

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

CRM-M No.36052 of 2019
DATE OF DECISION : 29th NOVEMBER, 2019

**Haryana Waqf Board (earlier known as Punjab Wakf Board),
through Shamsher Ahmed, Estate Officer, Jhajjar.**

.... Petitioner

Versus

Mahabir Ahlabadi & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr.Manish Singh, Advocate for
Mr. Gulam Nabi Malik, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of order dated 06.03.2019 (Annexure P-5) passed by Additional District Judge, Jhajar and order dated 02.02.2015 (Annexure P-4) passed by the Judicial Magistrate 1st Class, Bahadurgarh, District Jhajjar, whereby the respondents have been discharged in the criminal complaint

A perusal of the file shows that the petitioner-Haryana Wakf Board (hereinafter referred as, 'Board'), claimed to be owner of khasra No.2166 Khewat No.351 situated at Bahadurgarh. The Board is further claiming that the respondents were the tenants under the Board. The Board has also filed civil suit and the same was decreed in favour of the Board. The appeal filed by the respondents was also dismissed. Whereafter, the Board has chosen not to initiate even the execution proceedings, as per the statement made by counsel for the petitioner. Subsequently, respondents are stated to have executed the sale deeds qua

khara No.2214, which is situated across the road, opposite the land comprised in khasra No.2166. Upon this, Board had lodged FIR against the respondents; alleging that the sale deeds have been wrongly executed by describing therein the khasra number of land as 2214. In fact, the respondents have sold the land situated in khasra No.2166 only. Initially the respondents were summoned by the trial court. However, later on, finding no material and offence against the respondents, the trial court had discharged them. Against the discharge, the petitioner-Board preferred revision petition before the Additional Sessions Judge, Jhajjar. Same was dismissed by the revisional court. Accordingly, the present petition has been preferred against the revisional order and also the original order; whereby the respondents have been discharged from the proceedings of the criminal trial.

Learned counsel for the petitioner has submitted that the sale deeds have been executed by the respondents, in some cases by mentioning a different khasra number then khasra No.2166; and in some other cases without even mentioning any khasra number. Hence, the respondents have sold the same very land; qua which the Board has got the decree for possession in its favour. Therefore, it is contended by the counsel for the petitioner that the intention to cheat the Board was very much present, when the respondents were executing the said sale deeds. Still further, it is submitted that even the revisional court has committed grave illegality in upholding the order passed by the trial court. The revisional court has wrongly held that since the demarcation was not got done by the petitioner-Board and that sale deeds have not been challenged by the Board, therefore, the complaint could not have been

initiated against the respondents. It is contended by the counsel for the petitioner that the sale deeds need not to be challenged. The property of the Board could not be alienated by the respondents; who were the tenants over the land. It is further submitted that the demarcation was not required in the case; because there is already a decree in favour of the petitioner-Board.

Having considered the arguments of the learned counsel for the petitioner-Board and having perused the record on the file, this court does not find any substance in the argument of the learned counsel for the petitioner. The petitioner Board has already got a decree for possession in its favour qua khasra No.2166. Therefore, on the basis of that decree, the Board can always get the possession; free from any encumbrances; qua the land comprised in the said khasra number. Any sale deed, executed by a party to the suit subsequent to the decree, cannot even stand in the way of the Board; in getting the possession of the land. The Board in its wisdom has not even chosen to file the execution petition for getting the possession.

Still further, it is not even disputed by learned counsel for the petitioner that the land, which was sold by the respondents, is situated across the road, opposite khasra No.2166 mentioned above. In some of the sale deeds, executed by the respondents, even khasra number is mentioned, but that khasra number is different than khasra No.2166. Hence, on the face of it, it cannot be said that the property sold by the respondents is the same which was subject matter of the decree passed in favour of the petitioner-Board. In this regard, this court finds that the revisional court has rightly observed; that since neither the demarcation

had been got done by the Board nor any execution has been filed, therefore, the criminal proceedings against the respondents, at the behest of the petitioner-Board, was not sustainable.

Otherwise also, if the petitioner-Board claims to be the owner, the alleged sale deeds cannot be said to have cheated the Board at all. If any person has any grievance qua being cheated, it would be the person to whom the land was sold by the respondents; but which belongs to somebody else. So far as the decree is concerned, if land happens to be the same, qua which the Board has got the decree for possession; based upon its ownership, the Board would always be free to take possession of said property by showing to the executing court that it is the same property which was subject matter of the decree. The demarcation of khasra No.2166 would entirely clarify the situation.

Otherwise also, the present petition has been filed in the nature of second revision against the order of revisional court, which had upheld the original order passed by the trial court. In this petition also, the petitioner has challenged only the 'legality' and 'propriety' of the order passed by the trial court. The petition under Section 482 Cr.P.C., in the nature of second revision, is not maintainable if the same is filed for questioning the 'legality' and 'propriety' of the order, which are the aspects which are to be considered in the revision also. This Court has already dealt with the proposition regarding the maintainability of the petition under Section 482 Cr.P.C by the same party, after having availed the remedy of revision before the Courts below; in a petition i.e. ***CRM-M-30350-2018 titled as Sudesh and others vs. State of Haryana and***

another; decided on 02.08.2018. The relevant paragraph is reproduced hereinbelow:-

“So far as the present petition is concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into 'legality' and 'propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see 'legality' and 'propriety' of the order passed by the Court. Since second revision by the same party is

prohibited under Section 397(3), therefore, any argument on 'legality' or 'propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below."

In view of the above, otherwise also, this court finds that the petition filed by the petitioner-Board is not maintainable.

Hence, finding no merit in the present petition the same is dismissed.

29TH NOVEMBER, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes