

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

CWP-30446-2019

Date of Decision: 14.01.2020

Gajraj Singh

. Petitioner

Vs.

State of Haryana and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

Present: - Mr.Neeraj Yadav, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 21.8.2017 by which an application filed by respondent No.5 under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'] has been allowed and order dated 6.6.2018 by which appeal filed by the petitioner has been dismissed.

In brief, respondent No.5 filed an application under Section 7 of the Act for seeking eviction of the petitioner from the land falling in khewat No.466, khatauni No.549, khasra No.607 (*gair mumkin rasta*) situated in village Dhawana, Tehsil and District Rewari, on the ground that the *rasta sare-aam* (thoroughfare) vests in the Gram Panchayat and the petitioner herein is in unauthorized occupation of the thoroughfare to the extent of 1 marla by including it in killa No.9. The application was filed by respondent No.5 on the basis of a demarcation report dated 23.09.2013.

Notice in the application was issued to the petitioner. The petitioner was represented by an advocate, who did not file reply despite

taking various adjournments and ultimately the defence of the petitioner was struck off vide order dated 13.05.2015. Thereafter, the trial Court, on the basis of the evidence, both oral as well as documentary, available on record, led by respondent No.5 reached to a conclusion that the petitioner is in unauthorized occupation of khasra No.607 to the extent of 36-36 karam on east and west side and $\frac{1}{2}$ karam on the south side, total measuring 9 karam by adding it to killa No.9 on which he has constructed his house. The trial Court, on the basis of the demarcation report dated 23.09.2013, passed the order of ejectment. The petitioner did not challenge the order dated 13.05.2015 by which his defence was struck off. However, in appeal, the order of ejectment dated 13.5.2015 was challenged. The appellate authority, on the basis of the evidence available on record, concurred with the decision of the trial Court and upheld the same. The revision petition filed by the petitioner before the Commissioner was dismissed on the ground of lack of jurisdiction.

Counsel for the petitioner has vehemently argued that the objection to the demarcation report was filed but he could not refer to any zimini orders, as nothing has been attached with the writ petition, from which it could be ascertained as to whether the order dated 13.05.2015 was wrongly upheld by the appellate authority even if it was challenged in appeal. Thus, the fact remains that there was a complete lapse on the part of the petitioner in not defending application by filing reply, therefore, the learned AC 1st Grade was well within his jurisdiction to pass the order of striking off the defence of the petitioner. Once there is no defence set up by the petitioner before the Courts below, he does not have any case for the purpose of tinkering with the concurrent finding of fact, recorded by both the Courts below, on the basis of oral as well as documentary evidence, led by

respondent No.5, much less by way of demarcation report from which it is evident that the petitioner is in unauthorized occupation of the shamlat land (*rasta sare-aam*). No other point has been raised.

In view of the aforesaid facts and circumstances, we do not find any merit in the present petition and thus the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

14.01.2020

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*