

*IN THE HIGH COURT FOR THE STATES OF PUNJAB  
AND HARYANA AT CHANDIGARH.*

CWP No. 18165 of 1991. [O&M]  
Date of Decision: 17<sup>th</sup> November, 2015.

Bhagwan Singh

Petitioner through  
Mr. Som Nath Saini, Advocate

Versus

District Development & Panchayat Officer, Rupnagar & Ors.

Respondents through  
Mr. K.K.Gupta, Additional AG, Punjab.

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**CORAM: HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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- 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?**

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**SURYA KANT, J. [ORAL]**

The petitioner impugns the order dated 01<sup>st</sup> February, 1981 passed by Gram Panchayat of village Niholka, Tehsil Kharar, District Ropar whereby he was held to have encroached upon a public passage by raising construction, fully mentioned in the order. He was directed to demolish the construction; remove the structure within 30 days, failing which the Gram Panchayat was authorised to take further action under Section 23 of the Punjab Gram Panchayat Act, 1952. A fine of ₹50/- was also imposed upon the petitioner.

[2]. Feeling aggrieved, the petitioner preferred an appeal which was dismissed by the District Development and Panchayat Officer, Ropar vide order dated 24<sup>th</sup> July, 1991 [P-7]. Both these orders are under challenge in the instant writ petition.

[3]. It may be mentioned here that the above stated penal action was taken by the Gram Panchayat at the instance of

respondents No. 4 and 5 who are also inhabitants of the village. Both of them are reported to have died and are survived by their legal representatives who have not come forward to contest these proceedings.

[4]. This writ petition came up for preliminary hearing on 09<sup>th</sup> December, 1991 when it was noticed that respondents No. 4 and 5 had earlier filed a civil suit for Permanent Injunction against the petitioner and it was held therein that the disputed site is not reserved for common purposes. Unfortunately, the findings of the Civil Court were not taken notice of while passing the impugned orders by the Gram Panchayat or the Appellate Authority.

[5]. Despite persistent orders, the Gram Panchayat of the village has not come forward to contest these proceedings.

[6]. Ordinarily, we would have set aside the impugned orders in the light of the facts that [i] the findings returned by the Civil Court were not taken into consideration while passing the same and [ii] appropriate recourse for the Gram Panchayat was to initiate eviction proceedings under Section 7 of the Punjab Village Common Lands [Regulation] Act, 1961. However, such an order would necessarily mean that even if the petitioner has encroached upon the public passage which otherwise vests in the Gram Panchayat being *shamlat-deh*, yet the Gram Panchayat will not be able to initiate action against him in future.

[7]. In these circumstances, we allow this writ petition, set aside the impugned orders dated 01<sup>st</sup> February, 1991 and 24<sup>th</sup> July, 1991. However, this order shall not be construed as a finding on

merits with regard to encroachment of the public passage/title qua the disputed site. In other words, Gram Panchayat shall be at liberty to initiate appropriate proceedings, if so maintainable or advised and in accordance with law and the observations made here-in-above shall have no bearing on such proceedings.

[8]. Disposed of. Dasti.

( **SURYA KANT** )  
**JUDGE**

**November 17, 2015.**  
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( **P.B.BAJANTHRI** )  
**JUDGE**