

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

CWP No.14680 of 2015

Date of Decision: 20.08.2015

Dharam Pal

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.O.P. Goel, Sr. Advocate, with
Ms.Shamita Kaushik, Advocate,
for the petitioner.

Mr.S.S. Dinarpur, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 12.5.2011 (Annexure P-9) passed by the Collector, Thanesar on an application filed under Sections 4 and 5 of the Punjab Public Premises Act, 1973 [for short 'the Act'] by respondent No.5, order dated 2.6.2014 again passed by the Collector, Thanesar and order dated 24.3.2015 passed by the Commissioner, Ambala Division, Ambala.

The case set up by the petitioner is that he has purchased an old built up house having an area of 216.66 sq. yards from Usha Rani wife of Ashok Kumar by way of a registered sale deed dated 31.8.2010. Respondent No.5 filed a suit for mandatory injunction against Kasturi Lal Bhatla, Amrit Lal Bhatla and the petitioner, alleging that the respondents in the suit have illegally encroached upon some area of the road of the Town Planning Scheme [TPS] No.5. The trial Court did not grant temporary injunction and dismissed the application of respondent No.5 vide its order dated 6.9.2010. However, in appeal the parties to the *lis*, in

the civil suit, unanimously resolved that the land in dispute can be demarcated through the District Town Planning [DTP] in the presence of both the parties i.e. the Municipal Council and the plaintiff. Accordingly, the Appellate Court directed the parties to get the demarcation through DTP, Kurukshetra, who was further directed to get the disputed site demarcated in view of TPS No.5. The DTP, Kurukshetra submitted his report, thereafter, the application filed by respondent No.5 for temporary injunction was dismissed as withdrawn on 20.12.2010. Thereafter, respondent No.5 filed a petition under Sections 4 & 5 of the Act against Parveen Kumar and Municipal Council, Thanesar on 22.4.2010 because at that time the petitioner was not in picture as he had purchased suit property on 31.10.2010. The said application was allowed by the Collector vide impugned order dated 12.5.2011. Since, it was going to affect the rights of the petitioner vested in the disputed property, therefore, he filed an application for seeking review of the order but the said application was dismissed by the Collector, Thanesar on 8.12.2011 on the ground that the application for review was not maintainable. The petitioner thus, filed an appeal before the Commissioner, Ambala Division, Ambala, which was disposed of by him on 3.10.2012, with the following order: -

“Both the parties, the appellant as well as the respondents admit the TP Scheme and both the parties are agreed for demarcation taking the existing street building line and TP scheme as basis. In these circumstances the order passed by the Collector is set aside and the case is remanded to SDO (Civil)-cum-

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Collector, Thanesar with a director to carry out the demarcation from District Town Planner by taking the existing building line and TP Scheme as basis after giving notice to Municipal Council and the concerned parties and thereafter both the parties be provided opportunity to produce their respective evidence and thereafter, the case be decided afresh on the basis of merits.”

The demarcation was ultimately carried out by the DTP on 4.6.2013 along with the Executive Engineer of the Municipal Council and it was observed by him that *“thus, it came to be decided by the officers/employees and other persons present at the spot that the boundaries of the disputed plot of Dharampal which has been shown in red colour in TP scheme No.5 Drawing No.DTP(KU)46/ 74 are correct as per the aforesaid scheme.”*

The aforesaid demarcation was challenged by respondent No.5 and Municipal Council by filing objections, the matter was then decided by the Collector vide his order dated 2.6.2014. The relevant portion of his order is as under: -

“After hearing the parties and the learned counsel it was decided that the spot of the disputed land will be inspected by Collector Thanesar himself (orders of Commissioner, Ambala Division) whether there is street on the spot or not.

The parties were informed on telephone for spot inspection. The undersigned alongwith

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patwari reached on the spot of disputed land. In the presence of the parties the spot was inspected and it was found that the disputed land is a part of street on which a wall of 12ft x 65ft has been illegally constructed which is land vested in the Municipal Council and has been unauthorisedly occupied. No one has any right to unauthorisedly occupy the street land. The unauthorised possession is directed to be ejected with immediate effect and Municipal Council is directed to get the unauthorised possession removed from the street land according to rules.”

The petitioner challenged that order before the Commissioner, Ambala Division, Ambala, which was dismissed with the following order: -

“I have heard the arguments of the counsel for the parties and has also examined the facts on record. The facts on record makes it clear that respondents No.1 to 3 filed objections on report of District Town Planner whereafter Collector inspected the spot of the disputed land and on the spot inspection the possession of present appellant was found unauthorized on the public street. In the TP Scheme the disputed land is a public street. According to rules no person has any right to unauthorisedly occupy the public street. In

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my opinion the orders of the Court below are legal and no interference is needed in the same.”

Learned counsel for the petitioner has argued that there is a fallacy in the approach of the Collector while deciding the objections or the *lis, inter se* the parties, in regard to unauthorised occupation/construction by the petitioner as alleged by respondent No.5. It is submitted that the Collector could not have decided the issue merely by way of a spot inspection as the matter involved demarcation of the site which has been duly carried out none less than by the DTP in the presence of Xen of the Municipal Council and the Commissioner has also passed the order without referring to the argument raised by the petitioner in regard to the validity of the report of the DTP and relied upon the spot inspection made by the Collector. The petitioner has thus, filed the present petition in which respondent No.5 being an interested parties, is on caveat.

After a detailed discussion in the Court, both the parties, namely, the petitioner and respondent No.5 are *ad idem* that the impugned orders may be set aside and the fresh demarcation may be carried out by the DTP, Kurukshetra but in the presence of an Advocate of this Court, who may be appointed as Local Commissioner as the allegation of respondent No.5 is that the DTP has not taken measurement/demarcation of the land in dispute but of some other street.

Learned counsel for the petitioner has not raised any objection in this regard as he is quite confident about the report of the DTP.

After hearing learned counsel for the parties but without making any observations on merits, the present petition is hereby allowed and the impugned orders are set aside. The matter is remanded back to the Collector, Thanesar to decide it afresh after obtaining the report of the DTP in regard to the demarcation of the site in dispute.

The DTP, Kurukshetra is further directed to demarcate the site in dispute in the presence of the Executive Engineer of Municipal Council, both the parties and the Advocate, who is being appointed as Local Commissioner in this Case.

Mr.Arvind Galav, Advocate, who is present in Court, is appointed as Local Commissioner in this case, who shall inspect the spot and submit his report as well about the proceedings of the demarcation before the Collector, Thanesar.

The fee of the Local Commissioner is assessed at ₹25,000/- with ₹5000/- as expenses, which shall be borne by the petitioner. The amount of the expenses, borne by respondent No.5, shall have to be paid in advance to the Local Commissioner before he goes for inspection. The DTP, Kurukshetra shall also inform the Local Commissioner as well as the parties about the date and time on which he would inspect the spot.

The parties are directed to appear before the Collector, Thanesar on 1.9.2015.

20.08.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**