

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7359 of 2015
Date of Decision:-2.2.2016.

Sanjeev Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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

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. Vikram Singh, Advocate for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

Mr. S.P. Chahar, Advocate for respondent No.4.

Mr. Satbir Singh Malik, Advocate for respondent No.5.

SURYA KANT, J. (ORAL)

1.) The petitioners have laid challenge to the orders dated 25.7.2014 and 20.3.2015 (P-5 and P-6 respectively). Vide the first order, the Collector, Sonapat allowed the application of Gram Panchayat of village Bhatana, Jafarbad, Tehsil and District Sonapat filed under Sections 4, 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction of the petitioners from the area of the public passage comprising *khasra* No.75 which is admittedly recorded as *gair mumkin raasta* i.e. public passage.

The second order has rejected the appeal preferred by the petitioners against the eviction order.

2.) It may be observed that the petitioners have been found to have encroached upon a part of the public street on the basis of two demarcation reports dated 10.7.2005 and 25.8.2006. As per the first report, the width of encroachment was 5 feet 6 inch whereas the second report suggests the width of encroachment as 5 feet on one side and 4 feet on the other. The length of encroachment as per both the reports was 75 feet. The petitioners' objections against these demarcation reports did not find favour with the Collector or the Appellate Authority.

3.) When this petition came up for preliminary hearing on 22.4.2015, a statement was made on the basis of instructions given by the petitioners that the disputed path may be demarcated afresh as per the *Aks Shijra* and the field book and if the petitioners are found to be in unauthorized possession over any part of the path, *“they would remove the encroachment voluntarily.”*

4.) On 13.7.2015, counsel for the parties agreed to fresh demarcation of *khasra* No.75 recorded as *gair mumkin raasta* i.e. public passage.

5.) With a view to infuse credibility to the third process of demarcation initiated at the instance of the petitioners, that this Court appointed a Local Commissioner also at the petitioners' expenses to supervise the demarcation and submit his own report. A team of

Revenue officials led by Tehsildar, Sonapat was constituted for the aforesaid purpose.

6.) The learned Local Commissioner has submitted his report according to which fresh demarcation was held on 26.10.2015 in the presence of the parties as well as officials of the Panchayat and Development Department. The third demarcation exercise has also established encroachment on public street by the petitioners to the extent of 43 square yards. The report, thus, says as follows:-

*“Before demarcation the spot as well as the records were perused. Thereafter, pucca stones were searched and Stone Survey killa No.23//1, 27//1, 28//1 were found which were checked by Pawan Kumar Surveyor through Thodo Light Machine and were found to be correct as per the record. Now the demarcation was carried out. While carrying out the demarcation from Killa No.23//1, Killa No.23//3 was established. Thereafter, Raasta No.75, which crosses through the Northern side of Killa No.23//3 was established and it was found that on the North/Eastern corner of Khasra No.23//3, East-6 feet 6 inches, West-5 feet 6 inches, South-65 feet, North -65 feet, **total land measuring 43 square yards has been illegally encroached upon by Dalbir son of Surajmal and others by constructing a house in the street.** This demarcation was also checked by way of Tape (Fitta) measuring 100 feet and the marks were found correct. This demarcation was got done through Thodo Light Machine, the report of which*

along with site plan is enclosed.” [emphasis by us]

7.) Faced with this, learned counsel for the petitioners submits that the width of the street as per the record is 11 feet only whereas at the spot the width is more than 13 feet. It is, thus, urged that there is no actual encroachment at the spot.

8.) We are however, not impressed by the contention. Besides the two demarcation reports relied upon by the Authorities, there is no reason to doubt the latest demarcation report submitted by an independent empire who got the measurements conducted under his direct supervision. No case to interfere with the impugned orders is made out except that the area of encroachment shall be as determined by the Local Commissioner in the latest report.

9.) Dismissed.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

February 2, 2016.

sandeep sethi