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

CWP-25670-2012

Date of decision : 09.05.2017

Manju Bala

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. M.S. Atwal, Advocate
for the petitioner.

Mr. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (ORAL)

The petitioner has approached this Court for setting aside of the order dated 09.12.2010 (Annexure P-1) passed by the Sub Divisional Magistrate-cum-Collector, Ludhiana (West) and as well as order dated 23.04.2012 (Annexure P-3) passed by the Commissioner-cum-Deputy Commissioner, Ludhiana, allowing the petition filed under Sections 4 & 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short 'the 1973 Act'). The eviction was sought in respect of land measuring 15 kanals on the ground that the land is in ownership of Forest Department and the same is in their illegal and unauthorized possession. The aforementioned petition was filed against Jatinder Singh and Manju Bala, whereas in the present petition, only Manju Bala has approached this Court.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. M.S. Atwal, learned counsel appearing on behalf of the petitioner submits that the Forest Department, at whose behest the eviction petition had been filed, is not the owner of the land measuring 35 kanals 7 marals Khewat No.138, Khatoni No.189, Khasra No.84 min, as recorded in the jamabandi for the year 1999-2000, situated at Village Kadian. In fact Kartar Wanti Dharamarth Trust is in established and continuous possession of the land measuring 15 kanals out of 35 kanals 7 marlas comprised in khasra No.84 and had raised a construction in the shape of hall measuring 102' x 54', another hall measuring 52' x 105' and a front office measuring 45' x 30' apart from boundary wall. The jambandi placed on record shows the ownership of the land of Provincial Government, thus, the stand in the eviction petition that the land is Forest Department is neither here nor there. On the basis of the respective pleadings of the parties, the authority below framed the issues and examined the witnesses. Balwinder Singh/respondent No.1, Forest Range Officer, Ludhiana admitted the construction raised at the site, yet the Sub Judicial Magistrate-cum-Collector vide order dated 09.12.2010 allowed ejectment petition by relying upon the jamabandi for the year 1963-64, 1969-70, 1974-75, 1979-80, 1984-85, 1989-90, 1999-2000 and 2004-05. The petitioner had set up a decree dated 17.03.2007 which has erroneously been discarded, by forming erroneous opinion being procured by Jatinder Singh and Manju Bala and between the other trusts without impleading the Forest Department. The petition was not maintainable as the possession of the property is with Kartar Wanti Dharamarth Trust and not the petitioner or Jatinder Singh. Notification (Ex.P-12) brought on record regarding transfer of land in favour of Forest

Department is bereft of the particulars of land situated in Kadian. All these factors have not been taken care of, thus, there is gross illegality and perversity and urges this Court for setting aside the impugned orders, under challenge.

On the contrary, Ms. Monica Chhibber Sharma, DAG, Punjab, submits that the impugned orders, under challenge, are perfectly legal and justified, much less, do not call for any interference. In fact, the eviction petition has been filed by the State of Punjab through the Divisional Forest Officer, who has been granted right over the property by the Government as way back in the year 1958 vide Notification dated 03.05.1958 (Annexure R-3). As per the provisions of Forest Conservations Act, 1980, any portion of forest land cannot be used for non-forest purposes without permission of the Government of India in view of the judgment dated 12.12.1996 rendered by the Hon'ble Supreme Court in **W.P. (Civil) No.171 of 1996** (Annexure R-2), thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Chadha, for, it is not understandable as to why the petitioner is espousing the cause of a trust, when there is a categorically pleading that they are not in possession of the disputed land. Some arrangement of Civil Court's decree in favour of the Trust without impleading the Forest Department cannot circumvent the procedure of eviction sought under the 1973 Act. It has been brought on record that Jatinder Singh had deposited the *lagan* in the Bank on various dates. Copy of the same had been noticed by the Collector i.e. on 29.11.2003, 10.02.2007 & 12.12.2008. The Government transferred the land, in

question, to the Forest Department as per the Notification (Annexure R-3) and therefore, the possession of Jatinder Singh and Manju Bala was unauthorized. The reliance to decree dated 17.03.2007 has been pondered upon by the Collector holding *prima facie* to be collusive one as it has been obtained without impleading the Forest Department. The entries in the revenue record shows the Forest Department to be owner. All these factors have also been noticed by the Commissioner in the appeal preferred by the petitioner.

Keeping in view the aforementioned facts, in my view, the present writ petition does not fall within the realm of 'Judicial Review' to form an opinion that the impugned orders, under challenge, are vitiated in law and accordingly, the orders are upheld.

Resultantly, the present writ petition stands dismissed.

09.05.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**