

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

C.R. No.5738 of 2014

Date of Decision:11.02.2016

Ran Singh

.....Petitioner

Vs.

Kasam Deen and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present:- Mr. H.S. Dhindsa, Advocate for the petitioner.

K. KANNAN, J.(Oral)

The defendant is the revision petitioner before this Court aggrieved against the order of injunction issued in favour of the respondent-plaintiffs. The contention was that he had already obtained a relief of injunction on the basis of the proposal of lease in the year 2004 and kabaliatnama directed to be executed. The plaintiffs were also parties in that suit when injunction had been granted recognising the defendant in suit and the petitioner herein as the party in possession.

The plaintiffs had filed the suit contending that the suit properties are notified waqf and was being used as a graveyard. The change in character of property shall not be permitted. The Court observed that the injunction obtained by the defendant- petitioner herein had been the subject of appeal but it would not be taken as final. The Court, therefore, proceeded to grant relief of injunction in favour of the plaintiffs that the property cannot be leased since it was a graveyard.

The petitioner argued that khasra girdawaries have entered agricultural operation having been carried at the waqf property and,

therefore, the relief of injunction sought by the plaintiffs must have been declined and the defendant cannot be in any way prevented from enjoying the property lawfully granted in lease. It will be too wide a proposition to state that the property which was notified as waqf, being a graveyard, cannot be leased at all. There have been utilised and unused graveyards in the States of Punjab, Haryana and Himachal Pradesh on account of large transmigration of people to Pakistan and there has been leases in respect of such property. The legislature has recognised this situation when it brought an amendment to Act of 2013 w.e.f. 20.9.2013. Section 51 of the Wakf Act, 1995 has been amended by the Amendment Act 27 of 2013 incorporating the substitution of clause (1) with a proviso Section 51 reads thus:-

“(1) Notwithstanding anything contained in the waqf deed, any lease of any immoveable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board.

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased, except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.”

If, therefore, any lease has been made as an unutilised graveyard before 20.9.2013, it will continue to be valid during the tenure of the lease. Thus the order has been passed by the Court below without taking notice of this amendment. Consequently, I set aside the order and remit the matter to the trial Court to consider whether there is any subsisting

lease in favour of the defendant on the date when the Amendment Act came into force on 12.9.2013. If the lease had not expired, the defendant's right to continue without being in any way fatter any form of injunction shall obtain till the tenure of the period of lease in favour of the defendant.

The impugned order is set aside and the revision petition is allowed in the above terms remitting the matter to the trial Court for disposal in the light of the directions given above.

February 11, 2016
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(K.KANNAN)
JUDGE