is also directed to ensure that before proceeding to make a fresh decision on the *lis*, he shall ensure that a valid demarcation of the relevant sites becomes conducted by a competent revenue Officer, and, thereafter he is directed to make a fresh decision on the *lis*, but within three months from today, and, after hearing all the affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 25, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No