

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

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**CR No. 1328 of 2020 (O&M)
Date of decision: 08.08.2022**

Satbir

...Petitioner

Versus

Leela Ram @ Chatru and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Saurabh Dalal, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the impugned order dated 18.01.2020, passed by the trial Court, vide which an application filed under Order 7 Rule 11 read with Section 151 CPC by the petitioner/defendant No. 1 for rejection of the plaint, has been dismissed.

Brief facts of the case are that the respondents/plaintiffs have filed a suit for mandatory injunction directing defendant Nos. 1 to 3 to remove the encroachment on the *Gali*, which belongs to defendant No.4-Gram Panchayat.

The petitioner/defendant No. 1 filed the aforesaid application that the jurisdiction of the civil Court is barred as the Gram Panchayat can file a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act for seeking eviction of the defendants and the suit in the present form is not maintainable.

The trial Court dismissed the aforesaid application by making

the following observations:

“9. I found no force in the contentions raised by counsel for the applicant on the grounds that as per the respondents, suit property is rasta sare-aam which has been encroached upon by the applicant as well as two other residents of his village by raising construction on the same. In written statement, applicant and two other defendants have stated that neither there is gali on southern side marked by letters CDEF shown in red colour over the alleged rasta No.243/2 nor they have encroachment upon it. They specifically denied that they have not merged rasta in their house. If there is any gali, same is owned and possessed by Gram Panchayat and as such, Gram Panchayat has right to eject under the provisions of Punjab Village Common Land Act. Meaning thereby, stand taken by the applicant and remaining two defendants is that they have not encroached upon any portion of the gali belonging to Gram Panchayat and if so, Civil Court has no jurisdiction and a petition under Section 7 of the Act is maintainable.

10. It is settled proposition of law that while deciding an application under Order 7 Rule 11 CPC, the Court need to examine only averments made in the plaint and need not go into contents set up in written statement. A perusal of copy of plaint reflects that it is case of the respondents that applicant and two defendants have encroached upon the public street. Meaning thereby, respondents have admitted that there is public street upon which encroachment has been made and said street is belonging to Gram Panchayat. Hence, question of title is not involved on the basis of the pleadings of the respondents and if the version of the applicant is accepted that there is no encroachment upon the public street, in that case also, the Court need to decide that

whether construction is upon the public street or applicant made construction upon his own land and in both circumstances, question of title of the Gram Panchayat shall not be raised. Streets are carved out for use of everyone and does not belong to any particular person. All inhabitants of the village have right to use the public street and no one has the right to encroach upon it. If anyone encroached upon the same, it is duty of the Gram Panchayat to take appropriate action against the encroacher. Gram Panchayat has been impleaded as party but despite receiving notice, none appeared on behalf of Gram Panchayat to contest the case and as such, Gram Panchayat has been proceeded against exparte. As per the respondents, Gram Panchayat is colluded with the applicant and other persons and therefore, no appropriate action is being taken against the encroacher and same plea seems to be acceptable because Gram Panchayat has proceeded against exparte. At this stage, stand taken by applicant and remaining two defendants in written statement cannot be considered.

11. No doubt, Section 7 of the Act provides that how and in what manner, encroachment upon the public street may be removed and for this purpose, an ejectment petition is to be filed before the Revenue Court. But at the same time, personal rights of the respondents to use the gali in dispute are involved. Due to alleged encroachment, respondents are not in possession to use the gali in dispute and in this way, their personal rights are also being affected and when as per the plaint, question of title is not involved in this case and Gram Panchayat is not taking any appropriate action and even has proceeded against exparte, therefore, suit for mandatory injunction between the individual parties is very much maintainable and therefore, at this stage, it

cannot be said that jurisdiction of civil Court is barred. Certainly for violation of legal right i.e. right to use gali, civil suit is maintainable. In view of above discussions, the present application is hereby dismissed.

12. Nothing in this application shall construe to be my opinion upon the merits of the case.”

Learned counsel for the petitioner has raised an argument that since the Gram Panchayat has an efficacious remedy of filing a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act against the encroachment of the petitioner, therefore, the suit for mandatory injunction is not maintainable.

After hearing learned counsel for the petitioner and going through the impugned order, passed by the trial Court, I find no merit in the present petition as the trial Court has rightly held that all the inhabitants of the village have right to use the public street and no one has the right to encroach upon it. Mere fact that the Gram Panchayat is not taking any action by not filing a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, the suit cannot be held to be non-maintainable.

Accordingly, finding no merit in the present petition, the same is dismissed.

08.08.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No