

Civil Writ Petition No.24923 of 2014
Date of Decision: *September 14, 2015*

Sant Ram

..... PETITIONER(S)

VERSUS

Commissioner, Ambala Division, Ambala & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
 HON'BLE MR. JUSTICE JASPAL SINGH

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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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PRESENT: - Mr. N.D. Achint, Advocate, for the petitioner.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

Mr. Bhag Singh, Advocate, for respondent No.4.

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Surya Kant, J (Oral)

1. The petitioner alongwith proforma respondents are aggrieved by orders dated 31.5.2012, 20.11.2013 and 9.9.2014 (P-4 to P-6, respectively) ordering them to be evicted from two khasra numbers viz. Khasra Nos.131 (0-4) and 132 (0-2) within the revenue estate of village Landi, Tehsil Thanesar, District Kurukshetra.

2. When this case came up for hearing on 27.7.2015, the following order was passed:-

“Counsel for the petitioner states that in case the Gram Panchayat (respondent No.4) consider the petitioner's claim with respect to Gair Mumkin Bara in Khasra No.131, the petitioner shall vacate his possession over Khasra No.132.

Before the Gram Panchayat considers the petitioner's request, the petitioner shall file an affidavit that he has vacated possession over Khasra No.132.

Adjourned to 04.08.2015.”

3. On 4.8.2015, learned counsel for Gram Panchayat informed that the petitioner had not demolished the wall constructed in Khasra No.132 and he continues to throw cow dung at the site. Learned counsel for the petitioner then gave an undertaking that the wall will be demolished and cow dung will be removed.

4. While petitioner was claiming that the wall stands demolished and encroachment has been removed, learned counsel for Gram Panchayat controverted the same. This Court, therefore passed the following order on 11.08.2015:-

“The controversy pertains to two khasra numbers bearing Nos.131 and 132. Both these khasra numbers were in possession of petitioner. The Gram Panchayat claimed the land of both the khasra numbers to be *shamlat deh*. The petitioner, on the previous dates, agreed to vacate possession over Khasra No.132 and Gram Panchayat was inclined to consider his claim qua Khasra No.131.

The petitioner has, today, filed an affidavit showing that he has vacated Khasra No.132 and that, there is no impediment against utilization of Khasra No.132 by the Gram Panchayat as a public passage and/or otherwise.

Counsel for respondent No.4 – Gram Panchayat, however, disputes petitioner's claim. In such a situation, when parties appear to be contesting against each other on a non-existent issue, we direct BDPO, Shahbad, to visit the site and get Khasra No.132 cleared from any obstruction/encroachment in his presence. The possession of Khasra No.132 shall be handed over to Gram Panchayat without any such obstruction etc. On doing so, Gram Panchayat is directed to consider petitioner's claim for

retention of Khasra No.131 which is said to have been purchased from Budhu son of Ladha, who was a *gair marusi*.”

5. In deference thereto, the Block Development and Panchayat Officer, Shahabad, Kurukshetra has sent a report dated 12.9.2015, the relevant part of which is extracted below:-

“Total area of 132 is approximate 60 yds. only 7 sq.yds which is illegally occupied by Des Raj and it form ‘A’ right angle triable shape of Des Raj House has not been got cleared. If this 7 sq. yds area has been demolished the strong suspicion is there of demolition of his full house of 170 sq.yds. It will cause him a great loss. In this situation there is no obstacle or any obstruction on khasra No.132.”

6. Learned counsel for Gram Panchayat though admits that encroachment from Khasra No.132 was removed and its vacant possession was handed over to the Gram Panchayat but he alleges that petitioner or proforma respondents are still throwing the garbage/ cow-dung at the site. The petitioner has denied these allegations.

7. It does appear from the report of BDPO that petitioner or the proforma respondents are still disturbing the Gram Panchayat from enjoying peaceful vacant possession of Khasra No.132.

8. At the same time, we do not deem it necessary to keep these proceedings pending on this short issue. We thus dispose of this writ petition with a restraint order against petitioner and proforma respondents or any other interested person that they shall not cause any hindrance or obstruction at Khasra No.132 which shall be used as a public passage and stands vested in the Gram Panchayat for all intents and purposes. In the event of any encroachment or

obstruction caused by the petitioner, proforma respondents or anyone else, the BDPO shall be at liberty to take action against them forthwith.

9. The Gram Panchayat, in the light of the previous stand taken before this Court, will consider the claim of petitioner to retain Khasra No.131 and shall forward its resolution for further consideration of the Competent Authority. Meanwhile, status-quo re: Khasra No.131 shall continue to be maintained till the decision is taken by the Competent Authority.

(Surya Kant)
Judge

(Jaspal Singh)
Judge

September 14, 2015
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