

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

**CR No.4766 of 2016
Date of Decision-16.09.2016**

Bahadur Singh and others ... Petitioners

Versus

Baljinder Singh and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.K. Aurora, Advocate for the petitioners.

Mr. Pankaj Jain, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Challenge in this revision petition is to the order dated 23.05.2016 passed by Additional District Judge, SAS Nagar, Mohali whereby order dated 02.12.2015 passed by Civil Judge (Junior Division), Mohali was set aside and the defendants were restrained from raising any construction in any part of the public street shown by letters 'ABCD' as well as 'EFGH'. Defendants were further restrained from raising construction in the public chowk during pendency of the suit.

[2]. Plaintiff filed a suit for permanent injunction seeking to restrain the defendants/petitioners from raising any construction on the part of the public street shown by letters 'ABCD' and 'EFGH' in the site plan. Further restraint was sought against the defendants from constructing and changing the nature of public street and public chowk situated in the north, east and west of the house of defendants. Mandatory injunction was also sought, directing the defendants to remove and demolish the construction raised over

the part of public street shown by letters 'ABCD' and further illegal construction raised over this part by putting lentil and further to remove and demolish stairs constructed at village chowk shown by 'IJKL' and further to restore the area 'EFGH' to its original position. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was filed for ad interim injunction.

[3]. Trial Court passed an order dated 02.12.2015 on the premise that plaintiffs have failed to show a *prima facie* case in their favour. Gram Panchayat was not impleaded in the suit, nor the Gram Panchayat had come forward to depose against the defendants or otherwise. Illegal construction or encroachment, if any done by the defendants would be appreciated by the trial Court at the time of final conclusion and the encroachers can be ordered to demolish the construction at their own expenses. Therefore, application for injunction was rejected.

[4]. Lower Appellate Court reversed the order passed by the trial Court and restrained the defendants from raising any construction in the part of public street as shown by letters 'ABCD' and 'EFGH'. Defendants were further restrained from raising construction in the public chowk as prayed by the plaintiffs vide order dated 23.05.2016.

[5]. Defendants have filed this present revision petition and asserted that they have constructed the wall and other construction on the same plinth as was in existence earlier.

[6]. At the time of preliminary hearing on 29.07.2016, following order was passed by this Court:-

“Learned counsel for the petitioners contends that petitioners have already constructed their house after leaving some portion towards the public street. Construction of boundary wall in the front courtyard is in offing for which building material is lying on the spot. This boundary wall is also sought to be erected on the same plinth as was existing. Learned counsel has filed an affidavit that ultimately, if the area underneath this boundary wall is found to be a public street, petitioners will demolish the wall at their own cost and responsibility and will not claim any compensation. The undertaking by way of affidavit dated 28.07.2016 is taken on record.

Notice of motion for 24.08.2016. Dasti as well.

To be shown in urgent list.

Liberty is also granted to the petitioners to serve the respondents through their counsel appearing before the trial Court.”

[7]. I have heard learned counsel for the parties.

[8]. During the course of hearing, it transpired that both the parties have alleged allegation and counter allegation of encroachment over public street. Both the sides have shown certain photographs showing that the encroachments have come in the public street in a very big way. Though such photographs cannot be taken cognizance of at this stage, but one thing is apparent that inhabitants of the village have tried to reduce area of

public street by way of constructing wall, stairs case and ramp etc in the public street. Even in some photographs, cantilevers and other over hanging superstructure have been erected in order to connect opposite house on the first and second floor. In a way, roof has been laid on a public street.

[9]. At this juncture, Court is not in a position to appreciate all these allegations and counter allegations. Learned counsel for the petitioners stressed upon his undertaking that he is going to construct the wall on the already existing plinth towards his house and does not intend to construct any part of the public street and also does not wish to construct first floor over any part of the public street in any manner. Even if, any area is ultimately found to be existing in the area of public street, they shall demolish their wall and other construction at their own costs and will not claim any compensation in lieu thereof. On 29.07.2016, an undertaking by way of affidavit was also filed in this Court by the petitioner.

[10]. In view of aforesaid, I deem it appropriate to allow the petitioners to construct the boundary wall on already existing plinth without encroaching upon any area of public street and raised construction over first floor without there being any hanging superstructure or cantilever on any part of the area falling in the public street. Information related to public grievance has been disclosed by both the sides. Gram Panchayat has not been impleaded in the present revision petition. I deem it appropriate to

direct the trial Court to implead Gram Panchayat, Mauli Baidwan, Tehsil and District Mohali and Block Development and Panchayat Officer, SAS Nagar, Mohali to be parties respondent in the suit. Gram Panchayat and Block Development and Panchayat Officer (BDPO) shall undertake assignment to demarcate the public street in question and if anyone is found to have encroached upon the public street in any manner, lawful proceedings would be initiated against such encroachers.

[11]. The undertaking given by the petitioner for the purposes of disposal of this revision petition is accepted in the aforesaid manner. This revision petition is also disposed of in view of facts already recorded.

(RAJ MOHAN SINGH)
JUDGE

16.09.2016
Prince

Whether reasoned/speaking

Yes/No

Whether Reportable

Yes/No