

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16797-1992

Date of Decision: July 04, 2017

Umed Singh and another

.....Petitioners

Versus

Commissioner, Hisar and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Surinder Lamba, Advocate
for the petitioners.

Mr.R.D.Sharma, DAG, Haryana.
Mr.R.S.Chahar, Advocate
for respondent Nos.5 & 13.

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SURYA KANT, J.

The petitioners seek quashing of orders dated 18.03.1991, 23.12.1991 and 25.09.1992 (Annexures P2, P3 and P4 respectively), whereby eviction petition filed by the private respondents under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to State of Haryana (for brevity, 'the 1961 Act'), was decreed against them and their appeal and revision petitions against the eviction order were also dismissed.

[2] The allegation against the petitioners was that they have encroached upon the *rasta* (public passage) measuring 847 square yards,

which was shown in the site plan as ABC NLM and which falls within the definition of *shamlat deh* under the 1961 Act and thus vests in the Gram Panchayat. The petitioners were alleged to have forcibly occupied a part of the said public passage measuring 461 sq.yds. and 21 sq.inch. On the encroached land the petitioners allegedly constructed the boundary wall and started using it as a courtyard.

[3] The petitioners contested the eviction petition and raised the title dispute under Section 7(2) of the 1961 Act. Their objections were turned down by learned Assistant Collector Ist Grade by a self speaking order dated 01.03.1989 against which they filed an appeal which was dismissed by the District Collector, Bhiwani, vide order dated 08.01.1990. The said order, rejecting the title claim qua the land in dispute, has admittedly attained finality.

[4] As regard to the eviction proceedings under Section 7 of the 1961 Act, which are summary in nature, both the parties led their respective evidence. The case of the respondent-plaintiffs as well as the Gram Panchayat was that previously also there was litigation qua the same land between the Gram Panchayat and the grand-father of petitioners in which the matter went upto the erstwhile High Court of Jind State and vide judgment dated 20.06.1930 the forefather of the petitioner, Shri Tota, was directed to be ejected from the said land as he was found in its illegal possession. The said judgment was produced as Ex.P1 alongwith site plan (Map) Ex.PA. Not only this, since the petitioners took a categoric stand that subsequent to the decision of the High Court of Jind, the matter was

amicably settled and public passage was evicted, hence fresh demarcation

was carried out by the SDO (Civil) as well as Assistant Collector, Ist Grade and upon measurement and again it was found that the petitioners are still in illegal possession of the land in dispute. In the light of such clinching and conclusive evidence referred to by the learned District Collector, Bhiwani in para 6 of his order, the eviction order passed against the petitioners by the Assistant Collector Ist Grade was upheld. Still aggrieved, the petitioners filed a revision petition which was dismissed in limine by the Commissioner, Hisar Division.

[5] We have heard learned counsel for the parties at a considerable length and gone through the record.

[6] It is contended by Mr.Surinder Lamba, learned counsel for the petitioners that the petitioners are residing in the house constructed at the site in dispute from the last over 100 years and it will be too harsh to dispossess them at this stage. He contends that sufficient public passage has been left out and there is no encroachment at the spot.

[7] Learned counsel for the respondents, on the other hand, controvert the petitioners' claim.

[8] On the petitioners' categoric stand that they have no longer encroached upon the public passage, this Court gave an offer to carry out fresh demarcation at their expenses but they are not keen for such an exercise. In any case there is overwhelming evidence on record to suggest that forefather of the petitioner, Shri Tota, was found in unauthorised possession of the land in dispute and eviction order was passed against him way back on 20.06.1930 by the Erstwhile High Court of Jind State.

Thereafter, the petitioners have also been found to have encroached upon a

part of the public passage where the boundary wall has been constructed by them. SDO(Civil) as well as the Assistant Collector Ist Grade carried out the measurements at the spot in the presence of parties. There is no reason to doubt the correctness of those reports. Still further, the controversy is a pure question of fact which the authorities have adjudicated keeping in view the material on record. The findings returned by the authorities below cannot be termed as perverse or contrary to the evidence on record.

[9] In this view of the matter there is no scope to interfere with the orders under challenge in exercise of writ jurisdiction.

[10] Dismissed.

**(SURYA KANT)
JUDGE**

July 04, 2017
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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |