

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.6099 of 2014
Date of Decision: February 15, 2016

Didar Singh and another

....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Anil K. Ahluwalia, Advocate, for the petitioners.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.NPS Mann, Advocate, for respondent No.6.
Mr.Umesh, Advocate.

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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?*

Surya Kant, J. (Oral)

The instant writ petition is directed against the order dated 20.02.2014 passed by the Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'). Vide the impugned order, the appeal filed by respondent No.6 in the eviction proceedings initiated by the Gram Panchayat under Section 7 of the Act, was allowed and the order passed by the Collector has been set-aside.

It is apparent from the Collector's order that the genesis of the dispute lies in an alleged encroachment made in the street as per the site-plan ABCDE within the lal lakir of the village, for which eviction petition was filed. The Collector accepted the petition holding that respondent No.6 has

encroached upon a portion of the street.

The Appellate Authority has allowed the appeal of respondent No.6 on the premise that he was allotted a plot measuring 10.22 marla whereas on measurement at the spot, the size of his plot has been found to be 9.62 marla only, namely, there is a shortage of 0.6 marla. The Appellate Authority has thus impliedly concluded that when the area in possession of respondent No.6 is less than what was allotted to him, there arises no occasion for him to encroach upon any part of the street.

The above-stated finding however does not answer the main issues that arose for consideration. Some of the questions which need to be answered are; (i) whether there exists a street or not? (ii) if so, what was the original sanctioned or approved width and length of the street? (iii) whether size of the street varies at the spot if compared with its original length and width? and (iv) if so, who are the persons who have encroached upon the part of the street?

Needless to say that if all the questions are answered in the same sequence, the encroacher(s), if any, can be identified and appropriate directions for eviction are inevitable. It will also be relevant at this stage that on our directions, the D.D.P.O., Roopnagar has filed his affidavit explaining that there is no Field Book or Masavi available with the revenue authorities but on spot-measurement he has found as follows:-

“....3. That the deponent visited the spot and found that the said street begins at 4 feet 7 inches wide from the house of Didar Singh son of Mohinder Singh and is about 4 feet 2

inches wide in the middle and then at the Gate of the respondent No.6 is about 5 feet 2 inches wide.....”

It may be seen that the size of the street varies from one point to another,

Taking into consideration the above aspects, we are satisfied that the Appellate Authority is required to pass a comprehensive order dealing with all the issues illustrated above.

The writ petition is accordingly allowed; the impugned order dated 20.02.2014 is set-aside and the matter is remitted to the Appellate Authority for a fresh adjudication of the matter.

The parties are directed to appear before the Appellate Authority on 21.03.2016.

Dasti.

[SURYA KANT]
JUDGE

February 15, 2016
mohinder

[P.B.BAJANTHRI]
JUDGE