

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

CWP-20252-2014

Decided on : 04.05.2015

Dharam Chand

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.Sumit Sangwan, Advocate, for the petitioner.**

**Mr.D.Khanna, Addl.A.G., Haryana,
for respondents No.1 and 2.**

Mr.Azad Singh, Advocate, for respondents No.3 and 4.

RAJIVE BHALLA, J.

The petitioner prays for issuance of a writ of certiorari, quashing orders dated 23.03.2011 and 24.09.2013, passed by the Assistant Collector, Ist Grade-cum-District Development and Panchayat Officer, Camp at Charkhi Dadri and the Collector, Bhiwani, respectively.

Counsel for the petitioner submits that the land, in dispute, is situated within the “Lal Dora”, is part of the Abadi Deh of the village and is in the petitioner's possession, since long. The petitioner has been using the land as a manure pit, bara, gitwar etc. A perusal of the site plan (Annexure P-4) and the Aks-Sijra (Annexure P-6), reveals that the passage ends at plot No.302. The

private respondents, who filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana), want a short-cut to their land. The Assistant Collector, Ist Grade, has allowed the application by ignoring that the land is situated within the “Lal Dora” and that the private respondents have failed to prove that passage No.307 passes through the land in occupation of the petitioner.

Counsel for respondents No.3 and 4 submits that a perusal of the site plan (Annexure P-4), produced by the petitioner, proves that the petitioner has blocked common passage No.307 at point “GH”. The blockage at point “GH” links passage No.307 to a cemented street. The petitioner has also encroached upon land abutting the cemented passage which was neither allotted to the petitioner nor does he have any right, title or interest, in this land.

Counsel for the Gram Panchayat-respondent No.5 has not filed any reply despite opportunity but states that the writ petition may be decided on merits.

We have heard counsel for the parties, perused the impugned orders as well as the documents appended with the writ petition.

Narender, son of Sh. Ran Singh and Ram Pal son of Amrat Singh, residents of the village, filed an application under Section 7 of the Act, for removal of the petitioner's unauthorised occupation over parts of two common passages. The Assistant

Collector, Ist Grade, after granting adequate opportunity to parties and considering a report filed by the Block Development and Panchayat Officer, held that the petitioner has encroached upon a part of common passages and directed his eviction from the area marked as “EFHGDA”, within thirty days. The petitioner filed an appeal which has been dismissed by the Collector, Bhiwani by holding that the petitioner is in unauthorised occupation of a part of a common passage and a part of a street.

Section 2(g) of the Act, postulates that land falling within the Abadi Deh of a village shall be excluded from Shamilat Deh. Section 2(g)(4) of the Act, however, declares that the land used or reserved for the benefit of the village community including streets, lanes, playgrounds etc. shall be included in the Shamilat Deh of a village. This apart, Section 2(g)(4a) of the Act declares that vacant land within the Abadi Deh or Gorah Deh of a village, not owned by any person shall be included in the Shamilat Deh of a village.

A perusal of the site plan (Annexure P-4) and the Aks-Sijra (Annexure P-6) and other relevant documents do not enable us to hold that findings of facts recorded by the Assistant Collector Ist Grade, Charkhi Dadri and the Collector, Bhiwani, are in any manner, illegal or without jurisdiction. The site plan (Annexure P-4), reveals that common passage No.302 leads to a cemented street but has been blocked by the petitioner at point “GHAD”. The petitioner is also in occupation of vacant land, which may be a part of a cemented street

that abuts his house.

The land, in dispute, as referred to earlier, is part of a passage that connects passage No.302 to a cemented street. The other encroachments by the petitioners are on vacant land that abuts the cemented passage. The encroachments, in our considered opinion, would be included in the Shamilat Deh of the village under Section 2(g)(4) and 4A of the Act. The petitioner may have been using the land for storing cow dung and fodder etc., but mere user does not translate into an indefeasible possessory or proprietary right so as to exclude the land from the Shamilat Deh of the village.

Consequently, finding no merit, the writ petition is dismissed but with liberty to the petitioner to approach the Gram Panchayat for purchase of the vacant land i.e. land other than land which connects passage No.302 to the cemented street by way of an appropriate application under Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to the State of Haryana), if permissible in law.

[RAJIVE BHALLA]
JUDGE

04.05.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE