

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

CRM-M-31277-2023

Date of Decision: 06.07.2023

Gurmail Singh and another

...Petitioners

vs.

Raminder Singh and another

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Janak Singh Bhinder, Advocate
for the petitioners.

N.S.Shekhawat J. (Oral)

By moving the present petition under Section 482 Cr.P.C., the petitioners are seeking quashing of the judgment dated 01.06.2023 passed by the learned Additional Sessions Judge, Bathinda (Annexure P-8) and the impugned order dated 28.02.2023 (Annexure P-6) passed by Sub-Divisional Magistrate, Maur in RCMS/Misc/02/2023, file No.07/Cr.P.C. of 26.12.2022.

The brief facts of the case are that the respondents had moved an application under Section 133 Cr.P.C. before the Court of learned Sub-Divisional Magistrate, Maur to remove the encroachments on the pahi/public street and to restore its usage to the general public. It was alleged in the application that the present petitioners had encroached upon the pahi, which was comprised in Khasra No.756. The application filed by the respondents was ultimately allowed by the Court of Ld. Sub-Divisional Magistrate, Maur and the following observations were made:-

“After hearing the counsels of both parties and upon perusal of record placed in file it is found that as per report dated 16.01.2023 of Patwari Circle Village Ramnagar passage is approved in revenue record which is under ownership of Nagar Panchayat and this passage is encroached upon and passage has been blocked. Hence, as per report of Circle Patwari, application under Section 133 Cr.P.C. of applicants is allowed. Block Development and Panchayat Officer, Maur is hereby ordered that the passage in question, which as per report of Circle Patwari is encroached upon, be opened within 15 days. Naib-Tehsildar, Maur is hereby appointed as Duty Magistrate for this work.”

Feeling aggrieved by the above said findings recorded by the Sub-Divisional Magistrate, Maur, the petitioners filed a revision petition before the Court of Ld. Sessions Judge, Bathinda and vide the impugned order (Annexure P-8), the Court of learned Additional District and Sessions Judge, Bathinda, dismissed the revision petition filed by the present petitioners. Challenging both the orders, the petitioners have filed the instant petition before this Court.

I have heard learned counsel for the petitioners at length.

Learned counsel for the petitioners raised a contention that the petitioners were never associated during the demarcation process of pahi comprised in Kharsa No.756 and even they were not present at the spot when the demarcation was conducted by the Revenue Officials. However, a perusal of the demarcation report (Annexure P-3) clearly shows that the intimation regarding demarcation was already given by the Revenue Authorities to all the concerned parties through Chowkidar. In any case, vide the impugned order, the learned Sub-Divisional Magistrate, Maur has only directed the Block Development and Panchayat Officer, Maur to remove the encroachment from

the passage in question, which is comprised in Khasra No.756, which is owned by Nagar Panchayat.

It is the admitted case of the petitioners that they have no concern with Khasra No.756. Thus, there is no illegality in the order passed by the Sub-Divisional Magistrate, Maur and the learned Revisional Court.

Needless to say that before removing the encroachment from pahi/passage comprised in Khasra No.756, the Block Development and Panchayat Officer, Maur shall conduct proper demarcation/verification of the facts and the encroachment shall be removed by following the due process of law.

The petition is disposed off.

06.07.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No