

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.11209 of 2016
Date of Decision: November 27, 2017

Jagdeep Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

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

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

Ms.Mamta Singla Talwar, DAG, Haryana,
for respondent Nos.1, 2 & 9.

Ms.Chhavi Sharma, Advocate for
Mr.R.S.Chauhan, Advocate,
for HUDA.

Mr.Sandeep Moudgil, Advocate &
Mr.Vikrant Pamboo, Advocate,
for respondent Nos.5 to 8.

AMIT RAWAL, J.

1. Petitioner has approached this Court seeking the following
relief:-

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents No.3, 4 and 9 to remove the illegal construction/encroachment made by respondents no.5 to 8, on public path/road by installing Toe Wall, Grills and fencing wire and encroached the area of public path/road measuring 5415.45 sq.yards as per the notice issued by the respondent no.4 dated 25.05.2015 (Annexure P-4) as early as possible, as

the public at large is facing great difficulty and problem due to the aforesaid encroachment raised by respondents no.5 to 8 on the public road.

It is also further prayed that this Hon'ble Court may also issue necessary directions to the respondents no.3, 4 and 9 that to take necessary legal action against the official who is responsible for raising the aforesaid illegal construction and encroachment on the public road for which the public at large suffers a lot from a passage of time.

AND/OR

Any other appropriate order or direction which this Hon'ble Court may deem fit in the peculiar facts and circumstances of the present case may kindly be passed in favour of the present petitioner.

2. Mr.Vivek Khatri, learned counsel appearing on behalf of the petitioner submitted that the present writ petition falls within the parameters of Maintainability of Public Interest Litigation Rules, 2010 laid down by this Court for the purpose of entertaining Public Interest Litigations, as the grievance espoused is for vindication of the public at large due to the illegal construction and encroachment done by respondent Nos.5 to 8, i.e., Dakshin Haryana Bijli Vitran Nigam Ltd., Chief Engineer, DHBVNL, Vidyut Nagar Hisar, Superintending Engineer (Civil), DHBVNL and Estate Officer, Vidyut Sadan, Vidyut Nagar, Hisar. It was claimed that the relief claimed is not personal.

3. It was further argued that respondent Nos.5 to 8 allotted a tender work to a private contractor for providing and fixing fencing wire in front of H.No.11/VII to 15/VII at Vidyut Nagar Colony, Hisar vide order dated 25.6.2013 (Annexure P-1). Thereafter, the proposal dated 6.8.2014 for providing of barbed wire fencing over boundary wall of Vidyut Nagar Colony, Hisar on northern side was also mooted, which was accepted by the

competent authority and in this manner, respondent Nos.5 to 8 have encroached public road/path measuring 5415.45 sq.yards. The aforementioned factum is evident from the information received under the Right to Information Act, 2005 (in short “the Act”) dated 15.7.2015 (Annexure P-6), but the HUDA has not taken any action. Even detailed representation (Annexure P-7) had been submitted to the Deputy Commissioner, Hisar and Estate Officer, HUDA, but having received no response, therefore, the present petition.

4. Mr.Sandeep Moudgil and Mr.Vikrant Pamboo, learned counsels for respondent Nos.5 to 8 submitted that as per the averments in the written statement filed by them, only temporary fencing had been provided on the divider between main road and service road in front of the residences of DHBVN colony, which does not affect the general public and no permanent work had been carried out on public road. It was asserted that there is no illegal encroachment as averred by the petitioner. In response to the letter written to the Estate Officer Annexure P-4 dated 25.5.2015, in reply thereto, it was stated that the gate of the temporary fencing had been kept closed only during the late night hours for checking incidents of thefts, nuisance, which were prevalent before fencing in front of the houses. Learned counsels further raised the objection qua maintainability of the writ petition.

5. We have heard the learned counsel for the parties, appraised the paper book and are of the view that there is no force and merit in the submission of the learned counsel for the petitioner. The petitioner has not appended any demarcation of the alleged encroachment so as to substantiate his averments. Heavy reliance had been placed on the information received

under the Act (Annexure P-6), where there was a reference to the report of the Patwari that a road measuring 140 ft. crossing from Jindal Chowk to Surya Nagar Pathak is of HUDA Department, but no such report has been appended.

6. The issue raised herein requires evidence to be led by the parties to determine whether there exists any encroachment as claimed by the petitioner. The petitioner has not even annexed the demarcation report on the basis of which the writ petition has been filed. The factum of alleged encroachment had been denied and, therefore, the matter involves a disputed question of fact, for which the writ petition is not the appropriate remedy. The petitioner, if so advised, may seek his remedies before competent court or authority in accordance with law.

7. As an upshot of our aforementioned observations, we do not find any merit in the present writ petition. The same is accordingly dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**November 27, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No