

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CWP-19075-2019

Date of decision: 19.09.2019

BADAN SINGH

...PETITIONER

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shamsheer Singh Mor, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the impugned order dated 04.04.2019 (Annexure P-5) passed by the Divisional Commissioner, Rohtak Division, Rohtak-respondent No. 2 and order dated 24.04.2017 (Annexure P-3) passed by the Collector, Gohana, District Sonapat-respondent No. 3, whereby on an application filed under Sections 4 and 5 of the Public Premises Act, 1973 against the petitioner by the Gram Panchayat, Village Anwali, Tehsil Gohana, District Sonapat-respondent No. 4, the petitioner has been found to have encroached upon 40 sq. yards which is part of a street, appeal against which has been preferred by the petitioner which has been dismissed.

It is the contention of the learned counsel for the petitioner that the Collector, Gohana, in his order dated 17.06.2011 (Annexure P-1), has mentioned that on demarcation having been carried out, it was found that the petitioner was not in illegal possession of any Gram Panchayat land nor had he encroached upon any area of the street. His contention is that the petition under Sections 4 and 5 of the Public Premises Act has been filed by

the Sarpanch of the village against the petitioner because of his personal grudge. His contention is that the competent authority has not taken into consideration the fact that the demarcation, which is said to have been carried out, was not in the presence of the petitioner. He contends that the petitioner had not been given any opportunity to rebut the report of the demarcation. The petitioner had been always requesting for fresh demarcation to be carried out but the said request has not been accepted. In this Court also, he has made such a request. Prayer has, thus, been made for setting aside the impugned orders.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case as well as the impugned orders.

As per the order dated 17.06.2011 (Annexure P-1) passed by the Collector, Gohana in an execution application which was preferred by some Ramdia, demarcation was carried out on 16.06.2011. In the said demarcation, petitioner was not found in illegal possession over street No. 493. The application, so filed, was dismissed. The contention of the counsel for the petitioner, however, now cannot be accepted for the reason that the application, which is the subject matter of the present writ petition, was filed under Sections 4 and 5 of the Public Premises Act, 1973 by the Gram Panchayat, Village Anwali, Tehsil Gohana, District Sonapat on 04.09.2015, which is after a period of four years from the date when the order dated 17.06.2011 (Annexure P-1) was passed. During the interregnum period, the possibility of the petitioner having encroached upon the street cannot be ruled out. Perusal of the order further indicates that the demarcation was carried out in accordance with the order passed in an appeal which has been

preferred before the Commission where both the parties had consented to the factum of carrying out demarcation through advanced technique of machine and it was further ordered that in case encroachment is found therein, the same would be removed. In pursuance to the said order, demarcation was carried out on 09.01.2017 in compliance with the order dated 09.07.2015 passed by the Commissioner, Rohtak Range, Rohtak, where the petitioner was found to be in illegal possession of the street.

The plea of the petitioner that he was absent at the time of demarcation having been carried out cannot be accepted in the light of the order passed by the Commissioner, referred to above, which was the consented order between the parties. The request of the petitioner for a fresh demarcation, therefore, cannot be accepted especially when the parties have agreed of such a process to be carried out.

It may be pointed out here that the process of demarcation was not through a normal process but was being conducted through the machine, wherein the petitioner has been found to be in illegal possession of the street.

In view of the above, finding no merit in the present writ petition, the same stands dismissed by upholding the order dated 04.04.2019 (Annexure P-5) passed by the Divisional Commissioner, Rohtak Division, Rohtak-respondent No. 2 and order dated 24.04.2017 (Annexure P-3) passed by the Collector, Gohana, District Sonapat-respondent No. 3.

September 19, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No