

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

**1. Civil Writ Petition No.24489 of 2018(O&M)
Date of decision: 29.10.2018**

Amarjit Kaur and others

...Petitioners

Versus

The Commissioner-cum-Deputy Commissioner and others

...Respondents

2. Civil Writ Petition No.25476 of 2018

Swaranjit Kaur and others

...Petitioners

Versus

The Commissioner-cum-Deputy Commissioner and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Jaideep Verma, Advocate for the petitioners
(in both the petitions).

G.S.SANDHAWALIA, J. (Oral)

CM No.16268 of 2018 in CWP No.24489 of 2018.

Prayer made in the present Civil Misc. Application for placing on record reply dated 21.6.2012 (Annexure P/21) and exemption from filing the certified/original copy of the same is allowed.

Annexure P/21 is taken on record.

Office to tag the same at appropriate place in the file.

The Civil Misc. Application stands disposed of accordingly.

Main cases

This order shall dispose of Civil Writ Petition Nos.24489 and 25476 of 2018 as common questions of fact and law are involved in these

petitions. However, for dictating this order, the facts have been taken from Civil Writ Petition No.24489 of 2018.

The petitioners challenge the orders dated 26.5.2014, 14.10.2015 and 14.3.2018 (Annexures P/12, P/13 and P/20 respectively) passed by the authorities below whereby eviction had been ordered from Khasra No.50, Razavaha 1-L, village Jawaddi under Sections 4,5 & 7 of the Punjab Public Premises & Land (Eviction & Recovery) Act, 1973.

Counsel for the petitioners has vehemently argued that the area was densely constructed, therefore, demarcation could not be conducted and has placed reliance upon demarcation report dated 30.3.2016 (Annexure P/17) to submit that there is no permanent point and therefore the demarcation could not be conducted.

A perusal of the petition filed by respondent-State would go on to show that unauthorized construction had been raised on the land of the Irrigation Department and on the Minor/1-L distributory of Sidhwan Branch as per paragraph no.2 of the application dated 16.2.2011(Annexure P/10).

The petition had been filed on the basis of demarcation done on 29.12.2010(Annexure P/11). Even at that point of time difficulties as such had been faced regarding the demarcation since construction had been raised on the said points. The petitioners had put in appearance and taken a stand that they were ready to purchase the land at DC rate as per proceedings of meeting which was held on 21.6.2012 (Annexure P/21). The relevant portion reads as under:-

“Submits that today i.e. 21.6.2012 at 3.00 PM you have called us in a meeting regarding the unauthorized possession over the water distributaries so that the common

consent can be drawn. In this regard anonymously it has been decided that title deeds are executed in our favour and mutations also sanctioned in our favour in the revenue record. We were not called during demarcation conducted by the Govt. from which it can come out whether we are in unauthorized possession or not? In case after verifying our documents it comes out we are in unauthorized possession then we are ready to purchase the land at DC rates.”

It is on this account eventually the eviction had been ordered on 26.5.2014 (Annexure P/12) by the Collector which was upheld on 14.10.2015 (Annexure P/13) by the Commissioner. The Appellate Authority also noticed that any purchase as such of the property was in Khasra Nos.25 & 26 whereas as per demarcation they were in possession over the Khasra No.50. It was also noticed that once there was admission by the petitioners themselves that they were ready to purchase the land, factum of being in illegal possession thus was proved.

Review Petition was also filed which was dismissed and earlier orders were upheld vide order dated 14.3.2018 (Annexure P/20) which is also subject matter of challenge in the present petition. Once the petitioners had not taken any worthwhile stand as such regarding their defence and had admitted before the authorities themselves that they are willing to purchase the land in question, it is apparent that they were in unauthorized possession and thus eviction had been ordered.

Counsel has vehemently argued that road was also constructed on the land of the Irrigation Department and it has come within urban area. Merely because some adjoining portion of the land of the Irrigation Department had not come under the road as such, it does not give licence to the petitioners to encroach upon the Government land. There is no such

stand taken that they are owners of the land on the basis of the title deed and that land from where they are being evicted is owned by them and it is not public premises.

The judgments in **Mahabir and another Vs. Surta and others** 2006(1) PLR 490 and **Haryana Wakf Board Vs. Asha Rani and another** 2017(3) PLR 168 relied upon by the counsel for the petitioners pertain to the appointment of Local Commissioner whereby contest as such was raised by the parties on merits and in such circumstances, this Court decided the said issue as noticed above. However, in the present case no such contest has been raised on merits and no such written statement had been filed and the stance is to purchase the land under their possession.

In such circumstances, orders passed by the authorities below do not warrant inference in exercise of jurisdiction under Article 226 of the Constitution of India.

Accordingly, finding no merit, both the writ petitions are dismissed in limine.

October 29, 2018
Pka

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No