

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

(I) **LPA No.444 of 2015 (O&M)**
DATE OF DECISION : 1st JUNE, 2018

K. D. Sharma **.... Appellant**

Versus

State of Haryana & others **.... Respondents**

(II) **LPA NO.870 OF 2015 (O&M)**

Arun Walia & another **.... Appellants**

Versus

State of Haryana & others **.... Respondents**

(III) **LPA NO.627 OF 2015 (O&M)**

Subhash Chander Chauhan **.... Appellant**

Versus

State of Haryana & others **.... Respondents**

(IV) **LPA NO.751 OF 2015 (O&M)**

Universal Medicos **.... Appellant**

Versus

State of Haryana & others **.... Respondents**

(V) **LPA NO.464 OF 2015 (O&M)**

Harish Chander Electronics **.... Appellant**

Versus

State of Haryana & others **.... Respondents**

(VI)	<u>LPA NO.695 OF 2015 (O&M)</u>
Sethi Garments	 Appellant
	Versus
State of Haryana & others	 Respondents
(VII)	<u>LPA NO.999 OF 2015 (O&M)</u>
Gurjot Singh	 Appellant
	Versus
State of Haryana & others	 Respondents
(VIII)	<u>LPA NO.466 OF 2015 (O&M)</u>
Oberoï Garments	 Appellant
	Versus
State of Haryana & others	 Respondents
(IX)	<u>LPA NO.467 OF 2015 (O&M)</u>
Hair Dresser	 Appellant
	Versus
State of Haryana & others	 Respondents
(X)	<u>LPA NO.465 OF 2015 (O&M)</u>
Dental Clinic	 Appellant
	Versus
State of Haryana & others	 Respondents

(XI)

LPA NO.633 OF 2015 (O&M)

Sachdeva Sweet House

.... Appellant

Versus

State of Haryana & others

.... Respondents

(XII)

LPA NO.835 OF 2015 (O&M)

Amrit Tailor

.... Appellant

Versus

State of Haryana & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE B. S. WALIA**

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Present : Mr. Chetan Mittal, Senior Advocate with
Mr. Vivek Goyal, Advocate
Mr. R. P. Singh Ahluwalia, Advocate and
Mr. Mayank Bansal, Advocate,
Mr. Anmol Verma, Advocate,
Mr. Rakesh Gupta, Advocate,
Mr. Gagandeep Rana, Advocate,
Mr. Malkeet Singh, Advocate and
Mr. Karanvir Singh Khehar, Advocate,
for the appellant(s).

Mr. Vivek Saini, Deputy Advocate General, Haryana.

Mr. D. K. Singal, Advocate for NHA.

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A. B. CHAUDHARI, J.

1. These letters patent appeals have been filed by the appellants including appellants K.D. Sharma Hospital, Dr. Arun Walia, Harish Chander Electronics, Sachdeva Sweet House and Sethi Garments, against the impugned judgment and order passed on 23.12.2014 by a learned Single Judge of this Court.

Facts:

2. The appellants are said to be the encroachers on the public road known as “Ambala-Jagadhri Raod” passing through the area known as “Mahesh Nagar Jagadhri Road, Ambala Cantt.”. There were in all sixteen encroachments. The appeals by five appellants only were argued. The other appeals were not argued perhaps because they have vacated their encroachments. The respondents, however, have still been contending that after removing their encroachments, they have again made encroachments looking to the fact that the construction of road was not being undertaken because of the pendency of the present litigation.

3. The bizarre picture in the towns and cities, including Ambala Cantonment town, is that the people are not able to even walk properly on the public roads because of the encroachments made by the persons occupying public road land on both the sides of the roads. There seems to be no end to this attitude of extending one’s area by encroaching on the public road without bothering for the inconvenience caused to the public. To have clear and spacious roads for public appears to be a forlorn hope. Case at hand is an example.

4. The litigation in relation to Ambala-Jagadhri Raod now known as Mahesh Nagar-Jagadhri Road, Ambala Cantt., a very busy road, commenced in this Court with civil writ petition No.9055 of 1996; and thereafter 17 civil writ petitions filed in this Court in the year 2009 and 2010. Because of the pendency of the litigation in this Court the road could not be completely made open for the public and the encroachers continued to put the encroachments taking full advantage of

the pendency of this litigation in this Court from 1996. The delay in the courts is also a prime reason and in such matters, the same cannot be countenanced. It appears that now the job to construct the said road for the public at large has been transferred to the National Highway Authority of India (NHAI). As stated earlier majority of the encroachers have vacated their encroachments except for the present appellants. It is a different matter that such encroachers with niggardly attitude who have vacated, have again come back with the encroachments but then that is not the issue before us. The respondents are entitled to throw away the encroachments made by them and construct the road. The issue in the present appeals is in relation to the above five appellants.

5. It is not in dispute that after commencement of the litigation in relation to the Mahesh Nagar Jagadhri Road, Ambala Cantt. in 1996, which was initiated under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, for removal of encroachments, the litigation has not seen the end and the fact of the matter is that the road could not be constructed for the benefit of public at large. Such a situation can be best termed as chagrin or grim and putting the users to excruciating pain. Be that as it may.

6. During the pendency of the writ petition before the learned Single Judge, several rounds of measurements and demarcation were undertaken at the instance of the parties. The learned Single Judge examined all these factual aspects in all details in relation to the khasra No.137 and has recorded one of its finding of fact as under:

*Although there is no survey mark available but
tri-junction pillar was found available at the site.*

For the purpose of demarcation, pucca point was traced. In khasra no. 113, there exists Ravi Dass Mandir at the spot which was existing prior to consolidation and the same was admitted to be standard point and confirmation of its existence was established by demarcating the same from khasra no. 53//11/4 from its western northern corner by measuring 45karams straight i.e. 247.6 ft. The site was found to be correct and in this manner, all the points were established at the spot and after matching the same with the dimensions of khasra no. 137 gair mumkin road, it cannot be said that the revenue authorities were not in a position to establish pucca points at the spot. The said pucca points have already been taken care of. In view of this, objections no. 6 and 7 are not sustainable. The demarcation has been carried out keeping in view the exact situation at the spot and is in consonance with the High Court Rules and Orders and basic revenue record i.e. masavi, field book and misal haqiat. In masavi and field book, all the dimensions of north, south, east and west in karams have given the width of road as has been mentioned in these revenue record with regard to khasra numbers abutting the khasra no. 137 gair mumkin road.

Demarcation report exactly mentions the area encroached by each of writ petitioners and also of others.

Now, I deal with the impugned orders.

Admittedly, khasra no. 137 is the property of the Government as per the misal haqiat i.e. jamabandi for the year 1963-64 and prior to that too it has been shown to be ownership of the Government and its old khasra number is 123 and neither of the parties is disputing the ownership of the road in question i.e. present khasra no. 137 (old khasra no. 123). The only dispute is dimensions at various places. The encroachments have been pointed out vide various demarcations. Even to do complete justice, this Court also ordered fresh demarcation which was carried out on 26.02.2012 which is placed on record as Annexure R-9 along with the revenue record i.e. masavi, misal haqiat and field book. Otherwise also, the earlier demarcation was carried out in the presence of Deputy Commissioner which has not been taken into consideration. Although in those demarcations also, the petitioner and others have found to be in illegal occupation, therefore, they have been ordered to be evicted.

At the time of passing the impugned order, demarcation report was before the authorities and 76 square yards was found to be encroached upon by the petitioner, the same has been found in the recent demarcation also. The only technical ground is that the demarcation was carried out many times. All the relevant documents have been dealt with in the order passed by the Collector and the order does not suffer from any illegality or perversity. The pucca points were earlier also established at the spot when the Deputy Commissioner has supervised the demarcation. Again the demarcation has been done under the orders of this Court, so in view of the finding of fact recorded by the authorities with regard to the encroachment by the petitioner and others and also as per demarcation dated 26.02.2012 petitioners have been found to have encroached upon khasra no. 137, I do not find any illegality or perversity in the impugned orders.

It is pertinent to mention here that during the course of arguments, the parties were offered that their actual area in their possession can be measured as per their document of title. If they are found to be in excess of the same, then that area will also be taken over by the Municipal Committee/Municipal Corporation or the Government and they were also asked to place on

record the documents of title, but perusal of all the writ petitions reveals that none of them have produced any record from which it could have been indicated what was their actual entitlement. Even the petitioners did not agree to the demarcation of their respective areas. All the writ petitioners are not owners of the land. They claim their possession as tenants. The owners are not before the Court but the tenants are before the Court. In this case, the petitioner also may not be the actual owner of the property, but being occupant the petitioners are contesting the writ petitions. When the encroachment is on the public road which is meant for the convenience of the public and when such public road passes through the urban area and the construction is carried out around it, the tendency is to encroach upon the area of the road. It is bounden duty of the Courts and the authorities that road should be restored to its original condition as per the revenue record.

Learned counsel for the petitioners have not been able to point out any perversity or illegality in the impugned orders passed by the Collector and the Commissioner.

7. Having recorded the above findings of fact, the learned Single Judge recorded the following conclusion :

“In view of above, all the aforementioned 17 writ petitions are dismissed. As specific direction is issued to the authorities to take action in accordance with law and to restore the road to its original width as per the masavi and the

demarcation report (Annexure R-9). However, it is made clear that when the operation is carried out, the Deputy Commissioner shall ensure that encroachment as depicted in the demarcation report dated 26.02.2012 (Annexue R-9) should be removed at the spot without any hindrance.”

In Appeals

8. After hearing learned counsel for the rival parties at length on few dates, this Court again at the behest of the appellants, who had made a fervent appeal to again ask the authorities to make measurements made the following order on 18.05.2018, which is reproduced below:

“Reply on behalf of respondent No.4 filed in Court today, is taken on record.

Mr. Chetan Mittal, Senior Advocate has made a specific submission that during the pendency of the appeal, the appellant has in fact removed/vacated the encroached area of 137.5 feet as stated by the respondents. He further submits that despite this position the respondents have been asserting in para No.4 of the reply that the encroachment is still there and total width of the road is still 115 feet instead of 137.5 feet. Countering this assertion of the respondents, Mr. Mittal submits that as a matter of fact the area under road occupation is 121 feet and not 115 feet as alleged as per the earlier reports.

We have recorded the submissions made by Mr. Mittal on the instructions of his client that as a matter of fact, he has removed the encroachment (alleged) to the extent of 137.5 feet. These submissions have been disputed by the counsel for the respondents.

In so far as LPA filed by Dr. Arun Walia is concerned, counsel appearing for him has made a categorical statement on instructions that during the pendency of the present appeal, appellant, Dr. Arun Walia, has removed the encroachment (alleged) to the extent of 11 feet and according to him that satisfies the claim of the respondents-government about the extent of encroachment by Dr. Arun Walia. This statement is again disputed by the counsel for National Highway Authority of India.

In that view of the matter, we think physical measurement of the width so also the verification of the facts stated before us is required to be made. We, therefore, direct the Deputy Commissioner, Ambala to carry out measurement of disputed area with the help of subordinate officers, if required and submit the report before this Court on or before 24.05.2018. It is made clear that the measurement will be carried out either on 20.05.2018 or 21.05.2018 and the same

is to be carried out in the presence of all the concerned parties to the present appeals. The counsel for the State is directed to inform about this order for collection of records from the concerned offices, if any, by tomorrow. Since the matter is pending for a long time and the decision is to be taken as early as possible, any lapse in submission of the report shall be viewed seriously.

Put up on 24.05.2018 for further hearing and orders.

In the meantime, status quo shall be maintained.

We also order that similar exercise should be taken in respect of i) Sachdeva Sweet House, ii) Sethi Bandhu and iii) H.R. Electronics.”

9. Pursuant to the aforesaid order the authorities have placed on record a status report that was prepared after a committee of six officers related to the issue, was constituted on 19.05.2018 to comply with the aforesaid order of this Court. Having been served with the copy of said report the counsel for the appellants in these appeals and in particular Mr. Chetan Mittal, learned senior advocate, submitted that though appellant-Dr. K. D. Sharma Hospital has no dispute about the width of the road in front of his hospital to the extent of 137.5, where the shops of other appellants are also located, the revenue authorities still have been showing the encroachment of 7 feet and 9 feet, when as a

matter of fact, there is no such encroachment. He, however, fairly stated that his client also wants that at this particular spot the width of the road should be 137.5 feet and it cannot be lesser than that. The learned counsel for the other appellants, however, disputed the position about the width of the road as 137.5 feet.

10. It appears from the submissions made by learned counsel for the rival parties that the width of the public road in question varies from spot to spot. That means at the spot, where hospital of Dr. K. D. Sharma is located, the width is stated to be 137.5 feet while going ahead the width is more and so and so forth till the end. We are really concerned with the width at this spot where the hospital of Dr. K.D. Sharma and other four appellants are located.

Consideration:

11. The report filed by the committee before us, pursuant to order dated 18.05.2018, has been taken on record and is marked 'X' for identification. The State counsel then has filed one more affidavit on 30.05.2018 and in response, the counsel for appellants have filed counter affidavits on record. We have gone through the entire record.

12. The learned counsel for the respondent-State and NHAI, submitted that all the measurement and demarcation reports are uniform in confirming the encroachment by K.D. Sharma Hospital, of 7 feet on East side, though there is variance from 5 to 12 feet on west side. At any rate, the total width of the road should be at this spot as admitted by the parties has to be not less than 137.5 feet. That is also in case of other appellants as their shops are at the same spot though on the opposite side.

13. The next argument raised by Mr. Chetan Mittal, learned senior counsel for the appellant-K. D. Sharma is that the appellant has already made available width of 137.5 feet opposite to his hospital, which statement has been vehemently opposed by learned State counsel as well as the counsel for the NHAI. According to Mr. Mittal, measurement and demarcation can be made in respect of the hospital of the appellant-K.D. Sharma, by considering the area shown in his sale deed and as per *masavi*. He further submitted that the information given by NHAI as well PWD shows the area even less than 137.5 feet width. Mr. Chetan Mittal, the learned Senior Advocate however fairly stated that the learned Single Judge Mr. Paramjit Singh (as he then was) held expertise in revenue laws. He however submitted that in the operative order though measurements have been referred as per '*masavi*' the demarcation made has been accepted with which the appellants have grievance. As against the above, learned State counsel as well as learned counsel for the NHAI submitted that the State Government is entitled to have its land of the width of 137.5 feet to be measured and demarcated from the original point which existed at the time/prior to the consolidation. According to them, no private party as per its convenience would be able to deprive the Government of even one inch of land of a public road. The learned counsel for the State submitted that the original/standard point was found out as described in the aforesaid report and accordingly the measurements were carried out and in that event it is seen that the appellant-K.D. Sharma's hospital is still having encroachment on the

land belonging to the Government for construction of public road at that spot to the extent to 137.5 feet.

14. We have given our conscious consideration to the entire matter and we are of the firm opinion that at this particular spot where the hospital of Dr. K.D. Sharma and other appellants' shops etc. are located, the width has to be 137.5 feet for the purpose of construction of road/public road. If the Government is the owner of 137.5 feet of width of land for use of public road, this Court would not allow a single inch of land being encroached by anybody. The dispute about measurement and demarcation has been troubling this Court on an number of times. The present report furnished by the committee after the last order made by this Court is based on revenue/settlement documents. We find and we hold that the measurements made under the said report marked 'X', submitted to this Court, is perfectly correct as it is based on the revenue documents and after finding out the original point/standard point for carrying out the measurements and demarcations. The appellants were also present during measurements. The measurements and demarcation were bound to be made from the original/standard point which has been found out by the Surveyors team. The reports/information given by PWD or the NHAI and private architects of appellants cannot at all be accepted as correct, because it is the revenue/survey department of the government which is the custodian of records and none else. The revenue/survey department has expertise in such matters. There is no reason for us to differ with the findings of facts meticulously given by the learned Single Judge who seem to have the rich experience in revenue

lawas as contended by Mr. Mittal. Even if K.D. Sharma Hospital under their respective sale-deed purchased the plot area indicated in the sale-deed that cannot bind the Government, as it is entitled to its width area of 137.5 feet to be measured from the original/standard point. We are, therefore, unable to agree with the submission made by Mr. Mittal that the measurement and demarcation should be made as per the sale-deed of the appellant-K.D. Sharma and not from the original point. Similar is the case with other appellants.

15. The learned Single Judge has recorded findings of facts with which we agree with the additional reasons as above.

16. In the result, we make the following order:

ORDER

- (i) LPA No.444 of 2015, LPA No.870 of 2015, LPA No.627 of 2015, LPA No.751 of 2015, LPA No.464 of 2015, LPA No.695 of 2015, LPA No.999 of 2015, LPA No.466 of 2015, LPA No.467 of 2015, LPA No.465 of 2015, LPA No.633 of 2015 and LPA No.835 of 2015, are dismissed.
- (ii) The status report dated 24.05.2015 marked 'X' filed by respondent-State on affidavit of Ms. Sharandeep Kaur, IAS, Deputy Commissioner, Ambala along with the accompaniments of the report with measurements and demarcation is accepted save and except that the width of the road shall be 137.5 feet at the spot where Dr. K.D. Sharma's Hospital and shops of other appellants are located. The same shall be handed over to NHAI.

- (iii) The status quo granted by this Court shall continue till the midnight of 10.06.2018 to enable the appellants to remove the encroachments. The handing over of the said area shall be made on or after 11.06.2018, on which date the State and NHAI would be entitled to take possession of the encroached land and proceed with its work.
- (iv) Costs made easy.

(A. B. CHAUDHARI)
JUDGE

1st JUNE, 2018
‘raj’

(B. S. WALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>