



CWP-28045 of 2018 (O&M)

1

104+209

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-28045 of 2018 (O&M)
Date of decision : October 03, 2024****Jagiri Ram (since deceased) son of Babu Ram through his L.R.****..... Petitioner****Versus****State of Punjab and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ***********Present :-Mr. B. S. Seemar, Advocate
for the petitioner.****Ms. Akshita Chauhan, DAG, Punjab.***********VINOD S. BHARDWAJ, J (Oral)
CM-16192-2024**

1. This is an application under Section 151 CPC for placing on record demarcation reports dated 14.05.2013 & 16.05.2013 as well as Naksha Tawafat as Annexure P-9 to P-11.

2. For the reasons stated in the application, the same is allowed. Annexures P-9 to P-11 are ordered to be taken on record.

CWP-28045 of 2018

3. Prayer in the present petition is for directing the respondents to transfer the land measuring 1 Kanals 7 Marlas 7 Sarsahis, which is in the name of the petitioner in the revenue record, but the same land had been encroached upon by the respondent-authorities.

4. Learned counsel for the petitioner contends that petitioner is owner of the land measuring 1 Kanals 7 Marlas 7 Sarsahis in Khasra No.23//11/1 and 12/1 in the village Katarian as per Jamabandi for the year



2011-2012. The said land was purchased in the year 1964 vide Mutation No.760.

5. Daughter of the petitioner moved an application for carrying out demarcation of the area where the road had been constructed by the respondents and to remove the illegal possession/encroachment from the land owned by the petitioner. Pursuant thereto, a Circle Patwari carried out a demarcation and submitted his report dated 24.10.2013 and reported that the road is already in existence but by way of encroachment of the land of the petitioner.

6. That on receipt of the aforesaid report, an application dated 12.12.2013 was moved by the petitioner for transferring the land falling under the abovesaid road in the name of the petitioner. Respondent No.2 marked the said application of the petitioner to Deputy Commissioner (S.K.Branch), S.B.S. Nagar for inquiry. The matter was proceeded with on departmental side and in the said proceedings, the respondent-authorities admitted that they have encroached upon the land of the petitioner by raising construction of the road. The official record of the letter dated 25.11.2014 (Annexure P-5) reads thus:-

*“From:Deputy Commissioner,
Shaheed Bhagat Singh Nagar.*

*To Secretary, Punjab Government,
Public Works Department (B&R Branch),
Chandigarh.*

Subject:-Regarding transfer of road land in name of Jagiri Ram son of Babu Ram, resident of village Katarian, Tehsil Banga, District Shaheed Bhagat Singh Nagar.

Regarding above cited subject, an application was filed



by Sarabjit Kaur daughter of Jagiri Ram, resident of House no.134/1, Nawanshehar, District Shaheed Bhagat Singh Nagar to this office on 12.12.2013, wherein it has been mentioned by the applicant that the land measuring 1 kanals 7 Marlas 7 Sarsahis situated in the area of village Katarian has been illegally acquired in the road and her this land be transferred from the area lying vacant at the road. In this regard a report was procured from Naib Tehsildar Banga. The Naib Tehsildar, Banga in his report submitted vide letter no.1818, dated 22.08.2014 has mentioned that according to revenue record the khasra no. 23//11/1 and 12/1 land measuring 2 kanals 8 marlas is owned by Jagiri Ram son of Babu Ram and his daughter Sarabjit Kaur daughter of Jagiri Ram, out of which the metaled road has been constructed in the land measuring 1 kanals 7 Marlas 7 Sarsahis. On the other side of the road, the houses of the owners Kuldeep Singh, Shavinder Singh, Dilbagh Singh sons of Kartar and others are cultivating the land. According to the record, the land comprised in Khasra no.65 of the road is owned by District Board as per record and in the cultivation column PWD has been shown as owner.

In the report received from Executive Engineer, Provincial Division, P.W.D. B&R Branch, Shaheed Bhagat Singh Nagar, it has been mentioned that village Katarian which falls on the road leading from Mahilpur to Behram, a road of this department is constructed on the land of Jagiri Ram son of Babu Ram, measuring 1 kanal 7 Marlas 7 Sarsahis and this road is constructed since long time and it is the land of this department and falls on the other side of the road. The demarcation of abovesaid land has been conducted thrice. In this regard, it has been recommended by the Sub-Divisional Engineer, Construction Sub-Division, Public Works Department B&R Branch, Shaheed Bhagat Singh while its report letter no.176, dated 21.08.2014 that as per Revenue department report the Khasra no.23//11/1 and 12/1 has been recorded as ownership of Jagiri Ram son of



Babu Ram, resident of village Katarian in revenue record. Similarly, Kuldeep Singh son of Kartar Singh who was in illegal possession of the P.W.D. land comprised in Khasra no.65, the said possession has been removed and Kuldeep Singh by calling at the spot was informed accordingly that this land is related to P.W.D hence he cannot cultivate the same. Therefore, the Khasra no.65 is to be transferred with land measuring 1 kanals 7 marlas 7 Sarsahi comprised in Khasra no.23/11/1 and 12/1.

Hence, this case is sent to you for further necessary action because the transferring of government land with the land of private party/person is outside the jurisdiction of undersigned.”

7. Notwithstanding the above said acknowledgement by the respondents that they had encroached upon the land of the petitioner, neither any compensation has been paid nor an alternative land was allotted. So much so, even the revenue entries stand transferred in the favour of the respondents-PWD (B&R).

8. Reply by way of an affidavit of Jasbir Singh Jassi, Executive Engineer, Provincial Division, PWD (B&R) SBS Nagar has been filed wherein it is submitted that the present petition is barred by delay and laches and the said link road was constructed in the year 1970 after carrying out the demarcation, No objection was raised by the petitioner at the said point of time and that any such indulgence is likely to lead to further litigation by other affected parties as well.

9. Learned counsel for the respondent-State, however is not in a position to submit that the respondents have acknowledged herein that they have encroached upon the land of the petitioner and that no compensation with respect to the same has been given. She, however



contends that they already have an equivalent/adjacent area under their ownership.

10. I have heard learned counsel for the parties and have gone through the documents on record as also the undisputed factual position about the respondent-department having encroached upon the land of the petitioner. I am unable to agree with the arguments made by learned counsel for the respondent-department that they could upset the true title and ownership over the land merely because they have raised the construction and the status remained the same for the last 49 years. Allowing perfection of any such encroachment would tantamount to a state excess and expatriation of its citizens and would immediately be a deprivation of a citizen of his right to property, without payment of compensation. Mandate of payment of compensation is a constitutional obligation, hence, the respondent-State, should not ordinarily be permitted to take a plea of delay in such circumstances. Given the meagre resources of a citizen, he may not always be equipped with means to battle out his differences and the State agencies may not respond to them fairly. It is only after much efforts that the entitlement of the petitioner could be established and finally determined. The obligation is that of the respondent-State itself for payment of a compensation and it undisputedly failed to discharge its own obligation. Accepting any such plea of the respondent-State would amount to giving premium to a violator. The said plea is accordingly declined.

11. Since the document Annexure P-5 and the factum of encroachment has remained undisputed, I deem it appropriate to allow the instant petition. The respondent-State is accordingly directed to assess the



compensation for the area owned by the petitioner and under its unauthorized possession and pay the compensation as per law or in the alternate to transfer an equivalent area to the petitioner.

12. Let the entire exercise be completed by the respondent-Public Works Department (B&R) within a period of four months from the date of receipt of certified copy of this order.

Pending application(s), if any shall also stand disposed of.

October 03, 2024
archana

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No