

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

**Civil Writ Petition No. 10478 of 2019 (O&M)
Date of Decision: 06.05.2019**

Suraj Parkash (since deceased) through his LRs

..... Petitioner(s)

Versus

Commissioner Rohtak Division Rohtak,
Tehsil and District Rohtak, Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Chanderhas Yadav, Advocate
for the petitioners.

JASWANT SINGH, J.

1. By filing of the instant writ petition, the legal heirs (*namely, Satiwati widow of Suraj Parkash, Jagmohan S/o Suraj Parkash and Sachin Kumar S/o Suraj Parkash*) of the petitioner-Suraj Parkash (since deceased) are seeking quashing of order dated **21.01.2019 (Annexure P-9)** passed by learned Commissioner, Rohtak Division, Rohtak; **(ii)** order dated 28.08.2018 **(Annexure P-7)** passed by learned Collector, Jhajjar; **and (iii)** order dated 04.06.2014 **(Annexure P-5)**, passed by learned Assistant Collector First Grade, Jhajjar, being illegal, null and void. The writ of *mandamus* is also sought to direct the respondents/authorities not to disturb the possession of the petitioners on the residential house which was constructed by Suraj Parkash (now deceased).

2. It is the case of petitioners that initially Suraj Parkash (since deceased) had constructed a residential house in Khasra No. 299 in the year 1983 and the petitioners are also staying in this residential house. However, the private respondents, who are neither residents of the village nor have

any interest in the land in question, but in order to settle the scores, have got initiated the proceedings under Section 7 of the Punjab Village Common Land (Regulations) Act, 1961, (in short, “The Act, 1961”) against the petitioners with the allegations that the petitioners have encroached Khasra No. 106, which was reserved for *Chopal Brahmnan*, by concealing the fact that *Chopal* was already in existence in the said plot.

The Courts below have relied upon the demarcation report, which was carried out much prior to the application under Section 7 of “The Act, 1961” at the back of petitioners, as neither the petitioners nor any of their representative was summoned and was presented at the time of demarcation proceedings. During hearing before the trial Court, the petitioners produced their evidence to prove that they have not encroached any part of the Khasra No. 106. But the evidence led by petitioners has wrongly been disbelieved by the Court(s) below. As such, all the impugned orders are liable to be set aside.

3. We have heard learned counsel for the petitioners and have gone through the paper book very carefully.

During the trial of the case under Section 7 of “The Act, 1961”, the petitioners did not dare to get the appointment of the Local Commissioner to controvert the Demarcation Report set up by the respondents and also in order to prove that there is no encroachment alleged to have been made by them in Khasra No.106. Indisputably, the Khasra No.106 is adjoining to Khasra No. 299 and it is the case of the petitioners that they have got constructed their house in Khasra No. 299. Evidently, Khasra No.106 is owned by the Gram Panchayat and is adjoining to Khasra No.299, allegedly to be owned by the petitioners and they have constructed

their house in this Khasra as per their stand. Now, it was the bounden duty of the petitioners to disprove the stand of the respondents that they have not made any encroachment in any part of Khasra No.106 at the time of getting their house constructed in Khasra No.299. But, except of leading of oral evidence, they have led no documentary evidence to disprove the allegations of encroachment set up by the respondents against them. During trial, no evidence was produced by the petitioners that their house was in existence over the area, which is not beyond to the area of Khasra No.299.

As such, the Courts below have rightly observed in the impugned orders that the petitioners have found in the illegal possession over the Khasra No. 106 and have rightly passed the orders of eviction of the petitioners from the encroached area.

4. In the instant case, we find nothing wrong on the basis of which it could be said that the impugned orders are erroneous and are required to be interfered by this Court.

In the totality of the facts and circumstances as discussed by us, the instant **petition** is hereby **dismissed**.

(JASWANT SINGH)
JUDGE

May 06, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No