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

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Date of Decision : April 17, 2023

GURJANT SINGH

-Petitioner

V/S

STATE OF PUNJAB AND OTHERS

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ghulam Nabi Malik, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Vikram Jeet Singh, Advocate
for the respondent No.5-Gram Panchayat.

SURESHWAR THAKUR, J.(ORAL)

1. The respondents No.8 to 13 are alleged, in the instant writ petition, to make encroachment(s) upon land, owned and possessed by the Gram Panchayat concerned. The above made encroachment(s), resulted in an order of eviction being passed, by the competent authority concerned, as envisaged in the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the 'Act of 1973' for short).

2. It is not disputed amongst the learned counsels for the appearing litigants before this Court, that the said order of eviction, after acquiring a binding, and, a conclusive effect, resulted in the drawing of warrants of possession, and, which becomes appended as Annexure P-1, to the instant writ petition. Furthermore, it is also not disputed amongst the learned counsels for the appearing litigants before this Court, that the warrants of possession

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(supra) rather resulted, as unfolded by Annexure P-2, in their completest execution against the encroachers concerned.

3. Be that as it may, subsequent to the completest execution of Annexure P-1, rather through Annexure P-2, yet the above referred to private respondents, in the instant writ petition, are alleged to re-enter upon the Panchayat land(s), and, which resulted in a letter, as enclosed in Annexure P-3, becoming addressed by the residents of the village concerned, to the Special Secretary, Government of Punjab (hereinafter referred to as ‘Special Secretary’ for short).

4. It is fairly stated at the bar, by the learned counsel appearing for the petitioner, that the present petitioner was not a party in the petition, whereunder, the above stated binding, and, conclusive order of eviction became passed. Therefore, prima facie, then the petitioner herein may not have the locus standi to ask, that Annexure P-3 be directed to be actioned, upon, by the Special Secretary. Nonetheless, since the private respondents (supra) have purportedly resumed possession of the Panchayat land(s), thereupon, in the event of such re-encroachment(s) being allegedly made by the encroachers, thus Section 5 of the Act of 1973, provisions whereof become extracted hereinafter, is the apt recourable remedy. When the said extracted provisions, empowers “any person”, term whereof does but when include even the petitioner, who also rather may be, aggrieved by such re-encroachments, to draw a motion thereunder, before the competent authority, rather post the makings of the completest and effective execution of Annexure P-1, through Annexure P-2. Moreover so, but irrespective of the fact, that in the basic petition, which resulted in the drawing of Annexure P-1, and thereafter in the drawing of Annexure P-2, rather the present petitioner was not a party therein.

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Thus, the present petitioner, who may have some right, title or interest, on the Panchayat land(s) rather in terms of the Wazib Ul Arz, therefore, he becomes ably competent to institute the present writ petition, but, under Section 11 of the Act of 1973 before the learned Collector concerned.

*“5. **Eviction of unauthorized persons:-** (1) If, after considering the cause if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorized occupation, the Collector may make an order of eviction, for reasons to be recorded therein, the Collector may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises or of the estate in which the public premises are situate.*

(2) If any person refuses or fail to comply with the order of eviction within thirty days of the date of its publication under sub section, (I), the Collector or any other officer duly authorized by him in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary.”

4. The reason for making the above conclusion becomes rested, upon, the provisions of Section 11 of the Act of 1973, provisions whereof, are extracted hereinafter:-

*“11. **Offences and penalty:-** (1) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation he shall [on conviction by an Executive Magistrate- in Pb. Only] be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one*

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thousand rupees, or with both.

(2) Any Executive Magistrate convicting a person under sub-section (1) may make an order for evicting that person summarily and shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.”

5. A reading of the above extracted provision, makes it abundantly clear, that thereby, the Executive Magistrate, apart from, being empowered to initiate penal action against those persons, who despite becoming lawfully evicted from the Panchayat land(s), yet, subsequent thereto, make re-entry on the Panchayat land(s), becomes also empowered by sub-section (2) thereof, to ensure that the said re-encroachment(s), as made upon the Panchayat land(s), are ensured to become freed by the encroacher(s) concerned, rather through his making an eviction order against the encroacher(s) concerned.

6. Be that as it may, therefore, the motion as made before this Court, by the present petitioner, who however, was not a party in the eviction petition concerned, is a validly made motion, as thereby alone, a mandamus, can be passed upon the Executive Magistrate concerned to, in terms of Section 11 of the Act of 1973, but on a motion made before him by the present petitioner, or by the Panchayat concerned, rather draw appropriate proceedings, in accordance with law, against those persons, who after theirs becoming ensured to be lawfully evicted from the Panchayat land(s), have re-entered upon the Panchayat land(s), but owned and possessed by the Gram Panchayat concerned, and wherein, the estate holders, in terms of the Wazib Ul Haq, may be holding some right, title or interest, to make tenable users thereof. The above asked for mandamus, though in terms (supra), is permitted to be made upon the Executive Magistrate concerned, but, the Executive Magistrate concerned, may not enforce the provisions of Section 11 of the Act of 1973,

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against such persons, who have purportedly re-entered, upon, the Panchayat land(s), despite theirs being earlier validly evicted therefrom, unless prior thereto, valid demarcation(s) of the petition land(s) are made by the competent revenue officer concerned. If the competent revenue officer concerned, after making valid demarcation on the Panchayat land(s), draws a conclusion in his demarcation report, that the above referred to private respondents, have made a re-entry on the Panchayat land(s) concerned, thus the Sarpanch of the Gram Panchayat concerned or the petitioner herein, may proceed to move an application, in terms of Section 7 of the Act of 1973, before the Executive Magistrate concerned, who shall subsequently, after hearing all affected persons concerned, including the above referred to private respondents, besides after granting them all the asked for fullest tenable opportunity, proceed to draw lawful action(s), as contemplated in sub-section (1) against such persons, and, may also lawfully proceed to order for the eviction of such encroachers, from the Panchayat land(s), who post the completest execution, and, enforcement of the eviction order, respectively through Annexures P-1, and, P-2, are alleged to re-encroach, upon, the Panchayat land(s).

8. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 17, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No