

CWP No. 17739 of 1991. [O&M]
Date of Decision: 17th November, 2015.

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The petitioner has laid challenge to the orders dated 01.09.1991 and 09.09.1991 [P-5 and P-6] whereby he was ordered to vacate the land in dispute under Section 7 of the Punjab Common Lands [Regulation] Act, 1961 in a petition filed by him against the order of the Panchayat of his village and his appeal against that order was also dismissed.

[3]. Brief facts of the case are that the land in dispute comprises Khasra Nos. 47, 48, 49 and 50, Khewat No. 205 and 214,

Khatoni No. 178 of village Hakdarpur, Tehsil Pataudi, District Gurgaon. The Gram Panchayat sought petitioner's eviction under Section 7 of the 1961 Act on the ground that the subject land vests in it and he was in its unauthorised possession.

[4]. As per the revenue record, the land was recorded as *Gair Mumkin Kabristan*. The case of the Gram Panchayat was that since there was no Muslim population was left in the village after the 1947 partition and the land was reserved for a 'common purpose' of the village community, it vests in the Gram Panchayat under Section 2[g] [3] of the Act.

[5]. On the other hand, the plea taken by the petitioner was that since the land was recorded as *Kabristan* and had been notified as Wakf-property vide notification dated 21.11.1970, the Gram Panchayat had no concern whatsoever with it. The Assistant Collector 1st Grade rejected the above stated plea and held that the subject land vests in the Gram Panchayat. Consequently, the eviction order was passed. The petitioner went in appeal which was also dismissed.

[6]. The aggrieved petitioner approached this Court and his dispossession was stayed on 29th November, 1991.

[7]. We have heard learned counsel for the parties and gone through the record.

[8]. It is reiterated by learned counsel for the petitioner that since the subject land has been notified as a Wakf property and is recorded as *Kabristan*, it does not fall within the definition of '*shamlat-deh*', hence eviction petition was not maintainable.

[9]. On the other hand, learned counsel for the Gram Panchayat submits that after partition of the country, the land was never used as a *Kabristan* and it being otherwise reserved for the benefit of village community, it falls within the definition of '*shamlat-deh*' under Section 2[g][3] of the 1961 Act. He further contends that notification dated 21.11.1970 relied upon by the petitioner is not binding on the Gram Panchayat who was not a party to the proceedings which culminated into declaration of the subject-land as a Wakf Property. Reliance is placed in this regard on the decisions:[i]

Punjab Wakf Board, Ambala Cantt. Versus Natha Singh 1988[1]

RRR, 122; [ii] Punjab Wakf Board & Anr. Vs. Kashmir Singh &

Ors., 2012[4] PLR, 793; and [iii] Punjab Wakf Board Vs. Gurdev

Singh & Ors. 2014[2] PLR, 561.

[10]. We have carefully considered the rival submissions and are of the view that the petitioner's plea that he has been in cultivating possession of the suit-land can not be accepted for the reason that as per his own case, the land was recorded as '*Kabristan*'. Once the land was reserved or meant for burial, it was obviously uncultivable and it is so depicted in the revenue record also. The authorities have thus rightly held in these summary proceedings that *prima facie* such land falls within the definition of *shamlat-deh*.

[11]. The land of a 'Cremation ground' is undoubtedly meant for common purposes of the village community. Under the Scheme of the Act, the Gram Panchayat is well within its right to change the use of land from one common purpose to another, more so when the

original purpose for which land was reserved, has become redundant. Further, the land in dispute at best is owned by either the Gram Panchayat or the Wakf Board. In the absence of any declaration of title in favour of Wakf Board and there being overwhelming material on record to hold it as *shamlat-deh*, the impugned eviction orders call for no interference by this Court in exercise of its writ jurisdiction.

[12]. Be that as it may, the Wakf Board was not a party to the eviction proceedings. Since a firm finding of fact is likely to affect the rights of the Board to whom no opportunity was given to lead its evidence etc., we uphold the eviction orders but with liberty to the Haryana Wakf Board to initiate appropriate proceedings, if so advised, within a period of three months from the date of receipt of copy of this order for declaration of its title over the subject land. No decision prejudicial to the interest of Gram Panchayat shall be taken without hearing it.

[13]. Similarly, no interim relief during the interregnum can be granted to the petitioner as it would cause prejudice to the Gram Panchayat as well as the Wakf Board. The Wakf Board would be free to consider the question of extension of alleged lease of the petitioner, if it succeeds in the proceedings for which liberty has been granted.

[14]. Disposed of. Dasti.

(**SURYA KANT**)
JUDGE

November 17, 2015.
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(**P.B.BAJANTHRI**)
JUDGE