

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

Civil Writ Petition No.11626 of 2002

Date of decision:11.02.2015

Ranjit Singh son of Shri Jagroop Singh, resident of Mubark Mehal Colony, Sangrur; now at House No.2163, Phase 10, SAS Nagar (Mohali), District Ropar (Punjab).

... Petitioner

versus

State of Punjab through Deputy Commissioner, Sangrur, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.S. Khaira, Senior Advocate,
with Mr. D.S. Randhawa, Advocate,
for the petitioner.

Ms. Vandana Malhotra, Additional Advocate General,
Punjab.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petitioner has a contention that he is an agreement-holder from one Satbir Singh having entered upon possession of the property of an extent of 2 kanals in Khasra No.394 min at Sangrur described by the respondents as an 'inspection hut'. The petitioner's contention was that he was thrown out of the building and he has to be restored to the possession of the property. It appears that the petitioner's own vendor had filed a suit with reference to a larger

extent of property including the property claimed by the petitioner in Civil Suit No.138 of 1982 against the State of Punjab and obtained a decree for declaration and injunction in respect of whole of the property. The decree was tested upto this court in RSA No.2877 of 1996 and the State's appeal claiming the property to be its own was rejected through a judgment delivered on 23.09.2009, the copy of the judgment is filed as Annexure P-6. The petitioner's claim for being put back in possession is resisted by the State on a plea that the petitioner's possession was never admitted. On the other hand, the petitioner used to make sporadic attempt to enter upon the property and keep some of the belongings and the respondent had even issued a notice on 20.03.1998 asking the petitioner to vacate the inspection hut and also deposit ₹1,40,400/- for using the government building. The respondents would file reply stating that they had themselves constructed the inspection hut and the petitioner cannot claim the property as his or he has a right to claim the property as an agreement-holder.

2. It is a fundamental precept that possession is nine points in law and a person in possession cannot be disturbed otherwise than by a true owner who has a right to possession but I have no doubt in my mind that the petitioner's possession has been admitted in the written statement although qualified to the effect that the petitioner's possession was sporadic and that the building had been constructed

by the Forest Department. The claim for damage of over a lakh by the respondent through a notice ought to be taken as an admission of the petitioner's possession and if there is a characterization that the petitioner's possession is sporadic, I will only take it to be an attempt at clever pleading to deny the petitioner of his claim to restoration of possession. If the petitioner's vendor had obtained a declaratory decree in respect of all the items of property including the property claimed by the petitioner to be in his possession, then his possession ought to be restored irrespective of whether he had a lawful title of the property or not. This is not a case that would require an adjudication on title but if the petitioner would require to be supported, it is on the basis of his previously admitted possession and the act of dispossession of the respondent without recourse to law. I direct the property to be restored in the petitioner's possession in the extent of 2 kanals in Khasra No.394 min in Sangrur at the property identified as "inspection hut", within a period of 2 weeks from the date of receipt of copy of this order. The counsel for the State seeks for longer time which I decline, because there is no justification at all for the petitioner being denied the right of re-entry to a land where the State's own assertion to title has been denied by judgment of this court as early as in the year 2009. I will make no adjudication on the damages payable for the denial of his right to be in possession and I leave it to the petitioner to work out a right in an

independent civil action. The defence of Order 2 Rule 2 CPC shall not be set up, since this court has not assessed damages only because this is not appropriate forum for such an exercise.

3. The writ petition is allowed with costs assessed at ₹25,000/- awarded against the State for its unlawful act. Needless to state that this order is passed on the basis of records available and if there is any order of the Supreme Court against the decision of this court in RSA and any interim order has been passed, this decision must be taken as suborned to such decision as the Supreme Court may have passed.

(K.KANNAN)
JUDGE

11.02.2015
sanjeev