

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10276 of 1988 (O&M)

Date of Decision: 29.01.2015

Tirlok Chand & Ors.

... Petitioners

VS.

Sarkhan & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE RAJ MOHAN SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. Amit Jain, Advocate for the petitioners

Mr. Sanjay Vij, Advocate for respondent No.1

Mr. RKS Brar, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) Though the matter was adjourned for impleadment of legal representatives of petitioner No.1 who was on the previous date(s) reported to have died, we do not deem it necessary to adjourn the case for their impleadment. We say so for the reason that all the three petitioners are sons of Luxmi Narain. The second and third petitioners being brothers of 1st petitioner can pursue the instant writ petition as all of them have common interest.

(2) The orders dated 18.12.1987 and 04.07.1988 passed by the Assistant Collector, First Grade Ferozepur Zirka and the Collector, Gurgaon, respectively are under challenge in this writ petition. Vide the first order, the Assistant Collector directed ejectment of the petitioners under Section 7 of the Punjab Village

Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana. The Collector, Gurgaon dismissed their appeal by way of the second order under challenge.

(3) It may be mentioned here that while ordering ejectment of the petitioners, the Assistant Collector imposed fine of ₹2000 per hectare per annum on them.

(4) When this writ petition came for preliminary hearing on 17.11.1988, the following order was passed on the statement of learned counsel for the petitioners:-

“The learned counsel states at the bar that there is no encroachment by the petitioners on the land in dispute. His only grievance is that since he is not in possession of the site in dispute, no penalty could be imposed on him.

Notice of motion only to the extent of penalty for 12.1.1989.

Recovery of fine stayed meanwhile.”(emphasis applied)

(5) It may thus be seen that the only relief sought in the instant writ petition is against the fine imposed by the Assistant Collector on the petitioners @ ₹2000 per hectare per annum.

(6) Subsequently, on May 25, 1989, the following order was passed:-

“Mr. SS Ahlawat, DAG, Haryana, states that the State is not contesting this petition. Mr. Vij has not filed any written statement on behalf of respondent No.1.

Admitted. Stay to continue till further orders.”

(7) The official respondents are not contesting the claim of the petitioners. Similarly, respondent No.1-complainant who had initiated the instant proceedings has also not filed any written statement.

(8) We have heard learned counsel for the parties and perused the record.

(9) It is apparent from the order passed by the Assistant Collector that there was a serious dispute with regard to the identity and location of the khasra no. said to have vested in the Gram Panchayat. It was only after fresh demarcation that the authorities found the petitioners in part possession thereof. It was thus not a case where the petitioners knowingly or forcibly occupied the Gram Panchayat land. It was a case of mistaken identity. That apart, the categorical stand taken by the petitioners before this Court that they are not in possession of the Gram Panchayat land, has gone unrebutted.

(10) In the light of these undisputed facts, we are of the view that there was no justification for the Assistant Collector to impose any fine on the petitioners.

(11) For the reasons afore-stated, the writ petition is allowed in part; the orders passed by the Assistant Collector and Collector Gurgaon to the extent of imposing fine @ ₹2000 per hectare per

annum are set aside though the petitioners' eviction from the subject land is maintained.

(12) Ordered accordingly.

(Surya Kant)
Judge

29.01.2015
vishal shonkar

(Raj Mohan Singh)
Judge