

CWP No.2806 of 2020 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2806 of 2020 (O&M)

Date of decision : 16.05.2022

Gram Panchayat, Bhondsi

.....Petitioner

VERSUS

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. S.K. Chauhan, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-3611-CWP-2020

Prayer in this application is for placing on record Gazette
Notification dated 21.11.1970 as Annexure P-3.

For the reasons stated in the application, the same is allowed.
Gazette Notification dated 21.11.1970 is taken on record as Annexure P-3,
subject to all just exceptions.

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Challenge in this writ petition is to the order dated 22.11.2018
(Annexure P-2) passed by the Commissioner, Gurugram Division,
Gurugram – respondent No.2, whereby the order dated 11.03.2013
(Annexure P-1) passed by the Collector, Gurugram, ordering the eviction of
the private respondents and the Haryana Waqf Board from the land in
question has been set aside.

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It is the contention of the learned counsel for the petitioner that earlier, a civil suit was filed by the Gram Panchayat praying for a permanent injunction. The said civil suit was decided on 13.08.2003 against the Gram Panchayat on the ground of jurisdiction, where it was held that the Gram Panchayat should file an appropriate proceedings under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act').

It is, in pursuance thereto, proceedings under Section 13-A of 1961 Act, seeking a declaration to the effect that the Gram Panchayat was the owner of the land, was filed on 11.03.2013. This petition of the petitioner – Gram Panchayat was decreed against which an appeal was preferred by the private respondents including the Haryana Waqf Board, which was allowed by the Commissioner and the case was remanded to the Collector for fresh decision.

The Collector, thereafter, on remand passed a fresh order dated 11.03.2013 declaring the Gram Panchayat again to be the owner of the land in question. This order was challenged by the Haryana Waqf Board as also the private respondents by filing separate appeals before the Commissioner. These appeals were taken up together and decided vide order dated 22.11.2018 (Annexure P-2) by the Commissioner holding therein that the provisions of 1961 Act would not be applicable to the land in question as the land, which is the subject matter of the case, has been notified as a waqf property by Gazette Notification dated 21.11.1970 (Annexure P-3) issued by the Government of India. In the light of the said notification and the provisions of the Waqf Act, 1995, especially under Section 6 thereof, the

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properties which have been vested in the waqf, the ownership/title thereof, can only be determined by the Tribunal constituted under the said Act. On this basis, the said appeal has been allowed by relegating the parties to the said relief. This, the learned counsel for the petitioner contends, is not sustainable in the light of the fact that the Civil Court in its decree had held that the jurisdiction with regard to the land in question would be under the 1961 Act. Accordingly, he contends that the impugned order cannot sustain and deserves to be set aside.

We have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the pleadings and the records.

The contention as has been raised by the learned counsel for the petitioner cannot be accepted as merely because an observation has been made by the Civil Court with regard to the jurisdiction of the Court under a particular Act, would not confer such power when, as a matter of fact, the provisions as contained in the Waqf Act, 1995 would be applicable keeping in view the Gazette Notification dated 21.11.1970 (Annexure P-3) issued by the Government of India declaring the land to be a waqf property. The said notification will hold the field as it has neither been challenged nor has any Court declared the same to be invalid. That apart, once the land is declared as waqf property according to the notification referred to above, it would be the Tribunal alone constituted under the Waqf Act, 1995, which will have the jurisdiction to deal with the title of the said property. The order, therefore, passed by the Commissioner, Gurugram Division, Gurugram, dated 22.11.2018 (Annexure P-2) cannot be faulted with on facts and law,

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which would call for any interference by this Court in exercise of its extraordinary writ jurisdiction.

The impugned order dated 22.11.2018 (Annexure P-2) is, thus, upheld. It would, however, be open to the petitioner – Gram Panchayat to avail of its remedy in accordance with law.

(AUGUSTINE GEORGE MASIH)
JUDGE

16.05.2022

Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No