

117

CWP NO.1635 of 2024
DATE OF DECISION: 30.01.2024

Jai Parkash

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM

HON’BLE MR. JUSTICE SURESHWAR THAKUR
HON’BLE MR. JUSTICE LALIT BATRA

Present

Mr.Mohit Kakkar, Advocate,
for the petitioner.

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

SURESHWAR THAKUR, J (ORAL)

1. Learned counsel for the petitioner submits, that though in respect of the obstruction created over a public drain and a platform being raised, he has no objection with respect to the said obstruction besides the said platform, being forthwith removed, thus at the instance of the Sarpanch of the Gram Panchayat concerned.
2. However, he submits that the alleged water tank which is purportedly constructed on lands designated in the revenue records as Abadi deh, though has been asked to be dis mantled, through the impugned notice, yet he submits that the proposal, in the impugned notice, to demolish the alleged tank raised by him, on Abadi deh, is not amenable for being galvanized into fullest action.
3. Learned Additional Advocate General submits, that when the counsel for the petitioner admits, that the said tank has been raised on lands designated, in the revenue records Abadi deh, thereby since the said tank is not within Abadi of the petitioner rather when the alleged tank has been raised on an open space within the

Abadi deh. Therefore, he submits that the raising of the alleged tanks over open spaces, in the Abadi deh, especially when such open lands are included in the definition of Shamlat deh, resultantly, makes the said, alleged tank, since, is raised on such open spaces, thus to be liable to be demolished.

4. For accepting the above made submission before this Court by the learned Additional Advocate General, it but required that the Sarpanch of the Gram Panchayat concerned, prior to his issuing the impugned notice, upon the present petitioner, thus, holding a valid demarcation of the relevant site. However, it is fairly conceded today before this Court, by the learned Additional Advocate General, that such a valid demarcation of the relevant site, rather did not come to be conducted by an empowered revenue officer concerned. In consequence, when without a valid demarcation, being conducted of the relevant site, it may not be possible for this Court, to endorse the address made before this Court by the learned Additional Advocate General, that the dismantling of the said tank/platform, as proposed in the impugned notice, would also be an adherence to the Rule of law.

5. Therefore, for want of the relevant demarcation of the disputed site becoming conducted, thus at this stage, this Court, does deem it fit and appropriate to validate the impugned notice. Contrarily, this Court is of the view that for ensuring that the ends of justice are met and also for ensuring that the Rule of Law, is maintained, that a direction, be made upon the BDPO concerned or upon the Sarpanch of the Gram Panchayat concerned, to after holding a valid demarcation of the disputed site, thus immediately subsequent thereto, file a petition for eviction before the learned Asstt. Collector concerned. On the learned Asstt. Collector concerned receiving the said petition, he shall within two months on its becoming preferred before him, thus make a lawful speaking order thereon, but after hearing all the affected persons concerned.

6. Be that as it may, since the learned counsel for the petitioner, has submitted before this Court, that he has instructions to state before this Court, that the

present petitioner shall ensure the removal of the obstructions (supra) created, upon, the public place, therefore, the said made submission by the learned counsel for the petitioner be forthwith galvanized with fullest action by the respondents concerned.

7. Disposed of accordingly alongwith all pending misc. applications.
8. In case any obstruction is created by the present petitioner, in undoing the above, thereupon, it is open to the Executing Public Agency concerned, to ask for police assistance.

(SURESHWAR THAKUR)

JUDGE

30.01.2024
mamta

(LALIT BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No