

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

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Civil Writ Petition No.36313 of 2019
Date of Decision: December 16th, 2019

Harjit Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Karamjit Singh Maangat, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court with a grievance that the order dated 17.10.2017 (Annexure P-7) passed by the Sub Divisional Magistrate-cum-Collector, Gurdaspur, vide which warrants of possession have been issued in the execution proceedings in pursuance to the order dated 30.04.2009 (Annexure P-2), is not sustainable in the light of the fact that not only the petitioners but Gurmej Singh-respondent No.6, who had filed an application under Section 5 of the Public Premises Act, was found to be an encroacher. Eviction not only qua the petitioners but Gurmej Singh was also ordered by the said order. Counsel for the petitioners contends that a discriminatory approach has been exercised by the official respondents since eviction of only the petitioners is being carried out, whereas no such action is taken against Gurmej Singh son of Bahadur Singh-respondent No.6. He contends that the impugned order dated 17.10.2017 (Annexure P-7) cannot sustain.

2. This contention of learned counsel for the petitioners cannot be accepted as the discrimination, if any, can be claimed as a positive right and not as a negative right. Violation of Article 14 cannot be extended to the extent of helping an encroacher to claim that all encroachments should be

removed prior to he being removed from illegal possession.

3. The writ petition, therefore, as preferred by the petitioners and on the grounds taken therein, cannot be accepted and the same, therefore, stands dismissed.

4. In case the contention as has been raised by learned counsel for the petitioners is correct as is apparent from the order dated 30.04.2009 (Annexure P-2) passed by the Sub Divisional Magistrate exercising the powers of the Collector, Gurdaspur, wherein it has been held that Gurmej Singh is also an encroacher and the said order has attained finality against said Gurmej Singh, the competent authority is required to take action for removal of such encroachments.

5. Let the said encroachments, if any, qua Gurmej Singh son of Bahadur Singh-respondent No.6 be removed in accordance with law within a period of three months from today by the competent authority.

6. Copy of this order be given *dasti* to Mr. T.P.S. Chawla, Deputy Advocate General, Punjab, under signatures of Bench Secretary of this Court, for forwarding the same to the competent authority i.e. Collector-cum-SDM, District Gurdaspur-respondent No.2 for information and compliance and the compliance report be submitted with the Registrar (Judicial) of this Court with a further period of two weeks.

December 16th, 2019

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No