

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

CRL. MISC. No.M-21850 OF 2016
DATE OF DECISION : 2ND MARCH, 2017

Vijay Singh & another

.... Petitioners

Versus

Parveen & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Vivek Khatri, Advocate for the petitioners.

Ms. Tanushree Gupta, DAG, Haryana
for respondent No.2-State.

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A. B. CHAUDHARI, J. (ORAL)

By the present petition there is challenge to the order dated 28.09.2015 (Annexure P-1) passed by the SDM, Hisar in the proceedings under Section 133 Cr. P.C. for removal of encroachment allegedly made by the petitioners over the drain (*Nala*) to be utilized by the public at large. The SDM had directed the BDPO, Hisar-I to remove the encroachment on the *Nala*. The petitioners then challenged the order before the revisional Court and the learned Additional Sessions Judge, Hisar confirmed the order made by the SDM, Hisar, against which the present petition has been filed.

The main grievance of the present petitioners is that SDM relied upon a report dated 14.07.2015 made by BDPO-I that the petitioners have not been given opportunity to meet the said report and

therefore according to them the order made by the SDM was in violation of principles of natural justice.

This Court had on August 09, 2016, asked the counsel for the petitioners to prima facie prove that the construction made by them was on their own land and not by way of any encroachment on *Nala*. As a matter of fact, the burden to prove that the construction made by the petitioners was on the land owned by them, rests primarily on them. On 28.11.2016 the petitioners filed a certificate issued by Tehsildar Hisar dated 09.07.2013 (Annexure P-4) on the application made by the petitioners that was made on 09.07.2013. The reading of the certificate shows highly responsible manner in which the Tehsildar issued the certificate to the petitioners on the same date i.e. 09.07.2013 i.e. on the date of filing of the application. That is something, from which inference can be drawn that the Tehsildar, Hisar issued that certificate without verifying concerned records obviously for extraneous considerations. Obviously the certificate was liable to be rejected outrightly. Therefore, again time was granted to produce the proof of ownership of the petitioners over the land on which they had made construction. Having found that it was not possible to get the documents, this court then turned to the Tehsildar Hisar to find out the correct position as it is the Government authority which can furnish the correct information in response to the petition. Tehsildar, Hisar then filed an affidavit on 09.12.2016 completely dodging the requirement projected by this Court namely to find out whether there is any public *nala* 12 feet wide and whether the construction made by the petitioners is on public *nala*. But by way of misrepresentation he merely stated in para 3 that as per the

revenue record the land situated within the *Lal Dora* of village is under the ownership of *Abadi Deh*. Thus Sahib Ram, Tehsildar smartly enough tried to get out of the controversy in the petition. In my opinion, that is nothing but deliberate misrepresentation to the Court having fully known about the petition and its contents. This Court, was again dissatisfied with the said affidavit as it did not relate to the subject matter of the petition and adjourned the proceedings in the interest of justice after Tehsildar and Patwari were directed to remain present. The anxiety of this Court is that the practice adopted by the citizens to block the public *nalas* and rivers and to make construction thereon to the grave inconvenience to the public at large which tendency has been on increase everywhere must be curbed. Finally this Court made an order dated December 20, 2016 asking Tehsildar, Hisar to visit the spot and then file affidavit with a warning that if the affidavit was not filed with full responsibility this Court would proceed against the petitioners and Tehsildar. Now Sahib Ram, Tehsildar filed affidavit along with photographs, affidavits of the villages, nambardars and has clearly stated that the construction is an encroachment on the public *nala*. The affidavit is taken on record and shall form part of the record.

Nevertheless, the grievance made by the petitioner that he was never heard or allowed to rebut or confront the report of the BDPO-I as well as the present report, cannot be ignored by this Court in order to adhere to the principles of natural justice. The only way out, therefore, is to send the entire matter back to the SDM for holding fresh enquiry after giving opportunity to the parties, including Sahib Ram, Tehsildar, Hisar

and after supplying copies of all the relevant documents to either parties and if necessary record oral evidence and keep them on record.

The State of Haryana is directed to look into the conduct of Sahib Ram, Tehsildar, Hisar to decide whether to proceed against him in a departmental enquiry. The report be made within a period of four weeks from today. The Tehsildar Sahib Ram shall deposit ₹5,000/- as cost with the Haryana State Legal Authority within four weeks from today.

The parties shall appear before the SDM, Hisar who shall conduct the proceedings adhering to the principles of natural justice and in the light of the observations made in this order. The SDM shall be responsible in personally visiting the spot, carefully going through the records, previous proceedings and revenue record as well as Gram Panchayat land record and then come to the proper conclusion and shall in any case complete the proceedings within a period of four months from the first appearance.

Till then the parties shall maintain the status quo.

2nd MARCH, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No