

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CWP-18123-2018

Date of decision: 28.11.2019

THE BATHINDA TRUCK OPERATOR UNION (REGD) AND ANR

...PETITIONERS

VS.

DISTRICT COLLECTOR BATHINDA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Siddharth Gupta, Advocate,
for the petitioners.

Mr. T.P.S.Chawla, DAG, Punjab,
for the State.

Mr. Ghulam Nabi Malik, Advocate,
for respondent No. 2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This writ petition has been preferred by the petitioners challenging the order dated 31.05.2018 (Annexure P-1) passed by the District Collector, Bathinda, whereby petition preferred under Section 52 of the Wakf Act, 1995 has been allowed and the eviction of the petitioners ordered.

The petition came up for hearing before this Court for consideration on 30.07.2018 when notice of motion was issued and the status quo with regard to possession, as it exists on the said date, was ordered to be maintained till the next date of hearing.

Counsel for respondent No. 2-Punjab Wakf Board states that the writ petition is not maintainable in the light of the fact that there is a provision for appeal provided for under Section 52 (4) of the Wakf Act, 1995.

Counsel for the petitioners has referred to the judgment of the Supreme Court in **Ramesh Gobindram (dead) through LRs vs. Sugra Humayun Mirza Wakf**, 2010 AIR (SC) 2897, to contend that the eviction of a tenant from the Wakf property will be through the Civil Court and not through the Tribunal. He has also relied upon the judgment of the Co-ordinate Bench in **M/s Ram Murti & Sons and another vs. Punjab Wakf Board and others**, 2011 (1) RCR (Civil) 157, to contend that the Wakf Act, 1995 would not be applicable to the lease which has been entered into between the parties prior to coming into force of the Wakf Act, 1995 and the proceedings in such cases would be governed by the Wakf Act, 1954.

Counsel for respondent No. 2 asserts that these judgments are not applicable to the case in hand and the order passed by the District Collector is in accordance with law.

These pleas, which have been taken by the counsel for the parties, will be open for consideration by the Appellate Authority and, therefore, the statutory remedy should be availed of by the petitioners.

In case the petitioners file an appeal before the Wakf Tribunal as per the provisions of Section 52 (4) of the Wakf Act, 1995, the said appeal shall be entertained by the Tribunal without taking any objection with regard to the delay in approaching the Tribunal keeping in view the fact that the petitioners had approached this Court by filing the writ petition.

The interim order, which has been passed by this Court on 30.07.2018, shall

continue for the period which has been given by this Court. Thereafter, further proceedings will be governed by the order passed by the Tribunal.

It is made clear that the Tribunal would apply its own mind and pass appropriate order with regard to even the interim order which the petitioners are claiming/have claimed.

The writ petition stands disposed of in above terms.

November 28, 2019

**(AUGUSTINE GEORGE MASIH)
JUDGE**

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No