

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

Sr. No.103+236

**CM Nos.15388 & 15389-CWP-2022 in/and
Civil Writ Petition No.10189 of 2020
Date of Decision : October 27, 2022**

Narinder Singh Maan

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Raja Paramdeep Saini, Advocate, for the petitioner.

Mr. Gurvinder Singh, AAG, Punjab for respondents No.1, 2, 3
& 5.

Mr. Nakul Sharma, Advocate, for respondent No.4.

Mr. Aminder Singh, Advocate, for respondents No.6 & 7.

SUDHIR MITTAL, J. (ORAL)

CM-15388-CWP-2022

Allowed as prayed for. Exemption sought is granted.

CM-15389-CWP-2022

This application has been filed for placing on record Annexures
R-4/1 to R-4/4.

For the reasons stated in the application, the same is allowed.
Annexures aforementioned are taken on record.

CWP-10189-2020

This writ petition has been filed with the averment that private
respondents i.e. respondents No.6 & 7 who are son and father have
encroached upon public property. The Gram Panchayat has initiated action

under Section 34 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as the Act) but they have not been physically dispossessed.

2. Learned counsel for the petitioner has referred to resolution dated 30.12.2019 (Annexure P-2) passed by the Gram Panchayat wherein it was mentioned that respondent No.7 and one Sukhjinder Kaur widow of Avtar Singh had encroached the public street adjoining their residential house and thus, notice under Section 34 of the Act was issued to them. Despite issuance of notice, the said persons did not put in appearance and thus, resolution dated 06.01.2020 (Annexure P-3) was passed giving them three days' time to remove the encroachment. Yet, the encroachment was not removed leading to filing of a representation before the District Development and Panchayat Officer. The said official wrote a communication dated 18.02.2020 to the Block Development and Panchayat Officer to conduct an inspection. A complaint was also made before the police who registered an FIR dated 24.09.2020 against the private respondents. Accordingly, the submission is that the Gram Panchayat as well as the panchayat officials were remiss in their duties in failing to get the encroachment removed.

3. In response, learned counsel for the Gram Panchayat has submitted that a subsequent resolution dated 10.01.2020 was passed requesting the Block Development and Panchayat Officer to take appropriate action. The said official wrote a communication dated 27.10.2022 to the Commissioner of Police, Ludhiana requesting for police help as there was likelihood of breach of peace. Physically the encroachment could not be removed as police help was not provided.

4. Learned State counsel submits that communication dated 29.09.2022 has now been addressed by the District Development and Panchayat Officer to the District Magistrate, Ludhiana and that requisite police help would be provided shortly.

5. Learned counsel for respondents No.6 & 7 has submitted that Sukhjinder Kaur widow of Avtar Singh was also named in the resolution. In fact, the house adjoining which the street in dispute exists belongs to said Sukhjinder Kaur. She has not been made a party and thus, the writ petition is not maintainable. Further, it is submitted that a civil suit has been filed which is nearing completion. Matter is listed on 15.11.2022 for the evidence of the plaintiffs. Thus, the action of dispossession must await the decision of the Civil Court.

6. On being questioned regarding the relationship of aforementioned Sukhjinder Kaur with respondent No.7, it has been fairly admitted that she is the daughter-in-law of one of the brothers of respondent No.7 and is a co-sharer of the land which includes the house, adjacent to which the street in dispute is exists.

7. At this stage, learned counsel representing the Gram Panchayat submits that in the civil suit an application for grant of ad interim injunction was filed. Initially, ex parte ad interim injunction was granted but the same has been vacated vide order dated 10.03.2021. The said order was challenged by way of an appeal but the same was disposed of vide order dated 17.09.2021 as the counsel for the Gram Panchayat had informed the Court that the Block Development and Panchayat Officer had been approached for removing the illegal construction and that no forcible action

would be taken. The trial Court has returned a finding that the suit has been filed by manipulating facts and that the Gram Panchayat had followed the due process of law to prevent encroachment of public property. Finding no prima facie case in favour of the plaintiffs of the suit i.e. respondent No.7 and Sukhjinder Kaur, the application under Order 39 Rules 1 & 2 CPC has been dismissed.

8. From the submissions made by learned counsel for the parties, it is evident that the Gram Panchayat has passed resolutions for the purposes of taking action against respondent No.7 and Sukhjinder Kaur under Section 34 of the Act. The encroachment is of the public street adjoining the house of aforementioned Sukhjinder Kaur by construction of a wall parallel to the house and by erecting a gate at the entrance. This is also evident from the photographs annexed as Annexure P-1 with the writ petition. The police have also registered an FIR against the encroachers after conducting an inquiry. The Civil Court has dismissed the application for grant of ad interim injunction by returning a finding that no prima facie case was made out in favour of the plaintiffs of the suit. It has also been found that the suit has been filed by manipulation of facts. Thus, as things stand today, even the Civil Court has held that the land in dispute is a public street and that it has been encroached upon by the plaintiffs of the civil suit. Consequently, action taken by the Gram Panchayat under Section 34 of the Act does not suffer from any illegality. The civil suit has been filed jointly by respondent No.7 and Sukhjinder Kaur widow of Avtar Singh which clearly shows that the property in dispute is joint property. For this reason, even though

Sukhjinder Kaur has not been impleaded as a party in the present writ petition, it would not affect its maintainability.

9. In view of the above, the writ petition is allowed. The State of Punjab is directed to provide necessary police help to the Gram Panchayat to get the encroachment removed. Needful be done within ten days from the date of receipt of a certified copy of this order.

October 27, 2022
Ankur

(SUDHIR MITTAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>