

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

Civil Writ Petition No. 13767 of 2018 (O&M)

Date of Decision: 22.01.2019

Tarlok Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Umesh Kumar Kanwar, Advocate for the petitioner.

JASWANT SINGH, J.

1. The challenge in this writ petition is to the orders dated 15.12.2016 and 05.05.2017 (**Annexures P-17 & P-19 respectively**), whereby the petitioner (*Tarlok Singh*) has been ordered to be evicted from part of the public street encroached upon by him in the proceedings initiated by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (in short “The Act, 1961”).

2. In brief, the conceded facts which emerge out from the record are that there exists a public passage / common passage in Khasra No. 45, as per the revenue record of Village Balrah (*Hadbast* 500), Block Tanda, Tehsil Dasuya, District Hoshiarpur. The petitioner and *pro forma* respondents are the inhabitants of village Balrah. There was *Tug of War* among the inhabitants of the locality with regard to encroachment over the common passage comprising in Khasra No.45. As a result, to find out as to whether there was any encroachment over common passage, Halka Kanungo / local Commissioner conducted the demarcation of this Khasra No. 45 on 27.04.2016 and submitted a report dated 02.05.2016 (**Annexure P-13**). That at the time of conducting the demarcation, the petitioner also remained

present on the spot. The local Commissioner on the basis of the demarcation conducted by him on 27.04.2016 came to the conclusion that petitioner has unauthorizedly constructed a portion of his house on the land of common passage comprising in Khasra No.45 to the extent of 220 Sq.ft. Thereafter, the District Development & Panchayat Officer-cum-Collector, Hoshiapur vide order dated 15.12.2016 **(P-17)** directed the removal of the unauthorized encroachment, comprising two and half (2½) feet unauthorized extended gallery measuring a total 220 Square Feet.

The appeal filed by the petitioner against the order dated 15.12.2016 **(P-17)** under Section 13-A of “The Act, 1961” was also dismissed by the Director Rural Development and Panchayats Punjab, Mohali, exercising the powers of Commissioner, vide impugned order dated 05.05.2017 **(P-19)**. It transpires that since there was no stay during the appeal, warrants of possession were also issued by the District Development & Panchayat Officer-cum-Collector, Hoshiapur vide order dated 20.02.2017 **(P-18)** as per report dated 02.05.2016 **(P-13)**.

3. Counsel for the petitioner has contended that all the impugned orders are merit-less and have been passed in clandestine manner. The petitioner has not made any encroachment over the land of public passage. It is further contended that the eviction order has been passed by the Collector at the back of the petitioner by wrongly declaring him *ex parte* without proper service. Hence, the impugned orders are liable to be set aside.

4. After scrutinizing the arguments addressed by learned counsel for the petitioner and the record, we are of the view that instant writ petition deserves to be dismissed.

It is admitted and a matter of record that the petitioner-Tarlok Singh himself had been making complaints regarding encroachments of the common passage and demarcations had been conducted on earlier occasions as well. It is also not disputed that in view of the rival claims of the parties concerned, a Local Commissioner, i.e., Halqa Patwari was appointed to conduct a fresh demarcation.

There is no dispute to the factum that the petitioner (*Tarlok Singh*) himself was present at the time of conducting of demarcation proceedings by the local Commissioner / Halka Kanungo on 27.04.2016. As such, even at the time of conducting of demarcation, the petitioner did not raise any objection with regard to mode and manner of conducting of demarcation by the local Commissioner. Meaning thereby, the petitioner accepted the procedure adopted by the local Commissioner to measure the land of common passage. Therefore, the stand of the petitioner that the demarcation report has to be rejected is totally incorrect.

As such, we are of the view that the petitioner should abide by the report of the Local Commissioner, whereby it is categorically established that the petitioner-Tarlok Singh, Mohinder Singh s/o Sadhu Singh (respondent No. 7), Kulwant Singh s/o Kartar Singh (respondent No. 8) and Gurdev Singh s/o Jagir Singh of the locality have encroached the land of public passage. Thus, the petitioner is required to remove two and half (2½) feet unauthorized constructed extended gallery of his house on the land of common passage.

As regards the plea that the petitioner was wrongly proceeded *ex parte* by the Collector in the eviction proceedings instituted on 17.11.2016 based on the demarcation report dated 02.05.2016 (P-13),

Mohinder Singh and Kulwant Singh, the co-encroachers appeared and got their statements recorded that they will not file their replies and would have no objection if the Panchayat takes possession of the said unauthorized encroachments. Tarlok Singh (petitioner) and Kashmir Kaur, widow of Gurdev Singh did not appear inspite of service of summons, and were accordingly proceeded *ex parte* on 25.11.2016. The other two i.e. Mohinder Singh and Kulwant Singh also avoided the further proceedings and were subsequently proceeded *ex parte*. It is too late in the day to accept that the petitioner was not aware of the proceedings for eviction when his similarly placed neighbours, residing across the road, had put in appearance. Moreso, when the petitioner himself was goading the Gram Panchayat for identification and removal of encroachments. In our opinion, the petitioner deliberately chose to stay away from the proceedings and the orders passed by the Collector declaring him *ex parte* was thus clearly justified. Therefore, the plea is rejected.

5. Further, it is well settled proposition of law that Government or Panchayat lands belong to public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. In fact, the Government / Panchayat holds the property as a trustee of the people. Possession of public property by the encroachers is no possession in the eyes of law. Such encroacher of public property has no right to claim any right whatsoever on the basis of un-lawful occupation of public property. Moreover, the Courts have to act as guardians of public property.

The Hon'ble Supreme Court in case of ***Jagpal Singh Versus State of Punjab, 2011 (1) RCR (Civil) 912 (SC)*** has also laid down that:-

“(i) All Government orders permitting allotment of Gram Sabha land to private persons and

commercial enterprises on payment of some money are illegal and should be ignored.

(ii) *The directions issued to all the State Governments in the Country that they should prepare schemes for eviction of illegal/unauthorised occupants of Gram Panchayat and Gram Sabha land.”*

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

No other point was raised before us.

7. Before parting with this order, we hereby **direct** to the Gram Panchayat of Village Balrah, Block Tanda, Tehsil Dasuya, District Hoshiarpur, to act as a Trustee of Panchayat land and to take active and effective steps against all to remove the encroachment over this passage as per the report dated 02.05.2016 (**P-13**) of the local Commissioner forthwith and the report is awaited within three months from today to be filed in the Registry of this Court.

In the totality of the facts and circumstances as discussed by us, the instant **petition** is hereby **dismissed** and pending miscellaneous application(s), if any, stand(s) also disposed of accordingly.

(JASWANT SINGH)
JUDGE

January 22, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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