

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7627 of 1994 (O&M)

Date of Decision:-17.12.2015.

Jage Ram (deceased) through his LRs

.....Petitioners

Versus

Commissioner, Gurgaon Division and others

.....Respondents

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

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. C.B. Goel, Advocate for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

Mr. Neeraj Gupta, Advocate for respondent No.5.

Mr. Arun Yadav, Advocate for respondent No.6.

SURYA KANT, J. (ORAL)

1.) The petitioners have laid challenge to the orders Annexures P-1, P-2 and P-3, which have been passed at the instance of the Gram Panchayat as well as private respondent No.6 who instituted an eviction application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 *inter alia* alleging that the petitioners have encroached upon a part of the public passage. The appeal, revision etc. against the eviction order were also

dismissed.

3.) The aggrieved petitioners came to this Court. *Ad interim* stay was granted and their dispossession was stayed.

4.) When this writ petition came up for final hearing on July 2, 2015, it was ordered by this Court that *prima facie* it appeared from the site plan that the petitioners had constructed the house by encroaching upon a part of *rasta* No.66 and a part of another old *rasta* (i.e. two public passages). On 24.7.2015, this Court passed the following order:-

“The dispute in the present case can be settled by ordering a demarcation of the plot in possession of the petitioners viz-a-viz Rasta No.66 and another old “Rasta” which abuts the plot.

The Tehsildar, Farrukh Nagar, District Gurgaon, is directed to determine the plot in possession of the petitioners viz-a-viz Path No.66 and another old “Rasta” that abuts the petitioner's land, in the presence of the parties and after issuing notice to them. The report to be submitted on or before the next date of hearing.

Adjourned to 19.9.2015.”

5.) In deference thereto, Tehsildar, Farrukh Nagar has placed on record the demarcation report dated 9.12.2015 duly supported with her affidavit reiterating the following:-

“The spot was visited and the demarcation was started after fixing points from north east corner of Killa no.10//4 north east corner of Killa no.10//5 north west corner of Killa no.16//11

and north east corner of Killa no.16//16 with the help of 100 feet inchi-tape (feeta) which was found to be correct. After considering the above said corners to be a base for demarcation, the demarcation of Khasra no.66 was carried out. The fixtures were pointed out and fixed on the spot. After the demarcation the following encroachments were found out which is as under:-

1 (a) Satbir Singh (b) Madan Lal (c) Baldev (d) Rajbir (e) Smt. Rajbala w/o Jaage Ram, petitioners encroached the Khasra No.66 by constructing his pucca residential house on the Northern side of rasta and by doing this he encroached 15.6 feet and petitioners encroached the Khasra no.66 by constructing his pucca residential house on the western side. By doing this he encroached 10.6 feet, i.e., $15.6' \times 10.6' = 165.36$ sq. feet.

2. Sarjeet S/o Gopal Singh made 3 feet encroachment on Eastern side and 2 feet encroachment on Western Side upon the rasta Khasra no.66, i.e.; $3' \times 2' = 6$ sq. feet.

3. Ram Kishan S/o Net Ram made 2 feet encroachment on the Eastern side of rasta Khasra no.66.”

6.) Though learned counsel for the petitioners wants to file objections to the demarcation report submitted by Tehsildar, Farrukh Nagar, we decline his prayer firstly for the reason that the demarcation report has merely re-confirmed the concurrent finding of fact and secondly, no question of fact need to be gone into by this Court in exercise of writ jurisdiction.

7.) In view of the latest demarcation report also, there can be no other conclusion except to uphold the impugned orders to the extent that the petitioners have been found to have encroached upon the public passage. The other interesting part of the report is that the complainant-respondent No.6 has also encroached upon a part of *khasra* No.66 though to the extent of 6 square feet only.

8.) Learned counsel for the petitioner relies upon some title-deed to claim ownership and/or status of a *bona fide* purchaser. Such a plea, in our considered view, must fail for the simple reason that when the subject-land is a public passage and vests in Gram Panchayat, no one else could sell or transfer it to the petitioner. It is not a case of even a defective title in favour of private individual.

9.) Faced with this, learned counsel for the petitioners relies upon the decision of this Court dated 17.9.2015 passed in **CWP No.13334 of 2014** titled **“Ram Chander Vs. Commissioner, Rohtak Division, Rohtak and others”** in which the scope and applicability of Rule 12 (4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (in short 'the 1964 Rules') as applicable the State of Haryana has been elaborately dealt with. The relevant part of the cited order is as under:-

“11. In Dalmer Singh's case supra, this Court strongly disapproved the policy formulated by the State Government for the sale of land to those who had unauthorizedly occupied the evacuee properties or Gram Panchayat land. It may be mentioned that Section 5 of

1961 Act deals with the manner in which the lands vested in Gram Panchayat are to be utilised. The Punjab Village Common Lands (Regulation) Rules, 1964 as applicable to the State of Haryana, have been notified to give effect to the provisions of 1961 Act. Rule 12 of these Rules deals with “purposes for which land may be sold.” Sub rule (4) of Rule 12, which has been amended vide notification dated November 14, 2011 i.e. much after the pronouncement of the above-cited decisions, reads as follows:

“The Gram Panchayat may with the prior approval of the State Government, sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate, floor rate or market rate, whichever is higher.”

12. The spirit of the above reproduced rule is that a Gram Panchayat with prior approval of the State Government may sell its non-cultivable land to the inhabitants of the village who have constructed their houses on or before March 31, 2000 subject to the condition that such construction does not obstruct the traffic and passers-by and subject to further condition that the land to be sold, can be upto a maximum of 200 square yards and at no t less than the Collector rate, floor rate or market rate, whichever is higher.”

10.) In the light of the above discussion and having regard to

the scope of writ jurisdiction to interfere with a finding of fact, we do not find any ground to interfere with the impugned orders. However, following the view taken by this Court in **Ram Chander's** case (supra), the instant writ petition is disposed of with liberty to the petitioners and respondent No.6 to approach the Gram Panchayat, subject to their fulfilling the eligibility conditions prescribed under Rule 12(4) of the 1964 Rules. In case the petitioners and respondent No.6 satisfy the requirements of the said Rule, the Gram Panchayat may consider the desirability of selling the occupied land provided that the encroachment made by them does not cause any hindrance in the flow of traffic or use of the public passage. An appropriate decision shall be taken within a period of three months from the date of submission of application(s) by petitioners or private respondent No.6. If the petitioners and respondent No.6 do not fall within the purview of Rule 12(4) of the 1964 Rules, the subject encroachment shall have to be removed within a period of four months thereafter.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

December 17, 2015.

sandeep sethi