

CWP No. 20915 of 2023

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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

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CWP No.20915 of 2023  
Date of Decision: 23.04.2024

Surender Kumar & ors.

..... Petitioners

Versus

State of Haryana & ors.

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

Mr. Rishi Pal Chaudhary, Advocate,  
for respondent No.4.

Mr. Dhruv Mittal, Advocate,  
for respondent No.5.

**SURESHWAR THAKUR, J. (ORAL)**

1. Through the present writ petition, the petitioners impugn the concurrently drawn verdicts of eviction, which are respectively embodied in Annexures P-3, P-4, and, P-8. Through the verdicts (supra), the petitioners were ordered to be evicted from the petition lands.

2. One Sultan Singh r/o Village Budhera Khalsa, Sub Tehsil Nigdhu, District Karnal, 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 petitioners as

therein, was premised on the ground, that the respondents therein had made an encroachment, upon, a gair mumkin phirni, therefore they are amenable to be evicted therefrom.

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 fixed 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 a lawful exhibition mark was required to be also made. The reason for the above being done, arose from therebys able proof becoming garnered by the demarcation report, whereas only 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

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 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 petitioners, 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 petitioners, 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 petitioners concerned, to also, apart from impleading the present petitioners as respondents, to along with

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, rather as a contesting respondent there has been an apposite untenable ouster from the array of litigants, in the relevant lis. In consequence, when for non-impleadment rather as a contesting respondent 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 contesting 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 contesting respondents in the relevant lis, thus the Assistant Collector concerned, after causing the apposite impleadment, shall positively make a lawful decision, within six months hereafter, upon the

remanded lis, but after hearing all affected persons concerned.

(SURESHWAR THAKUR)  
JUDGE

23.04.2024  
monika

(LALIT BATRA)  
JUDGE

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No