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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10823-2022

Date of decision:14.02.2023

BALWAN

...Petitioner

Versus

STATE OF HARYANA AND ORS

...Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petition lands are averred to cover an area about 60 kanals, and, are embodied in Khewat No.42 Khatoni No.133 Khasra No.71. The averment made in the petition, is that, there is unlawful change from a *Gair Mumkin* pond or a *Johar*, as located on the entire complement of the petition lands, rather to an irrigation *chahi*. Therefore, a mandamus is asked to be made upon the respondents concerned, to ensure that such a purported unlawful change being corrected, inasmuch as, qua a *Gair Mumkin* pond being ensured to be reconstructed thereon(s). The reply on affidavit furnished on behalf of the State discloses, that there are purported encroachments made on the petition lands, and, that for ensuring the removal of such purported encroachments, as made by the encroachers concerned, upon the panchayat lands, rather a petition under Section 7 of the relevant statute, has been instituted before the Collector concerned.

2. Though, the remedy available to the petitioner to cause the removals of the encroachments, as made by the co-respondents concerned, on the petition lands, described in the revenue record as *Gair Mumkin Johar* ponds, was to not access the jurisdiction of the Writ Court, but the remedy was to institute a petition under Section 7 of The Haryana Village Common Lands (Regulation) Act, 1961 (as notified on 05.04.2021) (hereinafter referred to as “the Act”). However, yet since in view of the above stated reply, on affidavit as furnished to the petition, with disclosures that a petition under Section 7 of the Act has been filed. Therefore, the instant petition asking for a mandamus, for the afore purpose being made, upon the respondents concerned, does not survive, and accordingly the same is closed. The learned Collector concerned, wherebefore whom a petition under Section 7 of the Act, has been filed, but is directed to expeditiously make a lawful decision upon the said petition.

3. If ultimately, the learned Collector concerned, on a lawful consideration of the evidence as becomes adduced before him in respect of the above unlawful change of user of the pond, being made, to that of an irrigation *chahi*, thereupon he may in accordance with law either impose a penalty, upon the errant concerned, or he may even proceed to make a direction upon the Gram Panchayat concerned, or the Secretary Revenue to the Government of Haryana, to restore the entire complement of the petition lands from an irrigational *chahi* to a *Gair Mumkin* pond.

4. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

14.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No