

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.552 of 2015.

Decided on:-23.01.2015.

Smt. Laxmi Devi.

.....Petitioner.

Versus

Khila Ram and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Present:- Mr. Bhag Singh, Advocate for the petitioner.

Dr. Bharat Bhushan Parsoon, J.

Aggrieved of order dated 7.1.2015 (Annexure P-1) passed by Additional District Judge, Sonapat (whereby allowing the appeal of defendants No.1 and 2, respondents No.1 and 2 herein, before removing the encroachment in the street, if any, made by defendants No.1 and 2, the lower court has been ordered to take necessary evidence to be sure that there is encroachment, in fact, existing on the municipal land) the plaintiff, petitioner herein, has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India by way of filing this civil revision petition.

2. It is worth notice that the lower court vide order dated 18.1.2014 (Annexure P-6) had ordered defendant No.3 Municipal Council, respondent No.3 herein, to proceed legally for removing the encroachment in the street, if any, made by defendants No.1 and 2 and was then to submit the report to the court concerned. The contesting private defendants No.1 and 2 had gone in appeal in which the impugned order (Annexure P-1) was passed. The petitioner-plaintiff is aggrieved of this order only on the ground that the Municipal Council has power to remove encroachment on the

municipal streets and calling for the evidence vide the impugned order, dilutes and dwarfs powers and stature of the Municipal Council.

3. If the Appellate Court has felt that determination of existence of encroachment on the public street is the first requirement which needs to be established before ordering for removal of the same, there is nothing wrong in it. Merely because the court has asked for the evidence should not be taken that such order dwarfs the domain and powers of the respondent Municipal Council. The impugned order is well-written, elaborate and does not suffer from any factual or legal error.

4. Keeping in view the totality of facts and circumstances as mentioned earlier, no ground to interfere with the impugned order dated 7.1.2015 (Annexure P-1) is made out; affirming the same, this petition, being devoid of any merit, is dismissed.

5. However, before parting with this judgment, it is made clear that compliance of the impugned order would be made by the lower court within one month from the date of receipt of certified copy of this order and the application under Order XXXIX Rules 1 and 2 CPC, if not decided yet, would be decided accordingly within the said stipulated time.

January 23, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes