
(2014) 07 P&H CK 0428
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17229 of 2011

Kapil Deo

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Citation : (2014) 07 P&H CK 0428

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Sandeep Arora, Advocate for the Appellant; Rupam Aggarwal, AAG, Punjab and Hitesh Pandey, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ritu Bahri, J.—The petitioner is seeking a writ of Mandamus directing respondents to get the encroachment made by Dassu ram-Respondent no. 5 in the public street measuring 15" wide adjoining his house in Mohalla Arya Nagar in the area of M.C. Kartarpur in District Jalandhar removed and to restore the entire public street for public use.

2. The grievance of the petitioner is that Dassu Ram-respondent no. 5 is making a house by encroaching upon the public street which is 15 feet wide as per Annexure P-3. House of Dassu Ram-respondent no. 5 is marked as No. 115 and the street outside his house is 8 feet as compared to the rest of the street which is 15 feet wide. Representations dated 9.9.2010 (Annexures P-4 and P-6) were made to the Deputy Commissioner of Jalandhar by all the residents of Mohalla Arya Nagar, Kartarpur (Jalandhar) that Dassu Ram-respondent no. 5 was constructing a house over the passage left by Nagar Council. The passage leads to Sri Guru Ravidass Dharamshala and due to the construction made by Dassu Ram-respondent no. 5, movement of the people was blocked. An agreement was reached between the petitioner and respondent no. 5 (Annexure P-7) that before the necessary demarcation is done by the SDM, Dassu Ram-respondent no. 5 will not make any construction. An application was also made to the Executive

Officer, Municipal Council to carry out the measurement of the length and breadth of the disputed public street (Annexure P-8).

3. As per written statement filed by respondent no. 4-Municipal Council, Kartarpur, it is admitted that the land owned by Dassu Ram-respondent no. 5 is situated in the Mohalla Arya Nagar of Kartarpur. It is denied that Dassu Ram-respondent no. 5 had ever tried to raise construction over the public street. On the other hand, Dassu Ram started raising construction/renovating his house and made additional alteration over his own land in his boundary wall without getting the site plan sanctioned by respondent no. 4. Notices were issued to Dassu Ram-respondent no. 5 by the Executive Officer of the Municipal Council, Kartarpur as per law for raising illegal construction and directing him to get the site plan sanctioned from the Municipal Council, Kartarpur. After getting the site plan sanctioned, the spot was inspected and it was found by the officials of Municipal Council that the construction raised by the said Dassu Ram-respondent no. 5 was not as per the site plan and he had made some more construction. Notice u/s 195(D) of the Punjab Municipal Act, 1911 were given to Dassu Ram-respondent no. 5. It is further stated that there is no encroachment done by Dassu Ram in the public street as alleged in the writ petition. Thereafter notice dated 10.8.2010 (Annexure R-1) was issued to respondent no. 5-Dassu Ram to demolish the constructed building beyond sanctioned plan. Notice Annexure R-3 was issued that the construction was not being done according to the sanctioned plan and he should demolish that construction within three days. Respondent no. 4 sent a letter dated 10.9.2010 to the concerned SHO for issuing directions to respondent no. 5 to stop the construction work. Annexure R-4, the demarcation report made by Patwari on 23.2.2011 is reproduced as under:

Today, demarcation of common way where the road is constructed, whose area 66 feet is done by Sh. Satnam Singh Patwari ordered by Naib Tehsildar Kartarpur with the steel chain (i.e. Zareeb). The persons that were present on the spot they considered it right. The measurement is done from the same point with Khasara No. 958-959 and found 12-12 KARAMA is correct. There is not any encroachment of Sh. Dassu Ram on the Khasara No. 958. On the other side Khasara No. 959 is congested population area. So measurement of Khasara No. 959 cannot be done. No dispute was happened on the spot. On the spot Shiv Kumar, Clerk, Municipal Council, Kartarpur was also present. So report is present for further action.

4. The Executive Officer made a report dated 25.8.2011 (Annexure R-5) to the Deputy Director, Local Bodies, Jalandhar. As per the report, there is no encroachment made by Dassu Ram-respondent no. 5 as alleged. In the written statement filed by the Regional Director on behalf of respondents no. 1 to 3, a report was sought from respondent no. 4 i.e. Executive Officer, Municipal Council and as per the report given by respondent no. 4, Dassu Ram-respondent no. 5 had not encroached in any way in the Nagar Council and the complaint was baseless. In this report, it is stated that Naib Tehsildar, Kartarpur had conducted

the demarcation of the land comprising Khasra No. 958 which was part of the property of the Nagar Council, Kartarpur. The Circle Cannongo, Kartarpur demarcated above Khasra No. 958 and gave their report that Dassu Ram-respondent no. 5 was not in possession of khasra no. 958 (property of Nagar Council).

5. After going through the written statement filed by the respondents, the complaint of the petitioner has been thoroughly examined by conducting demarcation as well as the spot inspection. The writ petition is liable to be dismissed. There is no encroachment on the public land by Dassu Ram-respondent no. 5.

6. The writ petition is dismissed with a cost of Rs. 5,000/-.