(2020) 05 CHH CK 0014

In the Chhattisgarh High Court

Case No : Writ Appeal No. 86 Of 2020

Mohit Kumar And Ors — APPELLANT

Vs

Ashok Kumar Tiwari And Ors — RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 50, 121, 124, 127(2),129, 129(2)

Citation : (2020) 05 CHH CK 0014

Hon'ble Judges : P.R. Ramachandra Menon, CJ;Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Anumeh Shrivastava, Abhijeet Mishra, G. Patel

Final Decision : Dismissed

Judgement

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Parth Prateem Sahu, J

1. Challenge in this writ appeal is to the order dated 15.11.2019 passed in WPC No.1134/2019 by which the learned Single Judge has set aside the

order dated 28.8.2018 (Annexure P-1 to writ petition) passed by the Board of Revenue Chhattisgarh, Bilaspur in Case No.M/02/R/A-12/183/2015 and

directed respondent No.3-Collector, District Bilaspur to conduct fresh demarcation of land in question after re-establishing permanent boundary mark

(chaanda) as per procedure laid down in the Land Record Manual Instructions based on the Chhattisgarh Bhu Abhilekh Niyamawali.

2. Facts of the case, in nutshell, are that initially the order of demarcation dated 17.11.2014 passed by the Tahsildar,Bilha, District Bilaspur in Case

No.02/A-12/2014-15 was challenged by petitioner/respondent No.1 before the Board of Revenue by filing a revision under Section 50 of the

Chhattisgarh Land Revenue Code, 1959 (for short 'the Code of 1959'), which came to be allowed vide order dated 18.6.2015 and the Sub- Divisional

Officer, Bilha was directed to constitute a team of Revenue Inspectors to carry out fresh demarcation of disputed lands and to submit demarcation

report. In compliance of order dated 18.6.2015, a team was constituted and thereafter demarcation of boundaries of disputed lands was conducted.

The Tahsildar, Bilha submitted his report vide letter dated 16.12.2015. On an objection being raised by applicant/ respondent No.1 herein against said

demarcation report, the Board of Revenue directed the Tahsildar, Bilha to apportion lands of applicant & non-applicant and to demarcate land of

applicant bearing Khasra No.297 and land of non-applicant bearing Khasra No.311/1, 311/2 & 312 by constituting a team of Revenue Inspectors. It

was also directed that for carrying out demarcation proceeding, the place of permanent boundary mark (chaanda) be dug out to see whether remnants

of traverse (chaanda) is there or not and if not, then to establish traverse (chaanda) on the spot after following the procedure prescribed in this regard.

Based on the aforesaid direction, on 5.4.2017 the Tahsildar had submitted demarcation report along with Panchsala, field book, B1 & map. On the

basis of report submitted by the Tahsildar, the objection raised by petitioner/ respondent No.1 was rejected vide order dated 1.7.2017 against which a

writ petition was preferred by respondent No.1 before the High Court, which came to be registered as WP (227) No.306/2018. The learned Single

Judge vide order dated 20.6.2018 allowed said writ petition; set aside order of Tahsildar dated 1.7.2017 and remanded back the matter to the Board of

Revenue for fresh adjudication with a direction to give finding whether compliance of subsequent demarcation was made as per provisions of Sections

121 & 124 of the Code of 1959 and the Rules framed thereunder. The Board of Revenue was further directed to conclude the proceeding within a

period of 45 days.

3. On remand of case, the Board of Revenue again took up the matter for consideration and after hearing both sides, has held that demarcation was

conducted by the team of Revenue Inspectors in accordance with the procedure prescribed in this regard and taking note of the provisions of Section

127 (2), 129 & Rules 6 & 7 of the Code of 1959 that when traverse mark is not traceable even after digging of land on spot, then further course which

is available for the revenue officials is to create/install a permanent boundary mark / traverse based on provision of Section 124 of the Code of 1959.

Except the objector/applicant therein (petitioner in writ petition), all other persons, who were noticed for demarcation, appeared on the date of

demarcation and the proceeding of demarcation was conducted by the Revenue Inspectors on 23.3.2017 in accordance with law.

4. The order dated 28.8.2018 was put to challenge by respondent No.1 before the High Court in WPC No.1134/2019. The grounds raised in writ

petition were that team of Revenue Officers, which conducted demarcation, had not followed statutory rules as provided in the Code of 1959; method

used for re-establishing permanent boundary mark and stones was not in accordance with procedure prescribed i.e. Land Record Manual and

Revenue Survey Book. The procedure and method adopted by the Revenue Officials for re-establishing permanent boundary mark (chanda-munara/

traverse) is based on the 'check survey method', which is not in consonance with the procedure prescribed under the Land Record Manual and

Revenue Survey Book. The Revenue Officials ought to have adopted one of three procedures i.e. Theodolite Survey, Prismatic Compass & Plain

Table Survey for re-establishing permanent boundary mark. Apart from aforementioned grounds, respondent No.1 had also raised certain other

grounds.

5. Appellant submitted reply to writ petition and after hearing both sides, the learned Single Judge allowed writ petition and while setting aside the

order passed by the Board of Revenue, had directed respondent No.3 to conduct fresh demarcation of the land in dispute after establishing permanent

boundary mark (chaanda-munara / Traverse) in accordance with procedure laid down under the Land Record Manual Instructions and the

Chhattisgarh Bhu Abhilekh Niyamawali.

6. Mr. Anumeh Shrivastava, learned counsel for appellant submits that the order passed by the Board of Revenue was strictly in accordance with law

upon considering the procedure prescribed under the Code of 1959 for demarcation of land and also the procedure for demarcating land based on the

locality and topography of the land based upon the 'check measurement system'. It is further contended that if the permanent boundary mark is

missing, then in all cases, the demarcation by 'Theodolite Machine' is not necessary. The procedure for demarcation of land in the aforementioned

situation is provided under Rule 4 of Chapter-V of the Land Record Manual, which was followed by the Revenue Officers. The observation made by

the learned Single Judge in the impugned order that in case of missing of permanent boundary mark, other two existing permanent boundary marks are

to be located and from that by deriving angle and perpendicular line, the missing chanda is to be found and thereafter missing chanda-munara is to be

re-established, is beyond the scope of Rule 4 of Chapter-V of the Land Record Manual. It is also pointed out that when the road of any nature is

found to be existing between Khasra No.297 and 311/1 & 311/2, then the said road can be considered as boundary of lands for purpose of

demarcation. The findings recorded by the learned Single Judge in Para-22 & 23 of the impugned order were also questioned. Rule 4 of Chapter-V

does not provide that for establishing missing chanda / permanent boundary mark it is not necessary to find out other existing chandas, but it can be

verified & identified and demarcation can be done based on tri- junction & quadra junction. On the basis of aforementioned submissions, learned

counsel for appellant submitted that the impugned order dated 15.11.2019 passed in WPC No.1134/2019 be set aside.

7. Mr. Abhijeet Mishra, learned counsel for respondent No.1 submits that the learned Single Judge has taken note of the procedure prescribed under

the Land Record Manual for ascertaining, identifying and establishing permanent boundary mark i.e. chaanda, if it is found missing from its place. He

further submits that the learned Single Judge has also taken note of the guidelines provided in the Land Record Manual for demarcating land in

different circumstances, which was followed. He also submits that the order under challenge is passed strictly in accordance with the procedure

prescribed under Sections 124 and 129 of the Code of 1959 as well as the Land Record Manual, which does not call for any interference of this

Court.

8. Mr. Ghanshyam Patel, learned Government Advocate for respondent No.2 & 3, in sum and substance supported the order of the Board of

Revenue.

9. We have heard learned counsel for the parties and perused the record.

10.Perusal of documents available on record and undisputed facts as appeared from the pleadings and documents placed on record by respective

parties, makes it clear that there is dispute with respect to boundaries of land between appellant and respondent No.1. It is settled principle of law that

dispute of boundaries can be resolved by conducting demarcation. The provision for demarcation of land is provided under Section 129 of the Code of

1959. Instructions and guidelines have been issued under the Land Record Manual for conducting demarcation by revenue authorities. It is also not in

dispute that at the time of demarcation, the revenue officers found that permanent boundary mark (chaanda-munara) is missing from its place and

even after digging to a requisite depth, no remnants of chaanda could be traced out.

11.In view of earlier orders passed by the Revenue Officer, Board of Revenue and the High Court, the only dispute, which is existing, is whether the

revenue authorities have adopted correct procedure for re-establishing permanent boundary mark (chaanda) for carrying out demarcation proceeding.

12.Chapter-X of the Code of 1959 deals with the boundaries and boundary marks, survey marks. Section 124 mentions about the construction of

boundary marks of villages and survey numbers or plot numbers. Under Section 124 the Rules regarding boundaries, boundary marks, survey marks

have also been framed. Section 129 deals with demarcation of boundaries of survey numbers or sub-division or plot numbers and provides that the

Tahsildar or any other revenue officer empowered under the Code can demarcate the boundaries of a survey number or of a sub-division or of a plot

number and the Tahsildar or any other Revenue Officer shall follow the rules for regulating the procedure made by the State Government under sub-

section (2) of Section 129 of the Code of 1959.

13.The Tahsildar, Bilha vide letter dated 5.4.2017 submitted demarcation report before the Board of Revenue in which it was mentioned that a team

of Revenue Inspectors & Halk Patwari had carried out demarcation proceeding after re- establishing permanent boundary mark (chaanda). Along

with this report, panchnama, field book etc. were also forwarded to the Board of Revenue. In the panchnama it is mentioned that for re-establishing

permanent boundary mark, the revenue officers have taken tri-junction of Khasra No.318, 319, 322 and tri-junction of Khasra No.319, 320 & 322 and

based upon said re-established permanent boundary mark, the demarcation was conducted. Before constituting team of revenue officials for

conducting demarcation proceeding, respondent No.3 in letter dated 28.11.2016, which was addressed to the Collector, had mentioned that the

permanent boundary mark was not found, there was no sign of permanent boundary makr even at the depth of 7 feet; permanent boundary mark

could be re- established by adopting 'Thoedilite Method' & 'Traversing Procedure' and thereafter only demarcation can be done.

14.From perusal of the demarcation report and panchnama submitted by the Tahsildar, it is clear that the proceeding sought to be pursued by the

Tahsildar was not adopted for re- establishing permanent boundary mark. Learned Single Judge while setting aside the order passed by the Board of

Revenue and holding that proper procedure has not been adopted for re-establishing the permanent boundary mark i.e. chaanda- munara, has

recorded thus;-

19. In the instant case the demarcation of land was carried out by establishing two missing Chanda on the basis of the boundary of the field from

Khasra Nos.318, 319, 321 & 322 and Chanda was established by taking the boundary marks on Khasra Nos. 319 & 444. The said action would be

evident from the Panchnama dated 02.03.2017, whereby on the basis of topographical features i.e. the boundary of the field, the new Chanda was

established. The instructions which is prevailing for demarcation and establishment of Chanda (boundary mark), Central Province Land Record

Manual and the M.P./C.G. Land Record Manual prescribed that in surveying a village or correcting maps, the permanent fixed points i.e. the traverse

and sub- traverse stations are necessary, since for survey of contiguous fields in block, in absence of permanent fixed point (Chanda) cannot be

accurate. In Chapter 4 of Chhattisgarh Bhu Abhilekh Niyamawali Rule 9 purport that to find out the location of a land, the traverse and sub- traverse

station would be required. It further purports by way of example that it is possible and easy to survey a single field quite accurately by fixing flags at

certain corners of the field or outside it and taking lines connecting those flags as base lines on which to build up the survey of the field boundaries by

means of off sets. It says however, this does not give the position of the field in the village. Thereby the permanent boundary marks which existing,

therefrom only the demarcation can be carried out further. The boundaries of the field made are set out on the basis of demarcation carried out from

the permanent marks. Therefore, the boundaries of the field are susceptible to the geographical changes due to erosion, wear & tear and further force

majeure etc. Rule 9 of the instruction book speaks that if the demarcation is carried out on the basis of the topographical feature for the village field, it

would be inaccurate unless the permanent boundary marks are found.

20. In light of the such existing procedure, which are codified in the instructions, the demarcation when is examined in the instant case, it shows that

during demarcation permanent boundary marks (Chanda) were not found either on Khasra No.319 or 444, which was shown in the revenue map.

Therefore, to establish the Chanda, the topographical features, the existence of road was taken into account. So the question again would be whether

it would be a correct procedure? The obvious answer would be in negative.

15.After recording finding that procedure adopted by the revenue officials for conducting demarcation, without re-establishing the permanent boundary

mark, not to be correct, the learned Single Judge has further dealt with the procedure to be adopted for re- establishing permanent boundary mark and

for that he has taken note of the Chhattisgarh Bhu Abhilekh Niyamawali, particularly Rule 4 & 5, and held thus:-

24. Chapter 5 Rule 4 of the Chhattisgarh Bhu Abhilekh Niymawali lays down the procedure how to fix missing Chandas and fix it by aid of two other

Chandas. The instructions as laid down shows that when a traverse station is missing and it is necessary to ascertain its position, for the purpose of

correcting the map, it should not generally be fixed by intersection, i.e. a at a point at the apex of a triangle based on two other traverse stations.

The proper method is to select two traverse stations, one on each side of the missing point, a line between which would pass close (i.e. within few

chains) to the original position of the missing Chanda as found on the map.

After ascertaining from the latter at what distance the missing Chanda should be at right angles to the two other stations selected on the ground. It is

easy when chaining a corresponding distance to that point to lay off a perpendicular with the optical square and measure out the required distance,

where the Chanda can be set up. It further says that it is necessary, however, to continue the chain-line to the forward station or Chandas, to test the

accuracy of the chaining with reference to the map.

25.The reading of the Panchnama to fix a missing Chanda would show that such procedure to establish the missing Chanda was not carried out by

finding out the other existing Chanda. Instead the topographical features i.e. the boundary of the field were taken into account to establish the Chanda

on Khasra Nos.319 & 444. The procedure therefore shows the boundaries of the field were taken into account to establish the missing boundary mark

i.e. Chanda whereas it should have been vice versa. If the existing Chanda on Khasra Nos. 319 & 444 were not found, it should have been

established by the other nearby Chanda. The existence of missing Chanda are to be relatively found by the procedure laid down in the Chhattisgarh

Bhu Abhilekh Niyamawali. It is also quite obvious that the boundary mark i.e. the Chanda if are shifted then the field also changes its position and the

boundary mark itself are disturbed since the filed do not have an embedded number with themselves.

26.The instructions of the Chhattisgarh Bhu Abhilekh Niyamawali, the land record manual, the chapter 6 prescribes that traversing can be done by

theodolite or plane table.

Theodolite traversing has been said to be more useful because if necessary the missing traverse stations can be refixed or replaced on the ground at

any later time with the help of the mathematical traverse data, provided the stations were properly marked and erected originally and their

maintenance was satisfactory. Meaning thereby the measures have also been provided that by theodolite traversing the missing Chanda can be

accurately established. This was exactly the demand of the Tehsildar vide its letter dated 28.11.2016 (Annexure P-7), wherein the demand was made

to the Collector, Land Records, for constituting a team of Revenue Inspectors to establish the missing Chanda by theodolite machine or traversing

method. Therefore, the procedure for demarcation of establishment of missing Chanda was itself defective and was not in accordance with the old

procedure and the instructions of the land manual and instead Chanda was re-established on the basis of topographical detail of the boundary of the

other Khasras which were wrong.

16. Looking to dispute of boundaries between the parties, which can be settled only by demarcating land of both the parties on the basis of permanent

boundary mark established by the government for villages and lands available in the villages. Learned Single Judge has also taken note of fact that as

there was no permanent running road initially and Rule 9 of the Instructions Book speaks that if demarcation is carried out on the basis of topological

features of the village field, it would be inaccurate unless the permanent boundary marks are found. It is an admitted case of both the parties that

permanent boundary mark on the spot where demarcation is to be conducted was missing. It was also reported by the Tahsildar himself in the letter

written to the Collector dated 28.11.2016 that the procedure for re-establishing permanent boundary mark was 'theodolite method or traversing

procedure' and only thereafter the demarcation could be concluded.

17. Thus, it is emerging from the records that even the Tahsildar was aware about the procedure for re-establishing the permanent boundary mark,

which is found to be missing at the time of demarcation, but even then the team of Revenue Inspectors & Halka Patwari, constituted by the Tahsildar,

had adopted different procedure, which is mentioned in the Rule 9 of the Instruction Book to be inaccurate. The boundary dispute can be resolved only

by demarcating the lands under the provisions of the Code of 1959 and the Rules & procedure prescribed for it.

18. Here in the case at hand, the dispute, which has been brought by respondent No.1, is with respect to re-establishment of permanent boundary

mark, which cannot be decided by a civil Court, and it can only be decided by revenue authorities in a revenue proceeding by taking recourse of

guidelines/ instructions and the Rules framed for re-establishment of permanent boundary mark (chaanda-munara / traverse), which is the root of

initiating/conducting demarcation of land.

19. Looking to the nature of dispute and also as per material available on record, particularly Annexure P-7 and extract of land record manual filed as

Annexure P-17 (Clause-4), we do not find any error or illegality in the impugned order remanding the case back to the revenue officer for conducting

demarcation afresh after taking into consideration the procedure prescribed under the Land Record Manual and the Chhattisgarh Bhu Abhilekh

Niyamawali.

20. Other submissions made by learned counsel for appellant in the written synopsis submitted by him after the matter was reserved for judgment,

except the subject matter of dispute i.e. procedure to be adopted for conducting demarcation after re- establishing the permanent boundary mark cannot be considered as the same are not raised before earlier Forums.

21. In view of the above, the appeal is dismissed.