

CWP no.17298 of 2016 (O&M) 1

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

CWP no.17298 of 2016 (O&M)

Date of Decision : 06.12.2018

Om Parkash

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

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

Mr. I.P.S.Doabia, Addl. Punjab

Mr. Bhanu Partap Singh, Advocate for respondent no.4

MAHESH GROVER, J.(ORAL)

We have heard learned counsel for the parties and perused the impugned orders dated 11.9.2015 and 30.5.2012.

On 26.8.2016, we had directed a fresh demarcation to be carried out by the Tehsildar who would ascertain the encroachment, if any.

Report has now been submitted and we intend to extract two paragraphs from the affidavit filed by Sh.Arvind Parkash Verma, Tehsildar, Hoshiarpur:-

“4. That it is submitted that the then Tehsildar, Hoshiarpur on the basis of report of revenue field staff had sent the report vide its letter No.R-20 dated 11.11.2016 to the District Development and Panchayat

Officer, Hoshiarpur that the area which requires to be demarcated falls within the 'Lal-Lakir' of the village and as such demarcation cannot be made. A copy of this letter dated 11.11.2016 is attached as “**Annexure R/2**”.

8. That it is submitted that the deponent in order to ascertain the factual position visited the spot on 20.4.2014 to comply with the orders dated 26.8.2016 passed by this Hon'ble Court. Since no revenue record is available within the 'Lal-Lakir' as such it could not be ascertained as to whether the construction made by Sh. Om Parkash, petitioner is an encroachment or not. However, a site plan showing the position existing at the spot has been got prepared from the Patwari Halqa. In this regard it is submitted that when enquiry was made from the villagers, some of the villagers have stated that he has encroached some part of the public street, whereas some are of the view that he has not made any encroachment. A copy of the Naksha Nazri is attached as “**Annexure R/7**” whereas copy of attendance sheet is attached as “**Annexure R/8**” respectively.”

Alongwith this affidavit Annexure R-7 has been appended which is a site plan that more or less conforms to the one produced by the petitioner himself. A perusal of this alongwith contents of the affidavit extracted above does not show any encroachment by the petitioner on the street as alleged. The impugned orders were passed largely on the report of the BDPO who in turn relied on the report of the Panchayat Officer passed

on the statement of the villagers.

Since a proper demarcation has been carried out by the Tehsildar who has also furnished an affidavit, the contents of which have been extracted above, with no objection from the Gram Panchayat so far, we are of the opinion that the same needs to be accepted. From perusal of the impugned orders which were passed on the report of the BDPO, who in turn relied on the report of the Panchayat Officer, who based his findings on the statements of the residents of the village, we are of the opinion that it would be safer to rely on the demarcation report rather than the one which was taken into account by the competent authority while passing the impugned order. Therefore, impugned order is set aside. Writ petition stands allowed.

(Mahesh Grover)
Judge

06.12.2018
rekha

(Lalit Batra)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No