

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122 CWP-6771-2024
Date of Decision: 20.03.2024

Jitender Kumar and another
.....Petitioners
Versus

State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. P.P.Chahar, Sr. Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. Through the instant petition the petitioner, who became impleaded as such in the statutory appeal bearing Executive Revision No.170/2023 challenges the concurrently made dismissal orders, respectively by the Assistant Collector concerned, and, by the statutory appellate authority concerned.
2. In a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as ‘the Act of 1961’), thereby the eviction of the respondent concerned, from the disputed lands, thus, became asked for. On the said petition, the concurrently made orders respectively, comprised in Annexure P-8 and, Annexure P-9, thus became rendered.

3. Apparently a reading of the impugned annexures, reveals that, the said annexures were made dependent upon two contrary demarcation reports. However, none of the said demarcation reports became either tendered into evidence by the author thereof nor as such they became proven in accordance with law. Necessarily also no adequate opportunity was assigned to the litigant concerned, to raise objections about the speakings as were made therein. It appears that the reliance as made on one of the demarcation reports by both the authorities below, was thus made, merely on the premise that the said demarcation report had been relied, upon, by the petitioner. The authorities concerned, also thereafter referred to the *musavi* and thereby concluded that the respondent concerned in the eviction petition, did not make, any encroachment upon the *Gair Mumkin Gali*.

4. However, even if any reliance became placed by the plaintiffs in the eviction petition, petitioner herein, upon the relevant demarcation report, yet the reliance thereon, did not yet relieve the authorities concerned, to ensure that the said demarcation report, is but proved in accordance with law rather through the author thereof stepping into the witness box. It was only after the stepping into the witness box of the author of the said demarcation report, thus the aggrieved could ensure theirs' making elicitation from him which may ultimately impinge, upon, the correctness of the demarcation report (*supra*), as became prepared, and, also became relied upon, by both the statutory authorities below. Moreover, thereupon the judicial conscience of the authority concerned, thus would become completely satisfied about the tenability of the relied, upon, demarcation report.

5. Even if assumingly echoings were made therein but adversarial to the plaintiff-petitioner herein, then yet the petitioner was enjoined to become permitted to make a protest against such echoings adversarial to him, thus necessarily only through the author of the said demarcation report becoming also permitted to be cross examined, even by the plaintiffs in the eviction petition. However, the above recourse did not become adopted by the authorities below and merely upon reliance being placed upon the demarcation report by the plaintiff/petitioner, that the eviction petition(s) became concurrently dismissed by the statutory authorities below.

6. The above exercise was to be avoided, as for reason (*supra*), yet a dire necessity arose, for the apposite demarcation report becoming tendered and proven in accordance with law, and, also an imperative necessity arose qua an opportunity becoming assigned to the petitioners therein, if the need so arises, to cross examine the author of the apposite demarcation report.

7. Be that as it may, even if there were two demarcation reports drawn on two different occasions, but with contrary depictions therein, thereupon too, the authorities below were enjoined to necessarily make a conclusion, that given the above purported discrepantie(s) *inter-se* two demarcation reports, that thus an independent demarcation be carried out by the revenue officer concerned, so that thereby there is re-conciliation of the *inter-se* discrepantie(s) which purportedly emerged amongst two rival demarcation reports. However, even the above recourse remained unadopted

by the authorities below. Necessarily the adoption of the above recourse would have ensured that substantial justice, is thus, done to the petitioners and to the respondents. The effect of the above non adoptions of the above recourse by the authorities below, has resulted in gross miscarriage of justice.

8. For undoing the gross miscarriage of justice, it is deemed imperative to quash the impugned orders. However, for ensuring that a valid demarcation by an independent authority is conducted of the petition lands, it is yet directed that for the afore purpose, the *lis* be remanded to the learned Assistant Collector concerned. The learned Assistant Collector concerned shall before making a lawful decision, on the remanded *lis*, shall ensure that an independent demarcation becomes carried out by an officer not below the rank of an SDM, who shall before proceeding to the site concerned, issue notices to all aggrieved and thereafter shall in accordance with law, make a valid lawful demarcation of the site concerned.

9. After the drawing of the demarcation report by the officer concerned, he shall forthwith transmit his report to the Assistant Collector concerned, who shall ensure that the said report is proven in accordance with law, but after giving an opportunity to the aggrieved therefrom, hence the litigant concerned, rather to make cross examination(s) upon the author of the demarcation report.

10. All the above exercises shall be ensured to be completed within six months from today but after hearing all affected concerned.

- 11. Disposed of.
- 12. Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

20.03.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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