

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

CWP No. 20117 of 2016

Date of Decision: 03.07.2019

MOHD. SATTAR AND OTHERS

..... Petitioners

V/s.

THE STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: Mr. Saurabh Kapoor, Advocate,
for the petitioners.

Mr. Amit Mehta, Senior DAG, Punjab.

Mr. Kanwaljit Singh, Senior Advocate,
with Ms. Prabhjot Kaur, Advocate,
for respondents No. 3 and 4.

Mr. Ashish Aggarwal, Advocate,
with Mr. Chajju Khan, Advocate,
for respondent No. 5.

RAKESH KUMAR JAIN, J. (Oral)

The petitioners belong to Muslim community who have approached this Court for seeking a writ in the nature of mandamus to direct respondents No. 1 to 4 to initiate necessary action against respondent No. 5 who are in the process of raising construction over the Muslim graveyard at Haibowal, Ludhiana, over land measuring 35 Kanal 7 Marla comprised in Khewat No. 2603, Khatauni No. 2825, Khasra No. 46, 47 as per Jamabandi for the year 2006-2007, *inter alia*, on the ground that the aforesaid land in dispute is a notified graveyard and its complexion cannot be changed even if the said land has been given on lease to respondents No. 3 and 4.

At the time of issuing notice of motion on 27.09.2016, this Court had directed the parties to maintain *status quo* in respect of the land in question and the said order of *status quo* is still continuing.

Today, during the course of hearing, learned counsel for the respondents have raised an issue of maintainability of this petition before this Court on the ground that the petitioner has the statutory remedy to approach the Tribunal constituted under Section 83 of the Waqf Act, 1995 (for short “the Act”) by filing an appropriate application, much less, the suit in terms of Section 51 and 54 of the Act.

Learned counsel for the petitioners has submitted that the petitioners would approach the Tribunal but in that process they have to give a notice under Section 89 of the Act which will consume atleast two months and in the meantime respondent may not change the nature of the land in dispute. He has, therefore, prayed that the petitioners may be relegated to avail the remedy before the Tribunal but the issuance of notice under Section 89 of the Act may be exempted and the interim order granted by this Court may be allowed to continue till the appropriate application before the Tribunal is filed.

Learned counsel for the respondents have not raised any objection in this regard but they have prayed that the petitioner may be bound down to file the petition/application before the Tribunal within a specified time.

In view of the aforesaid facts and circumstances, the present petition is hereby disposed relegating the petitioners to avail the remedy of filing the petition/application before Tribunal constituted under the Act within a period of 20 days from the date of receipt of certified copy of this

order. Till then, *status quo* order granted by this Court on 27.09.2016 shall continue. The Tribunal is further directed that in case such an application/petition is filed by the petitioners alongwith an application for stay, the same shall be decided immediately by passing a speaking order without being influenced by the stay granted by this Court. The petitioners are also exempted from issuing of notice under Section 89 of the Act.

[RAKESH KUMAR JAIN]
JUDGE

July 3, 2019
Ess Kay

[ARUN KUMAR TYAGI]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No