

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWP No.6129 of 2023

Decided on 26th November 2025

Sh. Madan Lal and another

...Petitioners

Versus

Sh. Mittar Singh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting?

**For the petitioners: Mr. Bimal Gupta, Senior Advocate,
with Mr. Satish Sharma, Advocate.**

**For the respondents: Mr. Mohinder Verma, Advocate, for
respondent No.1.**

**Mr. Pushpinder Jaswal, Additional
Advocate General, for respondents
No.2.**

**M/s C.N. Singh, Dr. Nidhi Singh and
Anshul Gandhi, Advocates, for
respondent No.5.**

**Mr. Vivek Sharma, Advocate, for
respondent No.6.**

Ajay Mohan Goel, Judge (*Oral*)

By way of this petition, the petitioners have prayed
for the following relief:-

“It is, therefore, respectfully prayed that this petition may kindly be allowed, records of the case may kindly be called for and impugned order dated 27.07.2023 (Annexure P-12), the impugned order dated 27.07.2023 passed in Revision Petition No.35/2016 and Appeal No.316/2015 may kindly be quashed and set aside in the interest of justice.”

2. The petitioners are aggrieved by the three orders passed by the learned Divisional Commissioner in Revision Petition Nos.13 of 2016, 35 of 2016 and Appeal No.316 of 2015, dated 27.07.2023. Learned Senior Counsel has drawn the attention of the Court to Annexure P-12, which is the order passed by the learned Divisional Commissioner in Revision Petition No.13 of 2016, titled Shri Mittar Singh versus Shri Madan Lal and others dated 27.07.2023 and has submitted that this is the main order on the basis of which the other two revision petitions have also been disposed of. Learned Senior Counsel submitted that the orders passed by the learned Divisional Commissioner are not sustainable in the eyes of law for the reason that the findings returned therein transgress and overreach the findings returned in the proceedings by the Hon'ble Division Bench of this Court. Learned Senior Counsel has referred to the judgment of the Hon'ble Division Bench of

this Court, copy whereof, is appended with the petition as Annexure P-9, passed in CWP 579 of 2017, titled Madan Lal Verma versus Municipal Corporation, Shimla and others, dated 17.08.2017. He submitted that in this judgment in Para-7 and Para-12 onwards a mandamus was issued by the Hon'ble Division Bench to the Municipal Corporation to ensure that the path in question details whereof are given in Para-7 of the petition is restored/ widened, after having included land, undertaken to be surrendered by private respondents by way of affidavits, forthwith. Learned Senior Counsel submitted that the details of the land which comprised the road 77 metres in length and 3 metres in width are given in Para-7 of the judgment. Thereafter, by referring to Para-8 of the order passed by the learned Divisional Commissioner dated 27.07.2023, in Revision Petition No.13 of 2016, learned Senior Counsel has submitted that learned Divisional Commissioner has directed the Municipal Corporation to restrict the path to 30 cms width of Khasra No.4348 on eastern side in complete derogation to the judgment passed by the Court and without appreciating that the Divisional Commissioner had no power to overreach the

judgment passed by the Court or pass an order which was in violation of the findings and mandamus issued by the Hon'ble Division Bench.

3. On the other hand, learned counsel for the contesting respondent submitted that there is no perversity in the order for the reason that what was decided by the learned Divisional Commissioner was on the basis of the spot position and therein as the land of the contesting respondents stood reduced, it was in this backdrop that a direction has been issued to the Corporation. Accordingly, learned counsel submitted that the order passed by the learned Divisional Commissioner called for no interference, more so in light of the fact that the learned Divisional Commissioner had only ensured that the contesting respondent was able to utilize the part of his land where admittedly the harvesting water tank was situated.

4. I have heard learned counsel for the parties and have also carefully gone through the record as well as the documents appended with the petition.

5. The relevant portion of the order of the learned

Divisional Commissioner dated 27.07.2023 is quoted hereinbelow:-

“In view of the observations made here-in-above, I partially admit this petition with a conclusion that the path carved out or declared by Municipal Corporation in Khasra No. 4350/1 (15.60 sq. meters), 4350/2 (18.50 sq. meters), 4350/3 (63.06 sq. meters) and 4349/1 (14.85 sq. meters) is correct. Further, the Municipal Corporation should restrict the path to 30 cms width of Khasra No. 4348 on eastern side. The path given on northern side of Khasra No. 4348 is neither necessary nor convenient to Shri Mittar Singh. Because along with abovementioned Khasra numbers, Khasra No. 4346/1 provides adequate access to all the stakeholders. Giving path on northern side of Shri Mittar Singh is not only unnecessary but also deprives Shri Mittar Singh of part of his land where admittedly harvesting water tank is constructed. Miscellaneous applications, if any, stand disposed of accordingly. A copy of this order be placed on the file of the Lower Court and record of the Lower Court be returned back. The case file of this Court be consigned to record room after due completion.”

6. The relevant portion of the judgment of the Division Bench passed in CWP No.579 of 2017, dated 17.08.2017 is quoted hereinbelow:-

“It is not in dispute before us that building plans of respondents No.3 and 4, only came to be sanctioned subject to undertakings furnished by aforesaid respondents that they shall be surrendering certain portions of lands from their own lands to make public path wider. It is also not in dispute that path was already in existence at the time of submission of plans/maps by private respondents. Since private respondents had

bound themselves to surrender some portions of their lands, we see no illegality or infirmity in the order dated 24.12.2016, passed by Municipal Corporation, Shimla, declaring land measuring 77 metres in length and 3 metres in width, passing through Khasra Nos. 4346/1, 4348/1, 4350/1, 4350/2 and 4350/3, situate at Bara Gaon, Block No. 7, Sector 6, Phase III, Shimla, as public path. It also emerges from the record, which has been taken note of above, that inquiry was got conducted by Deputy Commissioner, through District Revenue Officer, who subsequently pointed out towards encroachment having been made by private respondents on the public path.

At the cost of repetition, as has been taken note above, it is bounden duty of the land owners/building owners to provide proper path/streets giving proper access to the plots/houses of the persons residing adjacent to their buildings/lands.

Consequently, in view of the detailed discussion made herein above, we see valid reasons to interfere with the order dated 30.1.2017 passed by Divisional Commissioner, Shimla, who, apparently, without taking note of the undertakings having been filed by the private respondents, proceeded to stay order dated 24.12.2016, passed by Municipal Corporation, Shimla, declaring path in question to be a 'public path'.

Accordingly, the writ petition is allowed. Impugned order dated 30.1.2017 passed by Divisional Commissioner, (Annexure P-16) is quashed and set aside. Municipal Corporation, Shimla is directed to ensure that path in question is restored/ widened, after having included land, undertaken to be surrendered by private respondents by way of affidavits, forthwith. Needless to say, private respondents shall render all cooperation to the authorities in widening the public path, failing which they shall render themselves liable for contempt of this Court."

7. A perusal of Para-7 of the judgment of the Hon'ble

Division Bench demonstrates that the Hon'ble Division Bench held that the as private respondents had bound themselves to surrender some portion of their land. The Court saw no illegality or infirmity in order dated 24.12.2016 passed by Municipal Corporation Shimla declaring land measuring 77 meters in length and 3 meters in width passing through Khasra No.4346/1, 4348/1, 4350/1, 4350/2 and 4350/3 situated at Bara Gaon, Block No.7, Sector-6 Phase-III, Shimla as public path. Hon'ble Division Bench thereafter went on to hold that it also emerged from the record that an inquiry was conducted by Deputy Commissioner through District Revenue Officer who subsequently pointed out the encroachment having been made by private respondents on the public path. Incidentally, the contesting respondent herein was respondent No.3 in the said writ petition. It is in the backdrop of the findings returned in Para-7 of the writ petition, that further directions were issued from Para-12 onwards which stood quoted hereinabove.

8. Now in this backdrop, if one peruses the findings returned in Para-8 of the order passed by the learned Divisional

Commissioner, one finds that the learned Divisional Commissioner has directed the Corporation to restrict the path to 30 cms width of Khasra No.4348 on eastern side is without appreciating that the learned Divisional Commissioner did not have any authority to whittle down the judgment passed by the Hon'ble Division Bench by issuing such like direction, which has directly interfered with the direction passed by the Hon'ble Division Bench of this Court. Proprietary demanded that learned Divisional Commissioner should have laid his hands off as far as adjudication on an issue which already stood settled by the Hon'ble Division Bench is concerned. This not having been done by the learned Divisional Commissioner renders the impugned order to be bad in law.

9. Accordingly, in light of the above observations, this petition is allowed and the orders passed by the learned Divisional Commissioner under challenge are quashed and set aside. As agreed, the matter is remanded back to the learned Divisional Commissioner with the direction that he will adjudicate the matter afresh, but shall take into consideration the fact that while passing the order, it be ensured that the

directions passed by the Hon'ble Division Bench are respected. Mr. Mohinder Verma, learned counsel appearing for the private respondent submits that the Divisional Commissioner be directed to visit the spot himself or he should seek a report from some responsible Officer whether there is actually a path over the area is issue or not. Ordered accordingly. It is observed that the direction which has been passed by this Court is only relatable to Khasra No.4348/1.

10. In light of the fact that the issue is primarily between neighbors, it is hereby also observed that as in the course of the adjudication before the learned Divisional Commissioner, parties should also otherwise make an endeavor to have the matter amicably settled between themselves.

11. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

November 26, 2025
(*Vinod*)