

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

CWP No. 7177 of 2016 (O&M)

Date of Decision: 15.03.2018

PARDHAN SINGH

.....Petitioner

V/S.

STATE OF PUNJAB & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Vikas Singh, Advocate,
for the petitioners.

Mr. Ayush Sarna, AAG, Punjab.

Mr. Dhirender Gupta, Advocate,
for respondent No. 6.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner has prayed for the issuance of writ in the nature of mandamus for a direction to the respondents to obey and implement the judgment rendered by the Division Bench of this Court in CWP No. 7003 of 2011 decided on 22.11.2013 and also for restraining respondent No. 3 (Gram Panchayat) from raising any kind of construction around the boundary wall of the petitioner.

In brief, it is alleged that the petitioner is the *Khewatdar* in Village Bankharpur, Tehsil Dera Bassi, Distict SAS Nagar and is in possession of the land measuring 36 kanals comprising in Khasra No. 85/2 min as per *jamabandi* for the year 2010-2011. It is alleged that the petitioner alongwith another land owner-Bhud Singh apprehended interference in his possession and had filed a Civil Suit No. 603 of 1988 against the Gram Panchayat and Gram Sabha of Village Bankharpur. The said suit was decreed on 28.03.1990, holding the petitioners to be in possession and the defendants

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were restrained from dispossessing the petitioners from the said land except in due course of law. It is stated that the said decree of the trial Court has become final. It is further submitted that the issue as to whether that the land belongs to the Gram Panchayat or is covered by the definition of the Shamlat Deh has been decided in CWP No. 7003 of 2016 on 22.11.2013 in a bunch of cases in which it has been held that if the land in question is recorded in the jamabandi as “Shamlat Patti” and is not being used for the common purposes then it would not rest in the “Shamlat Deh” and as such the applications filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) were dismissed. The said order of the Division Bench is challenged in the Hon’ble Supreme Court in a SLP which is pending.

Learned counsel for the respondents has submitted that the present petition is not maintainable in its present form as the order passed by this Court in CWP No. 7003 of 2011 cannot be implemented by way of a writ petition especially when the matter is subjudice before the apex Court and secondly, the petitioner cannot ask for a restraint order when the petitioner has already got a decree of permanent injunction for the same property against the same defendant-respondents in which it has been held that the petitioner would not be dispossessed otherwise in due course of law and the respondent-Gram Panchayat has filed a petition under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 which has been allowed on 10.06.1993.

I have heard learned counsel for the parties and after taking into consideration the aforesaid facts and circumstances, am of the considered

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opinion that the present petition is not maintainable for grant of the prayer made in this writ petition because firstly, the decision rendered by this Court in CWP No. 7003 of 2016 is subjudice before the apex Court and secondly, the petitioner has been protected by the Civil Court only to the extent that they would not be dispossessed otherwise in due course of law and that the respondent-Gram Panchayat is not acting against the petitioner for seeking their possession forcibly but under the orders obtained from the District Magistrate on its petition under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. Thus, in view thereof, the present petition is dismissed as such.

March 15, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned : *Yes / No*

Whether Reportable : *Yes / No*