

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

106

CWP No.16114 of 2016
Date of Decision: 22.05.2019

Davinder Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

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

Present : Mr. K.S. Dadwal, Advocate
for the petitioners.

Ms. Anu Pal, DAG, Punjab
for respondents No.1 to 3-State.

Mr. Naveen Batra, Advocate
for respondent No.4-Gram Panchayat.

JASWANT SINGH, J. (ORAL)

Davinder Singh and Sukhdev Singh sons of Chanan Singh (petitioners No.1 and 2) along with Jagdeep Singh son of Prithipal Singh, nephew of petitioners No.1 and 2 were proceeded against by the Gram Panchayat Sigriwala, Tehsil and District Hoshiarpur by filing an eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 for their unauthorised occupation of a portion of land comprising public passage/*sare aam rasta* comprised in *khasra* No.289.

The two petitioners filed their reply (Jagdeep Singh did not contest the eviction petition). The said eviction petition was finally decided by the District Development and Panchayat Officer-cum-Collector, Hoshiarpur in favour of the Gram Panchayat, vide order dated 05.08.2015 (**Annexure P-5**) by recording a finding based on a

demarcation report that the two petitioners herein were in unauthorised occupation of land measuring 1 *marla* 6 *sarsai* out of *khasra* No.289 (0-8) as per *jamabandi* for the year 2013-14. Accordingly, the constructions over these said encroached portions were ordered to be removed. The appeal filed by the petitioners was dismissed vide order dated 22.01.2016 (**Annexure P-6**). Hence the present writ petition challenging orders dated 05.08.2015 (**Annexures P-5**) and 22.01.2016 (**Annexure P-6**).

The argument raised on behalf of the petitioners is that both the impugned orders (**Annexures P-5 and P-6**) were liable to be set aside, as the demarcation report relied upon, relates to *khasra* No.299 and not 289. Accordingly, notice of motion was issued to the respondents.

The official respondents No.1 to 3 have filed their reply, which has been adopted by the Gram Panchayat-respondent No.4. The aforesaid Jagdeep Singh impleaded as respondent No.5 stood duly served way back since October, 2016, who has chosen to abstain from the present proceedings and, therefore, is proceeded *ex-parte*.

During the course of previous hearing, in view of the wrong demarcation relied upon by the authorities, the official respondents were directed to conduct a fresh demarcation of the *sare aam rasta*/public passage comprised in *khasra* Nos.289 and 299 (although wrongly recorded in the order as *khasra* No.290).

At the time of resumed hearing today, an affidavit dated 15.05.2019 of Mr. Sarabjit Singh, District Development and Panchayat Officer, Hoshiarpur has been filed in Court. A copy of the same has

been furnished to the counsel opposite. Para 3 of the said affidavit reads as under:-

*"That after informing the concerned parties, the deponent went to the spot on 10.05.2019, at Village Singriwal, alongwith Halqa Girdawar, Patwari, BDPO Block-1 namely Mahesh Kumar, Tax Collector Subash Chander, Block Patwari Sh. Roop Singh. The parties were also present over there. However, the Halqa Girdawar and Patwari started demarcation with the consent of the persons present at the spot i.e. the concerned parties. During demarcation and inspection it was found that Sh. Jagdeep Singh S/o Prithvi Pal Singh has encroached upon the area measuring 1 Marlas 6 Sarsahi having dimensions East: 41 feet 6 inch, West: 41 feet 6 inch, North: 11 feet, South: 11 Feet, by raising construction of house in Khasra no.299, which is a passage and is recorded as Mustarka Malkan in the revenue record. The above said Jagdeep Singh was duly present during the demarcation and spot inspection. The said encroachment has been duly shown by Halwa Girdawar in the site plan accompanying with the demarcation report. Whereas, it is reported and found that there is no illegal possession over Khasra no.289(0-8) & 290 (1-2). The copy of the said demarcation report accompanied by the site plan was supplied by the office of Tehsildar to our office, vide letter no.1374 dated 13.05.2019. The copy of demarcation report is **Annexure-R-1.**"*

It is evident and agreed from the aforesaid fresh developments that there is no encroachment by both the petitioners on any portion of the *sare aam rasta*/public passage comprised in *khasra* No.289, whereas encroachment has been found to be that of Jagdeep Singh/respondent No.5 herein to the extent of 1 *marla* and 6 *sarsai* on the portion of the street comprised in *khasra* No.299. The said demarcation was conducted in the presence of Jagdeep Singh and others.

In view of the above, the present writ petition is allowed and both the impugned orders dated 05.08.2015 (**Annexures P-5**) and 22.01.2016 (**Annexure P-6**) are hereby set aside. The authorities are

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directed to remove the encroachments of the portion of the public street
comprised in *khasra* No.299 by adopting due course of law.

(JASWANT SINGH)
JUDGE

22.05.2019
Vinay-I

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No