

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

CWP-18564-2021

DECIDED ON: 24th NOVEMBER, 2021

RAKESH KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

**CORAM:HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Virat Rana, Advocate
for the petitioner.

Mr. Raman Kumar Sharma, Addl. AG, Haryana.

(Through Video Conferencing)

AUGUSTICE GEORGE MASIH, J (ORAL)

In compliance with the order dated 11th November, 2021 passed by this Court, report has been submitted by way of an affidavit of Additional Director, Urban Local Bodies Department, Haryana dated 19th November, 2021. In para Nos. 2 to 4 it has been stated, as follows:-

“2. That in compliance to the aforesaid order, it is submitted that after examination of copy of the plaint filed in civil suit No.120 of 2021 titled as Kalpna Chawla Vidyapeeth Senior Secondary School through its Director, Dharamraj Vs. Municipal Committee, Kharkhoda, it comes out that said Civil Suit was filed for declaration with consequential relief of permanent injunction under section 34, 37 & 38 of specific relief Act, wherein the plaintiff has challenged the notice dated 25.03.2021 and notice dated 07.04.2021 issued by the Municipal Committee, Kharkhoda for removing the illegal encroachment and to demolish the wall constructed by the plaintiff over the Municipal Land. It is pertinent to mention

here that plaintiff in the said Civil Suit has encroached over a piece of Municipal land/rasta falling in khasra no. 283 min. whereas the petitioner/complainant in the representation (Annexure P-10) has made the allegation that public road having 11 feet wide and adjacent to Kalpana Chawla School has been illegally encroached by person named in the said representation whereas name of plaintiff of Civil Suit No. 120 of 2021 was not included in the list of encroacher in the said complaint/representation. The relevant part of the complaint/representation (Annexure P-10) is reproduced as under:-

“1. That the members of Municipality Kharkhoda, District Sonapat, Haryana are as follows:-

1. Pavitar Guliya President Municipality, Kharkhoda, District Sonapat.
2. Mukesh Kumar Building Supervisor Municipality, Kharkhoda, District Sonapat.
3. Phoolkawar Patwari Municipality Kharkhoda, District Sonapat.
4. Kamla Devi Chairman Municipality, Kharkhoda, District Sonapat.
5. Sanjeet Alias Dhol Councillor, Municipality Kharkhoda, District Sonapat.

2. That these above said members in connivance with Councillor Sanjeet are taking illegal possession of public roads of Kharkhoda. One Public Road of 2 Km in length and 11 feet wide and adjacent to Kalpana Chawla school is a part of it. This road is used by villagers for passing through for their agriculture work. This is public road from time of chack bandi. On dated 04.11.2020 in the midnight, the Councillor Sanjeet Alias Dhol in connivance with Government Authority and his friends with common intention took illegal possession of public road and merged the five feet road in his farm with the help of JCB and regularly exceeding their limits”

But as per the report of the Municipal Committee, Kharkhoda, it is found that as per the demarcation report made by Tehsildar, wall in the eastern side of the school has been illegally constructed by the Kalpana Chawla School. In that context, reference of aforesaid Civil Suit has been made in para no. 6 of the Speaking order. The intent of purpose behind

mentioning the details of the said Civil suit in para no. 6 is just to put the entire factual positions in its right perspective manner so that factual position may be clarified/apprised more properly and not for any ulterior motive.

In the said Civil Suit, the defendant Municipal Committee, Kharkhoda has filed the application for early hearing as the case was earlier fixed for 01.12.2021. Accordingly, the case is fixed for hearing on dated 22.11.2021 before the Ld. Civil Court. The defendant Municipality, Kharkhoda has filed the written statement before the Ld. Civil court. A copy of the plaint and written statement is attached as Annexure R-1 and Annexure R-2 respectively for kind perusal of this Hon'ble Court.

3. That in addition to the plaintiff encroached over the aforesaid Municipal land/rasta, some other persons, Manoj son of Deep Chand and Shri Bhajan son of Sh. Surte have also encroached another pieces of Municipal land/rasta falling in Khasra No. 283 min. In this connection, Municipal Committee, Kharkhoda had also issued notices dated 25.03.2021 and notice dated 07.04.2021 to the encroachers for removing the illegal encroachment. But they did not remove the said encroachment. Now Municipal Committee, Kharkhoda has also filed petition under section 4,5 &7 of Public Premises Act before the Ld. Collector, Kharkhoda titled as 'Municipal Committee, Kharkhoda Vs. Manoj and Municipal Committee, Kharkhoda Vs. Shri Bhajan'. In both the petitions, the Court of SDO(Civil)-cum-Collector, Kharkhoda on dated 15.11.2021 has issued separate Show Cause notice to the respondents to explain why such an order of eviction should not be passed. The copies of the petitions are annexed as Annexure R-3 and R-4 respectively. The copies of the orders dated 15.11.2021 passed by SDO(Civil)-cum-Collector, Kharkhoda are attached as Annexure R-5 and R-6 respectively.

4. That the revenue rasta has been illegally encroached by owners of three pieces of land adjacent to said revenue rasta as per demarcation report made by Tehsildar. In one case, said illegal encroacher has already filed Civil Suit No. 120 of 2021 before the Ld. Civil Court which is still sub-judice. And in another two cases, the

Municipal Committee, Kharkhoda has filed the eviction petitions under the Public Premises Act against the said illegal encroachers before the Court of SDO(C)-cum-Collector, Kharkhoda.”

In the light of above, it is apparent that there is encroachment upon the public street and therefore, we direct that the eviction petition which has been preferred under Sections 4, 5 and 6 of the Public Premises Act be decided within a period of four months from today. It is also directed that the Civil Suit bearing No. 120/2021, titled as *Kalpna Chawala Vidhyapeeth Senior Secondary School, Kharkhoda vs. The Secretary Municipal Committee, Kharkhoda Distt Sonapat and another* be also finalised within a period of four months from today by Additional Civil Judge (Sr. Divn.) Kharkhoda.

The present petition is disposed of with above observations.

This order be conveyed to the concerned courts forthwith.

(AUGUSTINE GEORGE MASIH)
JUDGE

24th NOVEMBER, 2021
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>