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

**CWP No. 9410 of 2020
Date of Decision: 7th July, 2020**

Harjit and others

Petitioners

Versus

State of Haryana and others

Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Keshav Pratap Singh, Advocate for the Petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. This is the second round of litigation at the instance of the Petitioners.

2. In the first round, the Petitioners had come before this Court with CWP No.16440 of 2012 where they had challenged certain orders passed by the Assistant Collector 1st Grade, Faridabad, the District Collector, Faridabad and the Commissioner, Gurgaon Division, Gurgaon respectively. That writ petition came to be disposed of by the Division Bench of this Court on 19th February, 2013. The order of the Court was virtually a consent order. The counsel for the parties agreed that there was an error in the demarcation

report, viz., the eastern arm of Khasra No. 365 may have been wrongly referred to as 9 karams. As a result, this Court remitted the matter for carrying out a fresh exercise of demarcation to the Assistant Collector 1st Grade, Faridabad “to decide the matter with respect to encroachment of path No. 367 afresh and in accordance with law after taking into consideration the measurements of Khasras No. 365, 366 and 367 and all other relevant khasra numbers by reference to the *Mossavi*, Field Book and the *Aks-shajra*”.

3. Consequent upon the above order, a fresh demarcation report came to be prepared. It appears that thereafter in an execution petition, the Assistant Collector, Faridabad passed an order on 12th November, 2014. He noted the above developments and concluded as under:-

“After hearing the Ld. counsel for the parties and after going through the documents placed on the file as well as the demarcation report and after consulting the revenue record, since there is an encroachment over land in dispute by Sohan Pal etc. therefore, execution petition is dismissed. B.D.P.O. Is directed to consider the dimension of eastern wall as 6 karam and take action accordingly and to remove the encroachment and ejectment proceedings be initiated within a month. File be consigned to the record room.”

4. It appears that although the above findings were specific to Mr. Sohan Pal, the present Petitioners challenged the above order dated 12th November, 2014 by way of an appeal bearing Case No.1/Appeal V.C.L.A./D.C. before the District Collector, Faridabad. This appeal came to be dismissed by a detailed order dated 5th December, 2017, the operative portion of which reads as under:-

“After hearing arguments led by Ld. Counsels for both the parties and thorough perusal of case file of Lower Court, I have come to the conclusion that the disputed passage, situated in Khasra No.367, is a public passage, regarding which, expulsion proceeding is conducted by the Court of Assistant Collector, 1st Grade, Faridabad U/s 7 Punjab Village Common Lands Act, 1961. The lower court had right to entertain & try the application regarding illegal possession over said passage. The order dated 12.11.2014 has been passed by the Assistant Collector, 1st Grade, Faridabad after getting the evidence from both the parties regarding illegal possession over passage by respondents in said application and agreeing with the demarcation report of the spot, in which, there is no discrepancy and needs no amendment. The Assistant Collector, 1st Grade, Faridabad has passed a speaking order.

Hence the appeal, filed by the appellant, is found devoid of legal merit, not satisfied with the facts mentioned in appeal, as such the present appeal is hereby dismissed. The summoned file of lower court alongwith a copy of order be sent to lower Court. Case file be consigned to records after due compliance.”

5. Aggrieved by the above order, the Petitioners filed a revision petition before the Commissioner, Faridabad Division, Faridabad which also came to be dismissed on 6th March, 2020. The operative portion of the said order reads as under:-

“The contention made by revisionists that the land in dispute is situated out of lal dora, hence not falls U/s. 2 of P.V.C.L. Act and the case can't be decided U/s. 7 P.V.C.L. Act and that it contains the question of title, doesn't appear to be appropriate, as the disputed passage is public passage and reserved for public use. As contended by the revisionists that the Revenue Court is bound to comply with the order passed by the Ld. Civil Court, there is no mention regarding Khasra No.367 in said case. The said case is pending since past more than 15 years and demarcation of said passage stands conducted by the Block Development & Panchayat Officer, Tehsildar & Assistant Collector, 1st Grade. According to the demarcation reports, submitted by all the said three

officers, the revisionists are found in illegal possession over public passage. Hence I find no error in the orders passed by both lower courts, as such the revision, filed by the revisionists, is found to be devoid of merits and as such, is hereby dismissed.”

6. Learned counsel for the Petitioners repeatedly urged that the original findings in the execution proceedings were regarding the encroachment of the public passage by Respondent No. 5/Sohan Pal and not by the present Petitioners and therefore the findings in the subsequent proceedings *qua* encroachment by the Petitioners were unwarranted.

7. On the other hand, learned State counsel has pointed out that the clear factual findings by the Appellate Authority as well as the Revisionary Authority are against the Petitioners and that they too are encroachers on the land which was meant for a public passage.

8. Having considered the submissions of learned counsel for the parties, the Court is of the view that impugned orders of the Appellate Authority and the Revisionary Authority do not call for interference. Apart from the fact that authorities have returned the concurrent factual findings against the Petitioners regarding their encroachment over public passage in land bearing Khasra No.367, the Court finds that the Petitioners had sufficient opportunity in a 2nd round of litigation to demonstrate their case that they had not encroached on the public passage. They failed to do so. The Court accordingly finds that there is no reason to interfere with the impugned orders.

9. In that view of the matter, the petition is dismissed.

[S. MURALIDHAR]
JUDGE

[AVNEESH JHINGAN]
JUDGE

July 7, 2020
pankaj baweja

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No