

(2011) 11 P&H CK 0112

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 10247 of 2009

Laxmi Narain

APPELLANT

Vs

The Assistant Collector Ist Grade,
Rewari and othersRESPONDENT

Date of Decision: Nov. 17, 2011**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 7

Hon'ble Judges: Satish Kumar Mittal, J; Paramjeet Singh, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Satish Kumar Mittal, J.

Petitioner Laxmi Narain has filed the instant petition under Articles 226/227 of the Constitution of India for quashing the order dated 17.10.2006 (Annexure P-3), passed by the Assistant Collector Ist Grade, Rewari, whereby on the application filed by respondents No.4 and 5 u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (As Applicable to Haryana) (hereinafter referred to 'the Act'), the petitioner was ordered to be evicted from the passage in dispute; as well as the orders dated 30.3.2007 and 12.3.2009 (Annexures P-4 and P-5), passed by the Collector, Rewari and the Commissioner, Gurgaon Division, Gurgaon, whereby the appeal and revision petition filed by the petitioner against the said order were dismissed.

2. The dispute in this case is regarding the passage in village Bitodi, Tehsil and District Rewari. It was the case of respondents No.4 and 5 before the Assistant Collector that the petitioner has encroached upon the said passage by constructing a latrine on portion EFGH shown in the site plan. The Assistant Collector, after making the spot inspection and after hearing the parties as well as the other villagers, came to the conclusion that out of 17 feet wide passage, 4 feet passage

has been encroached upon by the petitioner by raising the construction of a latrine, which was not in the line of the passage, and ordered eviction of the petitioner. The said order of the Assistant Collector was upheld by the Collector as well as the Commissioner.

3. Learned counsel for the petitioner, while referring to a judgment and decree dated 6.2.1954 (Annexure P-2) passed in the civil suit, filed by father of the petitioner against the Gram Panchayat, vehemently argued regarding the width of the passage as 17 feet. A perusal of the said judgment and decree reveals that in front of the house towards the passage, a Chabutra was constructed, which was alleged to be an encroachment. It was held that father of the petitioner was entitled to occupy the said area, which was underneath the Chabutra. The petitioner has also placed on record copy of the site plan, filed in the said suit. A perusal of this site plan shows that in the 17 feet passage, Chabutra is existing and thereafter there is house of the father of the petitioner. Against the said judgment and decree, an appeal was filed by the Gram Panchayat, which was accepted and the judgment and decree of the trial court was modified. A perusal of the decree dated 5.8.1954 (Annexure P-6) passed by the Appellate Court shows that the parties, including the father of the petitioner, had agreed to remove the Chabutra/platform and will make the passage to 18 feet wide. We have also perused the site plan, which was filed with the civil suit. It indicates that the said passage in front of the house of the petitioner is 17 feet including the Chabutra, which in appeal was agreed to be removed by the father of the petitioner. During his statement before the Assistant Collector Ist Grade, the petitioner has admitted that he constructed the latrine only in the year 2003. Therefore, we are satisfied that in this case, the authorities have rightly ordered eviction of the petitioner from part of the passage, which is being used by the inhabitants of the village.

4. In view of the above, we do not find any illegality in the orders passed by the authorities below.

Dismissed.