

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

Date of Decision: 25.04.2019

1. CR No.800 of 2018(O&M)

Sadhu Singh**Petitioner**

Versus

State of Punjab and others**Respondents**

2. CR No.801 of 2018(O&M)

Satpal**Petitioner**

Versus

State of Punjab and others**Respondents**

3. CR No.802 of 2018(O&M)

Balwant Kaur and another**Petitioners**

Versus

State of Punjab and others**Respondents**

4. COCP No.399 of 2016(O&M)

Lakhvir Singh**Petitioner**

Versus

Sumit Muranjal and another**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

CR Nos.800, 801, 802 of 2018(O&M) and COCP No.399 of 2016(O&M)

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Present:Mr. B.D. Sharma, Advocate
for the petitioner(s) in
CR Nos.800, 801 and 802 of 2018.

Mr. Arun Kaundal DAG, Punjab.

Ms. Salina Chalana, Advocate
for respondent No.5
in CR Nos.800, 801 and 802 of 2018.

Mr. M.K. Singla, Advocate and
Ms. Sonika, Advocate and
Mr. Dinesh Kumar, Advocate
for respondent No.6
in CR Nos.800, 801 and 802 of 2018 and
for the petitioner in COCP No.399 of 2016.

Mr. J.S. Bhandohal, Advocate
for the respondents in COCP No.399 of 2016.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.800 of 2018 titled Sadhu Singh Vs. State of Punjab and others, CR No.801 of 2018 titled Satpal Vs. State of Punjab and others, CR No.802 of 2018 titled Balwant Kaur and another Vs. State of Punjab and others and COCP No.399 of 2016 titled Lakhvir Singh Vs. Sumit Muranjal and another are being disposed of. Facts are being noticed from CR No.800 of 2018.

[2]. Petitioners have preferred aforesaid civil revisions (except COCP) against the order dated 17.01.2018 passed by District Judge, Sri Muktsar Sahib vide which order dated

22.08.2017 passed by Additional Civil Judge (Senior Division), Gidderbaha was set aside and order of *status quo* granted by the trial Court was vacated.

[3]. Contempt petition has been preferred under Sections 10 and 12 of the Contempt of Courts Act, 1971 for punishing the respondents for defying the order dated 24.08.2015 passed by the High Court in CWP No.17512 of 2015.

[4]. The dispute is with regard to alleged encroachment on the road leading from Mehna to Vanwala Anu link road. Road is in existence since many years having definite width and paved portion. Re-carpeting of the road was done in the year 1990. Some part of the road is alleged to have come in the portion of the house of the petitioner on one side and Satpal Singh son of Sardul Singh and Lakhvir Singh son of Satpal Singh on the other side. Petitioner alleged that the aforesaid two persons are big landlords, having huge constructions along the road side and they do not like the existence of the house of the petitioner in front of their gate. The road is straight at the spot and there is no hurdle created by the petitioner, nor there is any shortfall in the width of the road at the spot. The road is running smoothly without there being any hurdle. Petitioner has referred to site plan showing the existing position of the street viz-a-viz the houses constructed on both sides. The house of the petitioner is

on the northern side of the road shown in green colour, whereas houses of the Lakhvir Singh and Satpal Singh are on the southern side of the house and are shown in blue colour in Annexure P2. Petitioner has also referred to the photographs of the existing position of the road in question.

[5]. Satpal Singh and Lakhvir Singh filed a suit for permanent injunction restraining Sub Divisional Officer, PWD (B&R) Sub Division, Gidderbaha for restraining the authority for making any pucca road or encroaching upon the area of pathway/patri in front of their houses. Para Nos.2 and 3 of the plaint are necessary to be quoted hereasunder:-

“2. That in front of the house of the plaintiffs along the wall of the houses of the plaintiffs on the western side the plaintiffs have left a pathway/patri marked as A to B and shown in green colour in the enclosed site plan, for their use in their own land. Along the said pathway/patri of the plaintiffs there is a kacha road which is being made pucca but the defendants and in order to make the said pucca road the defendant intends to encroach upon the area of said pathway/patri of the plaintiffs, illegally, forcibly, without any right. Photocopy of khasra girdawari Sauni 2014 and Hari 2015 and Aks Sijra Killa Bandi vill. Mehna and electricity and telephone bills of the houses of the plaintiffs are enclosed herewith.

3. That it is pertinent to mention here that in the month of March, 2015, previously also the defendant had tried

to encroach upon the area of said pathway/patri for the making of pucca road. Then the plaintiffs moved applications to various authorities including the defendant through registered posts. Photocopies of the same are enclosed. Certified copy of demarcation of the land of the plaintiffs as mentioned above, was also carried out by the Tehsildar Malout, is also enclosed herewith. As per the said demarcation report, the area of the pathway/patri of the plaintiffs as detailed above is also the ownership of the plaintiffs.”

[6]. Perusal of para No.3 of the plaint would show that a reference was made to some demarcation report carried out by Tehsildar Malout, wherein area of pathway/patri was shown to be under ownership of Satpal Singh and Lakhvir Singh.

[7]. During pendency of the aforesaid suit, Naib Tehsildar, Lambi appeared before the trial Court and made a statement that the demarcation at the spot is not possible. The said statement was recorded by the trial Court on 22.01.2016 and thereafter, the order to that effect was also passed by the Court on 22.01.2016 that demarcation cannot be made in that suit. Plaintiffs of the aforesaid suit namely Satpal Singh and Lakhvir Singh started alleging that the petitioner has encroached upon the portion of the road. They filed CWP No.17512 of 2015 by not disclosing the pendency of the aforesaid civil suit. The writ petition was filed against the respondents for taking action in the

context of alleged illegal possession over the land of the road.

The said writ petition came to be heard by the Division Bench of this Court on 24.08.2015. The writ petition was disposed of by passing the following order:-

“Present: Mr.Dinesh Kumar, Advocate, for the petitioner.

Mr.Rajesh Bhardwaj, Additional AG, Punjab.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

Notice of motion to respondent Nos.1 to 8 only at this stage.

On our asking, Mr.Rajesh Bhardwaj, learned Additional Advocate General, Punjab, accepts notice on their behalf.

Let eight copies of the writ petition be supplied to the State counsel during the course of day failing which this order shall be automatically recalled and the writ petition shall be deemed to have been dismissed for non-prosecution.

In view of the nature of order which we propose to pass, it is not necessary to issue notice to respondent No.9-Gram Panchayat or to seek any counter-reply from respondent Nos.1 to 8 at this stage.

The petitioner is a resident of village Mehna, Tehsil Malout, District Muktsar Sahib. He alleges that Khasra No.296 (43-1) is a public passage (road) and it has been encroached upon by some persons. Though the road is required to be maintained by PWD (B&R) Department but

no action is being taken by those authorities or the Gram Panchayat of the village. Such an issue has been raised by the petitioner vide application dated 21.05.2015 (P-9) also.

We thus dispose of this writ petition without expressing any views on merits of the petitioner's allegations, with a direction to the Deputy Commissioner, Muktsar Sahib or other concerned authorities to take notice of the above-stated allegations and if the public passage has been actually encroached upon, let appropriate action for removal of such encroachment, in accordance with law, including observing principles of natural justice, be taken within a period of four months from the date of receiving a certified copy of this order.

Ordered accordingly.

Dasti.

[SURYA KANT]
JUDGE

August 24, 2015

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[JASPAL SINGH]
JUDGE"

[8]. Perusal of the aforesaid order would show that khasra No.296 (43-1) is a public passage (road). The grievance of the writ petitioners was redressed by disposing of the writ petition without expressing anything on merits with a direction to the Deputy Commissioner, Sri Muktsar Sahib or other concerned authorities to take notice of the allegations in the writ petition. If the public passage was found to have been encroached, then appropriate action was to be taken for removal of such encroachment in accordance with law after observing principles

of natural justice within a period of four months from the date of receiving certified copy of that order.

[9]. When no action was taken by the official respondents, COCP No.399 of 2016 was filed in which Deputy Commissioner, Sri Muktsar Sahib and Executive Engineer, PWD (B&R), Sri Muktsar Sahib appeared on 01.09.2016 and learned Single Judge was pleased to pass the order dated 01.09.2016 which is reproduced hereasunder:-

“Present: Mr. Dinesh Kumar, Advocate for the petitioner.

Mr. J.S. Bhandohal, Advocate for the respondents.

Counsel for the respondents prays for and is granted four weeks time to file reply/compliance report. If the needful is not done within the stipulated time, the reply/compliance report will be accepted by the Registry on payment of Rs.10,000/- as costs to be deposited with the Lawyers' Welfare Fund, High Court.

List on 07.12.2016.

**(AUGUSTINE GEORGE MASIH)
JUDGE”**

September 01, 2016

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[10]. Contempt petition was adjourned for a period of more than three months. In order to cover any in-action on the part of the officials, they got conducted some demarcation on 05.12.2016 by some machine at the back of the petitioner

without associating him in the process of demarcation. Thereafter, they filed reply in the contempt petition stating therein that the petitioner along with three other persons is in unauthorized possession over the land of the road and notice dated 05.12.2016 was issued to the petitioner and others for removal of illegal possession within seven days. In the event of their failure to do the needful, their illegal possession was to be removed in accordance with law. A reply was filed by BDPO, Lambi in the contempt petition on 07.12.2016 with the aforesaid facts. Letter/memo No.2949 dated 05.12.2016 was issued by Tehsildar, Malout to Sub Divisional Magistrate, Malout in the subject matter of the writ petition regarding illegal possession, communicating that the demarcation proceedings have been conducted by the Field Staff with total machine and illegal possession was found.

[11]. Even on 04.12.2016, kanungo made a report that in pursuance of order passed in CWP No.17512 of 2015, kanungo had gone to the village. Record of the path was summoned from Halqa Patwari and demarcation was conducted by the total station machine in respect of land which was comprised in khasra No.296 in the presence of the concerned parties and Punjab State Mandi Board. Report of the station machine was attached. No notice was issued to the petitioner despite recital

in the aforesaid letter that the demarcation was done in the presence of the concerned parties. No such notice has come forth on record. On the basis of aforesaid report of total station machine, a notice was issued to the petitioner and three more persons namely Satpal son of Lal Chand, Balwant Kaur wife of Harnek Singh and Kala Singh son of Bhoora Singh regarding removal of illegal possession from land/road. Petitioner and others were directed that illegal possession be removed within seven days and in the event of not doing so, action shall be taken against them. The said notice dated 05.12.2016 was issued on the basis of report of kanungo dated 04.12.2016 which was submitted without issuing any prior notice to the concerned parties/petitioners before allegedly demarcating the site in question.

[12]. Feeling aggrieved against the aforesaid notice dated 05.12.2016 issued by BDPO, plaintiff/petitioner Sadhu Singh filed a civil suit for declaration to the effect that letter dated 05.12.2016 issued by the BDPO was illegal, null and void. Permanent injunction was also sought restraining the defendants from causing any interference or demolishing the house of the plaintiff/petitioner.

[13]. While disposing of CWP No.17512 of 2015, it was specifically recited in the order dated 24.08.2015 by the Division

Bench of this Court that action for removal of encroachment was to be taken in accordance with law by observing principles of natural justice. The said suit was filed by the plaintiff/petitioner on 13.12.2016. It was specifically pleaded by the petitioner in the civil suit that notice for demolition was issued against the spirit of order dated 24.08.2015 passed by Division Bench of this Court and the same was issued on political consideration. An application under Order 39 Rules 1 and 2 CPC for grant of temporary injunction was also filed along with the suit. No *ex parte* injunction was granted to the petitioner and the suit was adjourned for service of the respondents. In the meanwhile, BDPO again issued notice dated 21.12.2016 directing the petitioner to remove illegal possession in the form of house on the road within seven days, failing which appropriate action was to be taken against the petitioner.

[14]. Feeling aggrieved against the aforesaid letter dated 21.12.2016, petitioner along with three other persons/alleged encroachers filed CWP No.818 of 2017 which came up for hearing on 18.01.2017 and following order was passed:-

“Present: Mr. Bhrigu Dutt Sharma, Advocate for the petitioners.

It is contended that BDPO has no jurisdiction to evict an unauthorized occupant merely by issuing notice

unless an order to this effect is passed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. It is further contended that there is no encroachment made by the petitioners and the impugned notice has been issued at the instance of the private respondents.

Notice of motion for 23.05.2017.

Meanwhile, status quo at the site be maintained by both the parties.

(Surya Kant)

Judge

18.01.2017

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(Gurmit Ram)

Judge”

[15]. Perusal of the aforesaid order would show that order of *status quo* was granted on the premise that BDPO had no jurisdiction to evict an unauthorized occupant merely by issuing notice in the absence of any proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. No action was taken after passing of the order dated 18.01.2017.

[16]. The suit was contested by the respondents by filing separate written statement. Civil Writ Petition No.818 of 2017 ultimately came up for consideration on 23.05.2017 and the petitioner on the basis of pendency of the suit against first notice dated 05.12.2016 withdrew the writ petition with a liberty to pursue the suit filed by the petitioner before the trial Court.

Following order was passed by the Division Bench of this Court on 23.05.2017:-

“Present: - Mr. B.D. Sharma, Advocate, for the petitioners.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

Mr. M.K. Singla, Advocate, for respondents No.5 and 6.

Mr. Harkirat Singh Sandhu, Advocate, for respondent No.7.

RAJESH BINDAL, J.

The petitioners have approached this Court praying for quashing of the notice dated 21.12.2016 issued by respondent No.4 directing the petitioners to remove illegal encroachments on the land of Mehna-Banwala Anu Road. Learned counsel for respondents No.5 and 6 has produced in Court copies of three civil suits filed by the petitioners claiming the same relief, prior to the filing of the present petition, which are pending in the Court of Additional Civil Judge (Senior Division), Gidderbaha.

Considering the aforesaid stand taken by learned counsel for respondents No.5 and 6, learned counsel for the petitioners submitted that he may be permitted to withdraw the present petition with liberty to pursue the suits filed.

Ordered accordingly.

(Rajesh Bindal)

Judge

(Ramendra Jain)

Judge”

May 23, 2017

R.S.

[17]. After withdrawal of the writ petition on 23.05.2017,

COCP No.399 of 2016 came up for consideration on 25.05.2017

and following order was passed by learned Single Judge:-

*“Present: Mr. Dinesh Kumar, Advocate, for the petitioner.
Mr. J. S. Bhandohal, Advocate, for the
respondents.*

Learned counsel for the respondents informs that earlier there was a status-quo order passed by this Court in Civil Writ Petition No.818 of 2017 (Sadhu Singh and others Vs. State of Punjab and others) and the said writ petition now stands withdrawn by the petitioner on 23.05.2017. He, therefore, contends that further action for removal of illegal encroachments shall be completed within a period of four weeks from today and for this purpose, he prays for an adjournment.

Prayer granted.

Let the compliance affidavit be filed within a period of eight weeks from today with an advance copy to counsel for the petitioner, who shall, if need be, file response thereto within a further period of four weeks.

List on 24.10.2017.

**May 25, 2017
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**(AUGUSTINE GEORGE MASIH)
JUDGE”**

[18]. After withdrawal of the writ petition, rigour of order of *status quo* came to an end, therefore, respondents submitted before the contempt Court that they will complete the action for removal of the encroachment within a period of four weeks and the petitioner was directed to pursue his remedy before the Civil Court which was pending. In these circumstances, petitioner ventured to seek consideration of application under Order 39

Rules 1 and 2 CPC at an early actual date and application was filed to that effect on 30.05.2017. Notice of that application was issued on 30.05.2017 for 01.07.2017. Respondents were hell bent to demolish the house of the petitioner without following any process of law because no proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 were ever initiated, nor any notice was ever issued before conducting alleged demarcation by the respondents despite the order dated 24.08.2015 passed by the Division Bench in CWP No.17512 of 2015. Civil Court had adjourned the application under Order 39 Rules 1 and 2 CPC for 19.07.2017 and notice in the application for early hearing was issued for 01.07.2017. Since the petitioner had suffered irreparable loss, therefore, in order to save illegal demolition of his house, petitioner sought indulgence of the High Court by invoking supervisory jurisdiction of the High Court under Article 227 of the Constitution of India for setting aside the order dated 30.05.2017 passed by Civil Judge (Junior Division), vide which notice was issued in the application for early hearing for 01.07.2017.

[19]. CR No.4198 of 2017 came up for hearing before learned Single Judge along with connected revision petition on 13.06.2017 and the Court was pleased to issue notice of motion and parties were directed to maintain *status quo* till the next

date of hearing i.e. 04.07.2017. On 04.07.2017, trial Court was directed to decide the pending application under Order 39 Rules 1 and 2 CPC before the next date of hearing i.e. 31.08.2017. Trial Court vide order dated 22.08.2017 found *prima facie* material in favour of the petitioner and granted maintenance of status quo qua the possession over the suit property till final disposal of the suit. Order dated 22.08.2017 was assailed by the respondents in appeal before the Lower Appellate Court. Vide order dated 17.01.2018 passed by the District Judge, appeal was accepted. Order dated 22.08.2017 passed by the trial Court was set aside and *status quo* order was vacated.

[20]. Perusal of the impugned order would show that till date, no proceedings under Section 7 of the Punjab Village Lands (Regulation) Act, 1961 have been initiated by the respondents in the context of any unauthorized possession of the petitioner and others. Notices dated 05.12.2016 and 21.12.2016 were issued solely on the basis of *ex parte* demarcation conducting by the respondents on the site. Notice dated 05.12.2016 was assailed in the civil suit in which status quo order in the application under Order 39 Rules 1 and 2 CPC was passed by the trial Court which has been set aside by the District Judge vide the impugned order. As against the second notice dated 21.12.2016, CWP No.818 of 2017 was filed which was

ultimately withdrawn with a liberty to pursue the pending suit filed by the petitioner. Both the parties are claiming ownership and possession over the property in question by alleging encroachment by the opposite party. Khasra No.296 is a public passage. In the suit filed by Satpal Singh and Lakhvir Singh, categorical statement was made by the Naib Tehsildar, Lambi that the demarcation cannot be done in respect of site in question. Thereafter, demarcation was allegedly done. As per report of kanungo dated 04.12.2016 no notice was given to the petitioner and others and only reference was made that demarcation was conducted by total station machine in the presence of the concerned parties. No reference was made to any notice issued to the petitioner, nor the presence of the petitioner was recorded in the report prepared by kanungo. The aforesaid exercise was done in violation of the order dated 24.08.2015 passed by Division Bench of this Court in CWP No.17512 of 2015 by obligating the respondents to conduct demarcation in accordance with law after observing principles of natural justice. [21]. Perusal of the record would show that in order to save intended action in the contempt proceedings, the respondents have tried to project the case of demarcation by total station machine and on the basis of such *ex parte* alleged demarcation, notices dated 05.12.2016 and 21.12.2016 came to be issued.

Notice dated 05.12.2016 is the subject matter of civil suit which is pending before the trial Court from where application under Order 39 Rules 1 and 2 CPC has arisen. Against the second notice dated 21.12.2016, CWP No.818 of 2017 was filed which was ultimately withdrawn with a liberty to pursue the suit before the Civil Court.

[22]. In pith and substance, the controversy is revolving around the authenticity of demarcation allegedly conducted by kanungo in pursuance of direction issued by the Division Bench of this Court vide order dated 24.08.2015 in CWP No.17512 of 2015. The record produced by the respondents do not suggest association of the petitioners in any demarcation proceedings. It has also to be ascertained whether the path in question is worth demarcable in view of early statement made by the Naib Tehsildar before the Civil Court in the suit filed by Satpal Singh and Lakhvir Singh against Sub Divisional Officer, PWD (B&R), Sub Division Gidderbaha.

[23]. Trial Court has granted *status quo* on the ground that removal of alleged encroachment cannot be done without invoking substantive provision in terms of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. The impugned exercise cannot be done merely by issuing notice to the alleged encroachers. Lower Appellant Appellate Court in my

considered opinion, has gone without jurisdiction to set aside the order dated 22.08.2017 passed by the trial Court granting order of *status quo*. Both the parties are claiming lawful possession over the houses constructed by them and have alleged allegations against each other, therefore, it would be appropriate to direct both the parties to maintain *status quo* in respect of possession till such time a lawful demarcation is carried out under the supervision of Deputy Commissioner, Sri Muktsar Sahib who shall depute some competent officer to look after the process of conducting fresh demarcation at the site after issuing prior notices to the parties concerned and after observing principles of natural justice positively within a period of two months from the date of receipt of certified copy of this order. After the conduct of demarcation proceedings afresh in accordance with law, both the parties would resort to their legal remedies in accordance with law.

[24]. Lakhvir Singh son of Satpal Singh resident of Village Mehna has already been impleaded as respondent No.6 in the present case. He has already been impleaded as party defendant in the suit vide order dated 05.09.2018. Since the aforesaid exercise would take some time, therefore, CR Nos.800, 801 and 802 of 2018 are being disposed of in the light of observations made hereinabove. Since COCP No.399 of

2016 is also dependent upon the fate of intended demarcation which is to be carried out by the respondent department in consonance with principles of natural justice, therefore, COCP No.399 of 2016 is also disposed of, leaving the concerned parties to take recourse to lawful proceedings after receipt of demarcation report by the competent authority in accordance with law.

25.04.2019	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No