

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-8478-2023 (O&M)****Reserved on: 05.10.2023****Date of decision : 18.10.2023**

M/S G.K. ESTATE AND ORS.

-PETITIONER

VERSUS

JOINT DEVELOPMENT COMMISSIONER (IRD), PUNJAB AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Sherry K. Singla, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Aayush Gupta, Advocate
for the respondent No.7.Mr. Sandeep Punchhi, Advocate
for the respondent No.8.

SURESHWAR THAKUR, J.

1. Gram Panchayat, Village Sangowal, Tehsil and District Ludhiana, through its the then Sarpanch, instituted a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), whereby, it claimed the eviction of the respondents therein, from the petition lands. The Khasra numbers alleged to be illegally and unauthorizedly occupied by the respondents thereins, were comprised in Khasra No.8//1, 2/1, 10/2, 10/3, 11/1, 7//5/2, 6, 15, 14, 17, 18, 2//21/2, 22, 51, 52, 53, 54, 77, 78, 432. Through a decision made upon the eviction petition (supra), on 25.08.2022, decision whereof

becomes enclosed in Annexure P-2, the learned Collector concerned, excepting land comprised in Khasra No.51, in respect whereof he recorded the same to be falling within the control of the Punjab Waqf Board, thus proceeded to make directions, upon, the Gram Panchayat concerned, and, the B.D.P.O. Ludhiana-1, to make demarcations of the petition lands. The said making of valid demarcations of the petition lands, except qua Khasra No.51, was ordered to be completed within 30 days.

2. It appears that though an appeal, at the instance of the aggrieved respondents concerned, became raised against Annexure P-2, before the statutory appellate authority concerned, but, the fate of the said appeal, is not disclosed by any of the contesting litigants. Furthermore, since thereby the decree holder concerned contemplated, that a binding and conclusive verdict of eviction became rendered against the judgment debtors concerned, therefore, an execution petition was filed, before the learned executing court concerned.

3. The core controversy, which emerges amongst the contesting litigants, appertains to Khasra No.51. Therefore, it has to be determined whether qua the said disputed Khasra number, there was a valid empowerment invested in the learned executing court concerned, to make warrants of possession. In the above regard, it is necessary to refer to the verdict made by the learned Collector concerned on 25.08.2022 (Annexure P-2), wherein, a conclusion has been recorded, that the said Khasra No.51, is in terms of the gazette notification of 19.09.1970 issued by the Government of India, rather allotted in the name of the Punjab Waqf Board. Moreover, a conclusion has also been made in Annexure P-2, that since the said gazette notification, has

remained unchallenged, at the instance of the Gram Panchayat concerned, and, besides with the said Khasra number being recorded as *Gair Mumkin Kabristan*, thereby liberty was reserved to the Gram Panchayat concerned, to initiate proceedings against the Punjab Waqf Board.

4. Be that as it may, it thus appears that when the said Khasra No.51 is uncontestedly reflected in the gazette notification (*supra*) to be falling to the ownership of Punjab Waqf Board, besides when the said Khasra number is entered in the revenue records as *Gair Mumkin Kabristan*, thereby the jurisdictional competence to entertain a petition for seeking the eviction of the encroachers concerned, from the said Khasra number, besides to make an effective adjudication thereons, but became squarely vested in the Punjab Waqf Tribunal concerned.

5. Necessarily hence, the jurisdiction to try, and, to make an effective adjudication vis-à-vis the said disputed Khasra number (*supra*), rather did not vest in the learned Collector concerned under the Act of 1961. The said inference also becomes supported by the apt concurrent therewith conclusions, as became made by the learned Collector concerned, thus in Annexure P-2. However, the conclusion made therein, that the Gram Panchayat concerned shall initiate proceedings against the Punjab Waqf Board, is not in alignment with the prior thereto conclusions, that the said Khasra number is owned by the Punjab Waqf Board. Therefore, there was no occasion for the learned Collector concerned to make a direction upon the Gram Panchayat concerned to initiate appropriate lawful proceedings against the Punjab Waqf Board, as the owner alone, which is but the Punjab Waqf Board, could institute proceedings, and, that too before the Punjab Waqf

Tribunal concerned, to ensure the eviction of the encroachers concerned, on a petition being laid therebefore, and, thus for an effective adjudication being also made thereons. Resultantly, the said part of the conclusion is required to be quashed and set aside.

6. Be that as it may, even if assumingly, a binding and a conclusive effect is enjoyed by the verdict of eviction (Annexure P-2), excepting Khasra No.51. Nonetheless, the learned executing court concerned earlier had proceeded to issue warrants of possession, including therein, also the said Khasra number. The warrants of possession, as became earlier issued, are assigned Annexure P-4.

7. The inclusion of the disputed Khasra No.51 in the warrants of possession (Annexure P-4), but with the above description in the revenue records, led the aggrieved therefrom to institute CWP-23966-2022 before this Court. Through a decision made thereons, on 10.01.2023, this Court in the operative part of the said decision, operative part whereof becomes extracted hereinafter, made directions upon the learned executing court concerned to, in accordance with law, ensure the execution of the executable orders, as passed by the court of first instance, but, also assigned liberty to the Punjab Waqf Board to join the proceedings to ensure, that it assumes possession hence free from all encumbrances, if possible, of Khasra No.51.

“6. Resultantly, the execution or enforcement of the executable orders, as passed by the learned Collector concerned, as intimated to this Court by the learned Additional Advocate General, Punjab on instructions given to him by the authorities concerned, may not constrain this Court to record its satisfaction about their apposite ablest execution. In sequel, the report in respect of the execution of the executable orders, as passed by the Collector concerned, be promptly filed before the

learned Collector concerned, and, thereafter the learned Collector concerned, shall proceed to draw an order in respect of the completest execution of the orders, as passed by the Court at first instance. On the above, report being filed by the respondents concerned, before the Court of first instance, or, the executing Court concerned, the latter shall in accordance with law, pass orders with respect to the completest satisfaction of the executable order, or, if yet satisfaction is wanting in respect of the executable orders passed by the Court of first instance, he shall proceed to within a period of two months, hence draw the completest satisfaction in respect of the execution of the executable orders, as passed by the authorities concerned. Moreover, the Punjab Wakf Board is also permitted to join the execution proceedings to ensure that it assumes possession hence free from all encumbrances, if possible, of khasra no.51.”

8. In pursuance to the said made directions, Annexure P-12 became issued, whereby, the learned Collector concerned, in making purported compliance to the verdict (supra), as became made by this Court, proceeded to make a conclusion, that the possession of the petition lands, excepting Khasra No.51, has been delivered to the Gram Panchayat concerned. However, in respect of Khasra No.51, liberty was reserved to the Punjab Waqf Board to, in case it construes itself to be the owner of the said Khasra number, thus to make an appeal to the Revenue Department concerned.

9. The said Annexure has been challenged before this Court. Moreover, a challenge is also made to the pursuant thereto issued warrants of possession, as becomes enclosed in Annexure P-13, wherein, yet the said disputed Khasra number has been included, for thereby its possession being delivered to the decree holder concerned.

Validity of the drawing of the impugned Annexure P-12 and of the

consequent thereto issued Warrants of Possession (Annexure P-13)

10. In determining the validity of the above referred to Annexures, it is but necessary to re-allude to the finding(s) (supra), as became recorded by the learned Collector concerned in Annexure P-2. The said finding(s) relating to the Punjab Waqf Board being declared by the gazette notification (supra) issued by the Government of India, is stated therein to be unchallenged, thereby but obviously the gazette notification (supra) acquires a binding and a conclusive effect, thereby the said Khasra number is but deemed to be owned by the Punjab Waqf Board. Conspicuously also, when in the revenue records concerned, the said Khasra number is entered as *Gair Mumkin Kabristan*, and, to which entry no contest has been made at the instance of the decree holder concerned, thereby the said entry acquires an aura of conclusivity.

11. Nonetheless, the conclusion recorded in Annexure P-2, that the Gram Panchayat concerned is to be assigned liberty to initiate proceedings against the Punjab Waqf Board is, as stated (supra), in derogation of the ownership of the disputed Khasra number rather uncontestedly vesting in the Punjab Waqf Board, thereby the said owner alone, was competent to initiate proceedings for eviction of the encroachers thereon, and, that too through recouring the relevant statutory provisions. The said recourse was to be made before the Punjab Waqf Tribunal concerned, which alone enjoyed, the jurisdictional competence, to make an order of eviction, vis-à-vis, the encroachers upon the disputed Khasra No.51.

12. The further sequel of the above, is that, there was no occasion for the learned Collector concerned to, in Annexure P-12, relegate the Punjab Waqf Board to access the revenue court concerned, to make updations of the

revenue records, in terms of the unchallenged notification (supra), especially when on its becoming published in the official gazette concerned, it acquired conclusivity. More so, when the said conclusivity enjoyed by the gazette notification (supra), as appears on a reading of Annexure P-2, remain unchallenged, besides when an uncontested entry of *Gair Mumkin Kabristan* exists in the revenue records qua the disputed Khasra No.51.

13. In consequence, but obviously the Punjab Waqf Board was the owner of the said Khasra No.51, and, as stated (supra), it alone held, the jurisdictional competence to ensure lawful evictions of the encroachers, upon, the disputed Khasra number, but through it accessing the Punjab Wakf Tribunal concerned.

14. Though this Court had permitted the Punjab Waqf Board, to join the execution proceedings, but assuming even if the Punjab Waqf Board, did not join the execution proceedings, but was through Annexure P-12, assigned liberty to access the Revenue Department concerned, thus for seeking the updation of the revenue records. Resultantly, thereby too, there was no occasion for the learned executing court concerned, to include in the impugned warrants of possession (Annexure P-13), the said Khasra number, especially when the learned Collector concerned, had made the above conclusions, besides when with its becoming evidently owned by the Punjab Waqf Board, thereby the decree holder concerned, did not become bestowed with any leverage to ensure the retrieval to it, of possession thereof, rather from the encroachers concerned.

15. Moreover, when the uncontested entry of *Gair Mumkin Kabristan* occurs in the revenue records, thereby the said entry *per se* without any

updatation of records being asked for, rather in terms of the verdict made by this Court in “**Balwinder Singh V/s Gram Panchayat, Kotla Masood and others**”, **bearing CWP-2785-2009**, does enjoy sanctity. The relevant paragraphs of the said verdict become extracted hereinafter:-

“35. The exercise of jurisdiction by the Wakf Tribunal concerned, was a validly exercised jurisdiction, as the Wakf Tribunal concerned, became constituted through a notification issued on 23.10.2001, whereby, the Court concerned, has been conferred the powers of the Wakf Tribunal concerned. Therefore, since through the mandate, carried in the said notification, the jurisdiction, upon the petitions concerned, became validly assumed by the learned Additional District and Sessions Judge concerned. Therefore, the assumption of jurisdiction on the apposite lis' rather by the Wakf Tribunal concerned, was a validly assumed jurisdiction, as, the jurisdiction became assumed in respect of revenue entries describing the land as Maqbooja Ahle Islam Gair Mumkin Kabaristan. Therefore, when the judgment of the Hon'ble Apex Court rendered in Syed Mohd. Salie Labbai's case (supra), makes a declaration, that in the event of the entries in the revenue records describing the petition lands as Maqbooja Ahle Islam Gair Mumkin Kabaristan, thereupon the jurisdiction to decide the apposite lis, is vested in the Wakf Tribunal, and, not in Civil Courts, nor in the authorities under the Punjab Act. Therefore, the jurisdictional of competence to try the lis in respect of the lands described as Maqbooja Ahle Islam Gair Mumkin Kabaristan, is always vested in the Wakf Tribunal concerned. Moreover, when Section 108-A of the Wakf Act, 1995, provisions whereof extracted hereinafter, completely oust the jurisdiction of the Civil Courts or of any other Court, in respect of matters concerning with Wakf properties.

“108A. Act to have overriding effect- The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

16. Cumulatively, the effect of the above discussion, is that, both Annexures P-12 and P-13 are liable to be quashed and set aside.

FINAL ORDER

17. In summa, the writ petition is allowed, and, the impugned Annexures P-12 and P-13 are quashed and set aside only qua Khasra No.51, however, leaving liberty to the Punjab Waqf Board to, qua Khasra No.51, thus institute lawful proceedings, but before the Punjab Waqf Tribunal concerned, for thereby ensuring the eviction of the encroachers on Khasra No.51.

18. All pending application(s) stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

18.10.2023
devinder

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