

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

**CM No.25643-CII of 2017 in/and
CR-3407-2017**

Date of decision: 19.12.2017

Gurmail Singh and others

...Petitioners

Versus

Jeet Singh and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Pritam Singh Saini, Advocate,
for the petitioners.

Mr. Deepak Sharma, Advocate,
for the respondents.

Ritu Bahri, J.

CM No.25643-CII of 2017

The application is for staying the execution proceedings before the Executing Court.

With the concurrence of learned counsel for the parties, the main petition i.e. CR-3407-2017 is preponed and taken up today itself for disposal.

CR No.3407 of 2017

Challenge in this petition is to the order dated 07.04.2017 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), S.A.S. Nagar, Mohali, whereby report of the Local Commissioner has been accepted and a direction has been given to the Tehsildar to get the encroached area cleared and construction removed with the assistance of the police.

After hearing learned counsel for the parties, it is not in dispute

that as per site plan Mark-A, suit of the plaintiffs (respondents) has been decreed vide judgment and decree dated 21.02.2007 (Annexure P-1). Plaintiff-respondents filed the said suit for possession after demolishing the encroachment shown as 'X' and 'Y,' pucca construction made in the street ABCD, comprised in Khasra No.62 (0-4), Rsta 11 feet in width, adjoining to the western side of Khasra No.92 (0-5), situated in the revenue limits of village Kambali, Tehsil Mohali, District. As per judgment dated 21.02.2007 (Annexure P-1), the defendants (petitioners) have been restrained from raising any type of construction in the passage ABCD. Vide order dated 21.10.2016 (Annexure P-3), objections filed by decree holder against the report of Kanungo dated 20.09.2016, were accepted and the said report was set aside. A direction was given to the revenue authorities to appoint some other person, except Mr. J.S. Pal. Kanungo, who could give fresh report with regard to the encroachment as well as compliance of the judgment and decree dated 21.02.2007. Sh. B.S. Ahluwalia, Advocate, was also appointed as Local Commissioner to report about the actual and factual position on the spot. Subsequently, vide order dated 10.11.2016 (Annexure P-4), a new Local Commissioner namely Ms. Ravinder Kaur, Advocate, was appointed in the case to report about the actual and factual position on the spot. Thereafter, the impugned order dated 07.04.2017 (Annexure P-5) has been passed.

A perusal of the impugned order shows that no objection was filed by either of the parties to the report of the Local Commissioner and a direction was given to remove construction, which was blocking the rasta. This order has been challenged by way of present petition.

Mr. Saini, learned counsel for the petitioners, states that report of

the Kanungo has not been received so far and in this backdrop, the Lawyer/Local Commissioner, who had given the report, could not give any finding, as to whether there was any encroachment in Khasra No.62 (0-4 or not.

Perusal of the site plan Mark-A shows that there are two streets on either side of the street ABCD and some construction still exists on the said road. In this backdrop, the decree dated 21.02.2007 (Annexure P-1) has not been complied with till date.

In this view of the matter, this petition is disposed of by giving direction to the Executing Court to send the Tehsildar, District Mohali, to remove encroachment, if any, from the spot as per site plan Mark-A. Videography of the whole process be got done and costs of the videography will be borne by the respondents-plaintiffs.

19.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No