



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.33982 of 2024
Date of Decision: 17.12.2024

M/s Evershine Moulders Ltd.
...Petitioner
Versus
State of Haryana & Others
...Respondents

CORAM: HON’BLE MR. JUSTICE G.S. SANDHAWALIA
HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate and
Mr. Kamal Gupta, Advocate,
for the petitioner.

Mr. Saurabh Mago, DAG, Haryana.

* * * *

G.S. SANDHAWALIA J. (Oral)

Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India, is to the notice dated 17.07.2024 (Annexure P-9) issued by respondent No.5-Gram Panchayat under Section 24(2) of the Haryana Panchayati Raj Act, 1994 (for short ‘the Act of 1994’) which was in furtherance to the notice dated 09.07.2024 (Annexure P-7) issued under Section 24(1) of the Act of 1994. The letter dated 3035 dated 11.12.2024 (Annexure P-15) whereby the police assistance was given to demolish the boundary wall on the ground of alleged encroachment, is also subject matter of challenge.

2. Learned Senior counsel for the petitioner has submitted that the order is in contradiction to the observations passed by the Co-ordinate



Bench in **CWP No.19864 of 2020** titled as '**Gram Panchayat Thandran vs. State of Haryana & others**' and also the fact that there is pendency of **CWP No.14853 of 2024** titled as '**Ram Singh and Another vs. State of Haryana and Others**' in which interim order was passed on 18.07.2024 (Annexure P-21) by us.

3. We have perused the paper-book. It is apparent that the petitioner, at the first instance, has challenged the said notices by filing a civil suit after duly replying to the said notices and the copy of the plaint, along-with application under Order 39 Rule 1 and 2 CPC, has been appended as Annexure P-11. Initially, the petitioner was given the benefit of *status-quo* order by the Civil Court on 03.09.2024 (Annexure P-12) whereby it was also noticed that the demarcation was to be conducted by DGPS machine and the charges of the same were to be borne by the petitioner and the Tehsildar Rewari was appointed as a Local Commissioner to demarcate the property. The dispute is regarding *Rasta No.280* and the fact of the encroachment. Eventually the trial Court has dismissed the application under Order 39, Rule 1 and 2 CPC by passing a detailed order on 10.12.2024 (Annexure P-14) by noticing that there was three demarcation reports dated 10.05.2017, 25.06.2024 and 14.10.2024 and the encroachment of the petitioner has been found over *Khasra No.280*. It is not disputed that the said order is appealable before the District Judge, Rewari.

4. In such circumstances, we are of the considered opinion that there is efficacious remedy available with the petitioner to appeal before the Appellate Court and the petitioner, having exercised his option as such



to file a civil suit, cannot now be allowed to change the course by filing a writ petition on the same cause of action when a specific finding has been recorded by the Civil Court which order has not been challenged in the instant proceedings. Therefore, the present writ petition is not maintainable once the legal remedy has been invoked before the Civil Court.

5. Learned counsel for the State has also informed that the possession of the disputed area has also been taken which though is disputed by learned Senior counsel for the petitioner which would again be a matter of fact since there are certain photographs placed on record showing that bulldozer/JCB machine has already demolished certain portions of the alleged encroachment.

6. In such circumstances, we do not wish to comment upon the factum of possession as on date in view of the opposing and contrasting stands taken by both the sides. Resultantly, we dispose of the writ petition with liberty to the petitioner to approach the Appellate Court.

7. Needless to say that anything we have observed here-in-above is only for the purpose of maintainability of the writ petition and not on the merits of the case.

(G.S. SANDHAWALIA)
JUDGE

December 17, 2024
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>