

Gurbax Singh
2017.10.12 10:32

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

**CWP No. 11374 of 2015
Decided on : 25.09.2017**

Mewa Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

PRESENT: Mr. Mahavir Sandhu, Advocate
for the petitioners.

Mr. Shireesh Gupta, Sr. DAG, Punjab
for respondents No.1 to 8.

Mr. A.S. Bhatti, Advocate
for respondents No.9 to 12.

Mr. P.s. Khurana, Advocate
for respondents No.13 to 17.

Ajay Kumar Mittal, J.

1. The petitioners have filed the instant petition under Articles 226/227 of the Constitution of India for a direction to the respondents to release the land in question which had been reserved and protected as forest vide notification dated 22.04.1965 (Annexure P-2) issued by the respondent State Government. A further direction has been sought that the action of the respondents forest authorities whereby they have allowed the private respondents to encroach upon the said land of forests be declared as illegal, unconstitutional, unjust, unfair and against the mandatory provisions of the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980. It has

been further prayed that the respondents be restrained to encroach upon, raising any sort of construction, change, alter the nature and character of the land in question in any manner whatsoever.

2. A few facts relevant for decision of the controversy involved as narrated in the petition may be noticed. The petitioners are proprietors of Villages Mattewara and Garghi Fazal, Tehsil and District Ludhiana. The land in question measuring 68 Kanals and 9 Marlas as per the Jamabandi for the year 2010-11 is situated in the revenue estate of village Mattewara. On 22.04.1965 (Annexure P-2), the respondent-Punjab Government issued notification, declaring the total land of 1817 acres including the land in question as protected and reserved forests under the provisions of the Act. According to the petitioners, private respondents No.13 to 17, who are residents of village Garghi Fazal, by using their political influence have illegally started to occupy the land in question by raising thereon construction of boundary wall. As per copy of Aks-Shijra of the forest land of Mattewara, the land in question is situated on the boundary line of Village Garghi Fazal. Since this land was situated at the border line of both the villages, the respondent Sarpanch of Gram Panchayat of village Garghi Fazal namely Nirmal Singh along with his other brothers namely Mangat Singh, Gurdev Singh and Bhajan Singh illegally occupied the land in question. They also started cutting the trees therefrom and started construction of boundary wall over the land in question in order to illegally occupying the same. Not only this, they also made some of the land cultivable after removing the trees therefrom. They are also deriving the income therefrom, which is being distributed by the respondent officials of the Forest Department. The petitioners assert that the construction of

boundary wall is going on in the land in question. Aggrieved by the action of the respondents, the petitioner Tarlok Singh and others made complaint to the respondent-Chief Conservator of Forests, Patiala for taking appropriate action against the encroachers and to restrain them from raising the construction. Prayer was also made for appropriate demarcation of the land in question and to restore the same as forest. Similar complaints were also made to the respondent-DFO Ludhiana, Deputy Commissioner, Ludhiana, SDM Ludhiana and Chief Wild Warden, Mohali. The petitioners also made application dated 24.04.2015 for registration of case against respondent Nirmal Singh as well as officials of the Forest Department. Similar applications were also made to the higher authorities in the Government. Since, no action has been taken by the authorities against the encroachers, the petitioners have approached this Court through the present writ petition.

3. A written statement has been filed on behalf of respondents No.1 to 5, wherein, it has been *inter alia* stated that demarcation of all the khasra numbers of entire Mattewara forest exist in two parts extending over total 1839.55 acres area, which was got done by the concerned revenue authorities from 23.09.2014 to 28.03.2015. A demarcation report dated 06.04.2015 was issued by the Assistant Collector, Class-II Koomkalan Sub Tehsil, District Ludhiana, in respect of this demarcation. As per the demarcation report, 61 acres 4 kanals forest area had been taken from seven private persons and 6 acres 3 kanals private land belonging to eight private persons under the possession of Forest Department was handed over to the concerned landowners. After completion of demarcation, total area of forest i.e. 1839.55 acres is complete and the boundaries were fully demarcated.

The whole exercise of the demarcation had been got conducted for the purpose of constructing boundary wall. It has been further stated that there is no encroachment on either khasra numbers 36, 56 or 86 and the boundary wall was also found to be on the Forest boundary.

4. Separate replies have been filed on behalf of respondents No.6 to 8 and 13 to 17, controverting the averments made in the petition.

5. We have heard learned counsel for the parties.

6. A narration of facts as noticed above clearly shows that there is dispute on facts, which cannot be adjudicated in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, we refrain from entertaining this petition.

7. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of fact are involved, A Division Bench of this Court in *N.C. Mahendra vs. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of fact are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under article 226 of the constitution is discretionary and not obligatory. without being exhaustive, it is settled law that the Court would not ordinarily issue a Writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay Which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interests of justice do not require that relief should be

granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ. would be futile, and, (vii) where the impugned law has not come into force. it would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extraordinary remedy from the ordinary one by way of a civil suit.” (emphasis supplied).

8. The Supreme Court in ***State Cadre Authority and another vs. K.S. Bajpal and others***, (1990) (Suppl.) SCC 713, ***Bhagubhai Dhanabhai Khalasi and another vs. The State of Gujarat and others***, (2007) 4 SCC 241 and ***Mukesh Kumar Agrawal vs. State of UP and others***, (2009) 13 SCC 693 has held that wherever disputed questions of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in ***Dwarka Prasad Agarwal (D) by Lrs and another vs. B.D. Agarwal and others***, AIR 2003 SC 2686, wherein, it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what

extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

9. In view of dispute on facts, we do not find any ground to interfere in writ jurisdiction. However, it shall be open to the petitioners to seek their remedy either by filing civil suit or approaching any other appropriate forum in accordance with law. The petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 25, 2017
'gs'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No