
(2020) 07 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9410 Of 2020

Harjit And Others	Vs	APPELLANT
State Of Haryana And Others		RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Citation : (2020) 07 P&H CK 0030

Hon'ble Judges : S. Muralidhar, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Keshav Pratap Singh, Ankur Mittal

Final Decision : Dismissed

Judgement

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-shajraâ??.

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:-

â??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.â??

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:-

â??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.â??

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:-

â??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.â??

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.