

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

CWP-1794-2020

Date of Decision: December 20, 2022

MAJOR SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

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

Mr. Sandeep Jain, Addl.AG, Punjab.

Mr. J.S. Bhandohal, Advocate for respondent No. 4.

LISA GILL, J.

This writ petition has been filed by the petitioner being aggrieved of dismissal of his appeal on merits by the Joint Development Commissioner, SAS Nagar, Mohali, Punjab (exercising the power of Commissioner), vide order dated 09.10.2019 in the absence of the petitioner/his counsel.

It is submitted that petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 ('1961 Act' – for short) had been filed seeking ejectment of the petitioner and his brother (since deceased) from the land as described therein. This petition was allowed on 30.04.2018. It is further submitted that abovesaid petition was allowed

without taking into consideration the pleas raised by the petitioner including the one that petitioner/his father was in possession of the land prior to 1950. Appeal was filed by the petitioner challenging order dated 30.04.2018, which was dismissed by the Commissioner on 09.10.2019 (Annexure P9).

Grievance raised is that the appeal has been decided in the absence of the petitioner/his counsel. No opportunity to represent the case was afforded to the petitioner. It is submitted that the petitioner could not have been prejudiced in this manner for non-appearance of his counsel on the date fixed. In case, an opportunity had been afforded, all the pleas and relevant record would have been pointed out to the authority which may have led to a different outcome. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Ghanshyam Dass Gupta vs. Makhan Lal 2012 (4) RCR (Civil) 282**, wherein it is observed that the appeal should be dismissed in default in the absence of the appellant/his counsel. The same would provide an opportunity to the appellant by way of appropriate application, explain the reason for non-appearance and furnish sufficient cause thereof.

Keeping in view the facts and circumstances of the matter, impugned order dated 09.10.2019 is set aside and the matter is remanded to the Joint Development Commissioner, SAS Nagar, Mohali for deciding the matter afresh in accordance with law after affording due opportunity of hearing of all affected/concerned parties. Application/appeal be decided within a period of three months from the date of receipt of certified copy of

this order. Parties/their counsel to appear before the Joint Development Commissioner, SAS Nagar, Mohali on 06.01.2023.

It is clarified that there is no expression of opinion on the merits of the case.

(LISA GILL)
JUDGE

December 20, 2022
rts

(RITU TAGORE)
JUDGE

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