

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

(266)

CWP-9025-2023

Date of decision: - 18.05.2023

Mehar Singh**....Petitioner****Versus****Joint Development Commissioner (IRD) and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Inderjit Sharma, Advocate,
for the petitioner.

Mr. Karan Puggal, DAG, Punjab
for respondent Nos.1 to 3.

Mr. Vivek Chauhan, Advocate,
for respondent No.4.

VIKAS BAHL, J. (ORAL)

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of any writ, mandate, order especially in the nature of certiorari, directing for quashing of the impugned order dated 03.04.2023 (Annexure P-8) passed by respondent No.1, whereby an application for staying the operation of impugned order dated 06.01.2023 (Annexure P-3) has been dismissed.

2. On 03.05.2023, this Court was pleased to pass the following order: -

“Inter alia, contends that in the present case, the petitioner had filed an appeal against the order dated 06.01.2023 (Annexure P-3), vide which an application filed by the Gram Panchayat under Sections

5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short 'Act of 1973') seeking eviction of the petitioner from land comprised in Khasra No.446 (17 kanal) was allowed. It is further contended that the appeal filed by the petitioner is a statutory first appeal under Section 9 of the Act of 1973 and a stay application had also been filed alongwith the same and the Commissioner vide a cryptic order, had dismissed the said stay application and adjourned the said case for service of respondents and requisitioned the lower Court record for 17.05.2023. It is submitted that in the application filed by the panchayat under Sections 5 & 7 of the Act of 1973 with respect to Khasra No.446, averments had been made to the effect that the petitioner had constructed his cattle shed in the said Khasra No.446. It is argued that it is the case of the present petitioner that he is the owner in possession of Khasra No.445/1 and has no concern with Khasra No.446. It is submitted that further an application under Section 10 of the CPC was also moved before the Collector praying for adjournment of the case till the time the civil suit, which was filed by the petitioner to which a counter claim was filed by the Gram Panchayat, was pending. It is stated that the said civil suit was filed in the year 2021, whereas, the application has been filed in the year 2022 and in the said civil suit, vide order dated 30.09.2021, an application under Order 39 Rules 1 & 2 of CPC seeking injunction filed by the petitioner has been allowed. Learned counsel for the petitioner has referred to a detailed order dated 30.09.2021 (Annexure P-9) to show that even before the Civil Court it was the case of the petitioner that he had been allotted Khasra No.445/1 in the partition proceedings and he was in possession of the same for several decades and had made an animal shed in the said premises and that he had no concern with Khasra No.446, in which, the wall was situated. The trial Court, vide a detailed order, had granted injunction in favour of the present petitioner restraining the defendants from interfering with the possession of the petitioner and from dispossessing the petitioner from Khasra No.445/1 illegally and forcibly and even the injunction sought in the counter claim of the Gram Panchayat with respect to Khasra No.446 was also granted. The trial Court in para No.45 of the order had observed that the bone of contention in the present case was the faulty demarcation which

had been carried out earlier and the dispute was whether the land in question falls in Khasra No.445/1 or in Khasra No.446.

Learned counsel for the petitioner has submitted that a report has been submitted by the Local Commissioner (Annexure P-10) as per which, it has been observed that the area in Khasra No.446 is required to be identified as per the consolidation record and only thereafter demarcation can be carried out. It is thus stated that there are arguable points in the present case and the Commissioner vide order dated 03.04.2023 had rejected the stay application only after observing that nothing has been produced with respect to Khasra No.446 by the petitioner. It is argued that the main issue in the present case is whether the land in question falls within the land which is owned by the present petitioner i.e., Khasra No.445/1 or in Khasra No.446, which belongs to the Gram Panchayat and the said dispute is pending before the civil court. It is stated that by rejecting the stay application of the petitioner and adjourning the matter to 17.05.2023, the petitioner has been left remediless as in case the order dated 06.01.2023 is implemented, then, the statutory first appeal filed by the petitioner would be rendered infructuous.

Notice of motion for 16.05.2023.

On the asking of the Court, Mr. Ferry Sofat, Additional Advocate General, Punjab, appears and accepts notice on behalf of respondents No.1 to 3.

Liberty is granted to the petitioner to serve respondent No.4 through dasti process as well.

Status quo, as it exists today, shall be maintained till the next date of hearing.

To be taken up 1.45 PM.

**(VIKAS BAHL)
JUDGE”**

May 03, 2023

3. Learned counsel appearing on behalf of respondent No.4 has submitted that respondent No.4 would be able to show that the impugned order dated 06.01.2023 is in accordance with law and that it deserves to be upheld. It is further submitted that there is a demarcation report dated 02.08.2021, in which, the demarcation was done in the presence of the

petitioner and it was found that the petitioner was in occupation of Khasra No.446. It is stated that in case the above-said interim order granted is ordered to be continued till the decision of the appeal, then, prayer is made that the appeal be decided expeditiously, preferably, within a period of two months from the date of receipt of certified copy of this order.

4. Keeping in view the above-said facts and circumstances, the present writ petition is disposed of with a direction to respondent No.1 to decide the appeal filed by the petitioner against the order dated 06.01.2023 as expeditiously as possible, preferably, within a period of two months from the date of receipt of certified copy of the present order.

5. The interim order dated 03.05.2023 to the effect that “status quo, as it exists today, shall be maintained ” would continue till the time the said appeal is decided.

6. It is clarified that grant of the said interim should not be construed as an expression on the merits of the case and respondent No.1 would consider the entire case independently, in accordance with law, after hearing learned counsels for both the parties.

May 18, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No