

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23286 of 2015 (O&M)

Date of Decision: 21.04.2016

Ramphal & Anr.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE A.B. CHAUDHARI

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?

Present: Mr. Chanderhas Yadav, Advocate for the petitioners

Mr. Vishal Garg, Addl. AG Haryana

Mr. Kulvir Narwal, Advocate for respondent No.5

SURYA KANT, J. (Oral)

(1) The petitioners are real brothers and residents of Village Bambuliya, Tehsil Matanhail, District Jhajjar. They have laid challenge to the orders dated 21.09.2012, 26.03.2013 and 25.06.2015 (P9, P11 & P13) of the Assistant Collector First Grade, Collector and the Appellate Authority, respectively passed under Section 7 of the Punjab Village Common Land (Regulations) Act, 1961 as applicable to the State of Haryana whereby the petitioners were found to have encroached upon a part of the public street and have been consequentially ordered to be evicted. It may be mentioned here that the authorities carried out the demarcation of public street twice and as per both the reports, the petitioners were held to have encroached upon a part of the public street.

(2) When the aggrieved petitioners approached this Court, the following order was passed on November 19, 2015:- 1 & 3

“The petitioners have been found to have encroached upon a part of public street to the extent of one feet towards North and 8 feet towards South. The eviction orders thus have been passed on the basis of demarcation report submitted by Tehsildar, Matanhail, District Jhajjar. There was yet another demarcation report reiterating the encroachment by petitioners. As the petitioners have questioned those demarcation reports, an option was given to them to bear the expenses of the Local Commissioner under whose supervision a fresh demarcation can be carried out.

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In this view of the matter, let notice of motion be issued to the respondents for 19.01.2016.”

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“Sh.S.N.Gaur, Advocate, is appointed as Local Commissioner. The Deputy Commissioner, Jhajjar is directed to constitute a team of three revenue officers/officials comprising (i) Tehsildar, (ii) Field Kanungo and (iii) Halqa Patwari who shall carry-out fresh demarcation after notice to the parties and in the presence of Local Commissioner, on the basis of Map Book and/or Map of Lal Dora, if any available. The B.D.P.O., Matanhail shall also remain present alongwith Map Book...”

(3) In deference to the above-stated order, learned Local Commissioner has submitted a comprehensive report, the relevant extracts whereof are to the following effect:-

4. That in view of above peculiar facts, actual measurement of the disputed property i.e. the street and the houses therein, was done by Field Kanungo and B.D.P.O., in my presence and in the presence of persons present at the spot. The detailed report is as under:-

That there is a metalled road, running from west to east, existing on the northern side of the abadi of village Bambuliya, as is shown in the Map Annexure A-1, attached herewith the report. The land between metalled road and house of petitioner Ramphal, is lying open and vacant. The dispute pertains to southern portion and wall of house of petitioner Ramphal, which are alleged to be an encroachment of the street between the Points AB, highlighted in red colour in the Map Annexure A-1, which falls in the northern side of the street marked ABCDEFGHIJ, depicted in the yellow colour. The street marked XCDEFGH is pacca one (concrete built) while the street marked ABXHIJ is kacha one one and kacha Nali, shown in blue colour in Map Annex.A-1, is running in the street.

The width of street marked ABCDEFGHIJ is not uniform, as shown in the Map-Annex.A-1. The width of the street at point B is decreased by about one feet by constructing pacca wall. The portion between Points HI, measuring about 40 feet, shown in the dotted line in the map, i.e. the land on opposite side of

the house of petitioners, is lying vacant and there is no wall demarcating it from the street. There exists old pacca wall demarcating the street between points IJ and this pacca wall has also decreased the width of the street because this wall is not in straight line with the straight walls of other houses existing between points HG. The pacca wall existing between points J & I is older than the wall existing between points A&B. The width of the street between points ABHIJ is less than the width of the street between points BCDEFGH, as shown in the Map Annex.P-1.”

(4) We have heard learned counsel for the parties at a considerable length and perused the site plan (A1) appended with the report of Local Commissioner. We have no reason to doubt that the findings returned by the authorities vide impugned orders to the effect that the petitioners have encroached upon a part of the public street to the extent of 1 feet at Point-B or that their encroachment keeps on increasing till the street reaches at Point-A, is based upon correct demarcation at the spot and thus the directions for eviction from the encroached part of the street is fully justified.

(5) It may be true that the width of the street is not consistent as at one point the width is 11.10 ft. while the maximum width at another point is 14.5 ft. However, the width of the street immediate before the petitioners' house is 12.7 ft. but it stands reduced to 8.5 ft in front of the middle of the petitioners' house. It further appears that the width of the street has been reduced in front of point-A and Point-J in the site plan.

(6) The petitioners may be right in contending that part of the encroachment is attributable to the residents who have constructed houses in front of the petitioners' house but that plea does not in any case justify the encroachment made by the petitioners. Such allegations, nevertheless must remind the Gram Panchayat its obligation to take appropriate action against the encroachers.

(7) For the reasons afore-stated, we decline to interfere with the impugned orders. The petitioners are granted *four months'* time to reconstruct the front wall of their house leaving the encroached area as per the report of the Local Commissioner. The Gram Panchayat shall ensure that appropriate action is taken at the earliest against other encroachers of the public street also.

(8) Ordered accordingly.

(Surya Kant)
Judge

21.04.2016
vishal shonkar

(A.B. Chaudhari)
Judge