

In the High Court of Punjab and Haryana at Chandigarh

CWP No.25081 of 2015

Date of decision: January 28, 2016

Mohar Singh

..... Petitioner

Versus

DC-cum-Collector and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. N.S. Shekhawat, Advocate for the petitioner.

Ms. Kirti Singh, Deputy Advocate General, Haryana.

SURYA KANT, J.

The petitioner has laid challenge to the order dated 26.02.2013 passed by the Deputy Commissioner-cum-Collector, Narnaul whereby on acceptance of the appeal filed by the Gram Panchayat, he has been ordered to be evicted under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') as applicable to State of Haryana. The finding returned is that khasra No.110, which is located outside Abadi Deh is entered in the revenue record comprising the jamabandi for the year 2008-09 as Gair Mumkin Rasta (public passage). The petitioner is alleged to have encroached upon a part of the above-stated khasra number. Hence, the Gram Panchayat of his village Pawera Tehsil Narnaul filed the eviction petition under Section 7 of the Act. The Assistant Collector, Ist Grade, Narnaul dismissed the eviction petition

observing that though khasra no.110 is admittedly a public passage but the petitioner has constructed the house before 12.02.1981 and there was no obstacle caused in the employment of the public passage, hence, he was not liable to be evicted.

The Collector vide the impugned order dated 26.02.2013 has reversed the findings on the basis of two different reports of Local Commissioners dated 22.02.2012 and 03.05.2012 according to which the petitioner was found to have encroached upon a part of the public passage. Against the later report, the petitioner did not file any objections also.

It may be mentioned here that the encroachment has since been removed and the construction raised by the petitioner stands demolished.

Be that as it may, when this case came up for preliminary hearing on 02.12.2015, one of the options could be to dismiss the writ petition on the ground of delay and laches as the petitioner chose to approach the Court after more than 2-1/2 years. Yet the writ petition was entertained in the interest of justice and an option was given to the petitioner to bear the expenses of Local Commissioner under whose supervision third time the demarcation could be carried out. The petitioner has declined to avail that option. We thus proceed to decide the matter on the basis of material on the record.

Heard learned counsel for the parties.

In our considered view, the Assistant Collector, Ist Grade mis-construed the definition of 'Shamlat Deh' as contained in Section 2(g)(4) of the 1961 Act as according to this Clause the lands 'used' or 'reserved' for the benefit of village community including 'streets', 'lanes' etc are included in *Shamlah Deh*. There is no material alteration was made in the said definition w.e.f. 12.02.1981 vide Haryana Act No.02 of 1981. Only Clause 4(a) was added whereby 'vacant land situated in *Abadi Deh* or *Gorah Deh* not owned by any person' was also included within the ambit of *Shamlat*

Deh. Thus mis-conceived and erroneous approach led the Assistant

Collector Ist Grade to believe that the house constructed on a public street prior to 12.02.1981 was exempted or excluded from the definition of *Shamlat Deh*.

Further, two Local Commissioners, both government officials, in their separate demarcation reports have held that the petitioner has encroached upon a part of the public passage. Khasra No.110 undisputedly is recorded as *Gair Mumkin Rasta*. It admittedly vests in the Gram Panchayat. Any encroachment made thereupon is liable to be removed through summary process under Section 7 of the Act.

Under these circumstances, no case to interfere with the impugned order passed by the Collector is made out.

Dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

January 28, 2016
jt