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

Date of decision : 13.02.2017

1.

CWP-22118-2015

Puran Chand @ Puran Grover

... Petitioner

Versus

Deputy Commissioner, Gurdaspur and others

... Respondents

2.

CWP-22119-2015

Ramesh Chander

... Petitioner

Versus

Deputy Commissioner, Gurdaspur and others

... Respondents

3.

CWP-22120-2015

Balwinder Kaur

... Petitioner

Versus

Deputy Commissioner, Gurdaspur and others

... Respondents

4.

CWP-22121-2015

Tarsem Singh

... Petitioner

Versus

Deputy Commissioner, Gurdaspur and others

... Respondents

5.

CWP-22165-2015

Dr. Paramjit Singh

... Petitioner

Versus

Deputy Commissioner, Gurdaspur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Gopal Sharma, Advocate
for the petitioner(s).

Ms. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of five writ petitions, aforementioned. The petitioners are aggrieved of the order dated 10.07.2014 (Annexure P-2), whereby the proceedings under Sections 4, 5 & 7 of the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (for short 'the Act') seeking the eviction from shop (Atta Chakki) from Khasra No.41/1 land measuring 0-13 marlas, had been allowed.

Mr. Naresh Gopal Sharma, learned counsel appearing on behalf of the petitioner(s) submits that the ownership of the respondent(s) was seriously challenged to, which fact is evident from the written statement. In fact the State failed to establish the illegal possession on the land allegedly belonging to them. It was incumbent upon the State/respondent(s) to establish the encroachment by getting the land demarcated, thus, there is no compliance of the provisions of Section 101 of the Indian Evidence Act. Even if, in the absence of the applicability of the aforementioned provisions of the Indian Evidence Act, it is a common law that a person who seeks the eviction has to establish the encroachment. There is no admission of ownership of the plaintiff(s). All these aspects were seriously objected to in the written statement, much less, in the appeal, but have not been pondered upon, thus, the impugned orders under challenge are liable to be set aside.

Per contra, Ms. Monica Chhibber Sharma, DAG, Punjab,

representing the respondent(s)/State submits that the jamabandi for the year 2003-04, map and various other documents i.e. notices, have been proved on record. The unimpeachable evidence brought on record established the ownership and the encroachment. The impugned orders, under challenge, cannot be said to be suffering from any illegality and perversity. The scope of interference under Article 226 of the Constitution of India is very limited. The petitioners are unauthorized occupants of the land belonging to the State/respondent(s), thus, urges this Court for dismissal of the writ petitions with exemplary cost.

I have heard the learned counsel for the parties and appraised the paper book.

Shorn of the facts noticed above, the impugned order dated 10.07.2014 (Annexure P-2) rendered by the Deputy Commissioner do not *prima facie* establish the encroachment. No doubt the copy of the jambandi for the year 2003-04, map and site plan have been brought on record, but it is unilateral act of the respondent(s)/State. Preceding to filing of the petition, an exercise for getting the property demarcated by associating the respondent(s) ought to have been done, so that, the petition filed under Sections 4, 5 and 7 of the Act could not have been objected to at any cost. In my view, the respondent(s)-State has not been able to establish the encroachment, thus, the matter is required to be revisited to decide the controversy afresh.

For the foregoing reasons, the impugned orders under challenge are hereby set aside and the matter is remitted back to the Deputy Commissioner, Gurdaspur to decide the controversy afresh by granting the liberty to prove the encroachment in the proceedings initiated under

Sections 4, 5 & 7 of the Act. Resultantly the present writ petitions are disposed of.

The parties through their counsel are directed to appear before the Deputy Commissioner, Gurdaspur on 10.03.2017.

13.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No