

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

209

**CWP No.4940-2018
Date of Decision:20.08.2019**

Bhanu Parkash

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Vikram Singh, Advocate
for the petitioner.

Ms. Kirti Singh, D.A.G., Haryana
for respondents No.1 to 4.

Mr. Ashok Kumr Khubber, Advocate
for respondent No.6.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is a resident of Village Damla, Tehsil Jagadhri, District Yamuna Nagar. Respondent No.6 has filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') (as applicable to the State of Haryana) for seeking eviction of the petitioner from the land measuring 0 Kanal 9 Marla comprised in khewat/khatauni No.1003/1236, khasra No.409 min situated within the revenue estate of Village Damla, Had Bast No.484, Tehsil Jagadhri, District Yamuna Nagar, inter alia, on the ground that the said land is a part of gair mumkin rasta sare am and therefore it is a shamilat deh on which the petitioner has illegally encroached upon by raising a house. The said petition is allowed by the Assistant Collector, Ist Grade on 17.12.2015. Aggrieved against the said order, an appeal was filed by the petitioner. The said appeal has

been disposed of on 13.10.2016 by the Collector, Yamuna Nagar with the following observations:-

“Thus, on the basis of the aforesaid discussion, the appeal of the appellant is dismissed to the extent of setting aside the order under appeal passed by the Lower Court. However, as in the demarcations dated 30.05.2010 and dated 21.04.2012 of the land in question, there were differences about illegal encroachment of the appellant and respondents N.3 and 4 over the land in dispute, therefore, the order under appeal is hereby modified that the possession of the land which is in illegal possession of the appellant and respondents No.3 and 4 be obtained only after conducting demarcation of the land in question in presence of both the parties.”

The petitioner has also filed a suit under Section 13-A of the 1961 Act which is pending.

Counsel for the petitioner has submitted that the property in dispute does not fall within the definition of shamilat deh whereas on the other hand counsel for the respondent has submitted that the impugned order is only an order remanding the case back to the Assistant Collector Ist Grade to re-demarcate the land in the presence of both the parties despite the fact that there are two demarcation reports dated 30.05.2010 and 21.04.2012 already on record in which there is some difference.

Be that as it may, keeping in view the fact that the learned Court below has passed an innocuous order whereby the matter has been remanded back to the Assistant Collector Ist Grade to take the decision afresh after seeking demarcation of the property in dispute in the presence of the petitioner, we do not find any reason to interfere with the said decision. However, at the same time, liberty is granted to the petitioner to raise the issue before the competent Court as to how the application under Section 7 of the Act is not maintainable. In case,

any such objection is raised then the same shall be decided.

Parties are directed to appear before the Assistant Collector Ist Grade on 10.09.2019. It is made clear that it is a matter pertaining to the alleged encroachment made by the petitioner on the rasta sare am, therefore, Assistant Collector Ist Grade is hereby directed to decide the matter as early as possible but within a period of three months from the date of their appearance.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

20.08.2019
Kothiyal

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