

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(114)

CWP-9010-2023

Date of decision: - 02.05.2023

Naginder Singh Banipal

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pritam Singh Saini, Advocate
for the petitioners.

Mr. Ferry Sofat, Additional Advocate General, Punjab
for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari for quashing the order dated 23.03.2021 (Annexure P-7) passed by the Collector-cum-Sub Divisional Magistrate, Bassi Pathana and order dated 29.09.2021 (Annexure P-11) passed by the Deputy Collector-cum-District Collector, Fatehgarh Sahib, vide which the appeal against the order dated 23.03.2021 has been dismissed and also the memo No.1221 dated 27.01.2023, vide which the Executive Engineer, Bhakra Main Line Canal has requested the Deputy Commissioner, Fatehgarh Sahib to get the possession delivered to the Canal Department.

2. Learned counsel for the petitioner has submitted that in the present case, the Government of Punjab, vide notification dated

26.12.2016 notified the Punjab Allotment of State Government Land Act, 1961 (hereinafter referred as “Act of 1961”) for allotment of land to the occupants who are in cultivating possession of such land since the past than twenty years and a copy of the said notification has been annexed as Annexure P-2. It is further submitted that the petitioner had applied for allotment under the said Act in the year 2018 and the respondent authorities had filed a petition under Sections 4 and 5 of the Punjab Public Premises & Land (Eviction & Rent Recovery) Act, 1973 (hereinafter referred as “Act of 1973”) against the petitioner, which was allowed by the Sub-Divisional Magistrate-cum-Collector, vide order dated 23.03.2021. It is also submitted that vide order of the same date i.e. 23.03.2021, the Sub Divisional Magistrate had dismissed an application filed by the petitioner for allotment of said land filed under the Act of 2016. It is stated that an appeal was filed by the petitioner against the order dated 23.03.2021 rejecting the application of the petitioner for allotment and on 07.07.2022, the said appeal was allowed and the matter was remanded back to the Sub-Divisional Magistrate to reconsider the application for allotment filed by the petitioner in accordance with law. It is further stated that the said proceedings are still pending. It is argued that however the appeal filed by the petitioner with respect to his eviction under the Public Premises Act was dismissed on 29.09.2021 and has submitted that although, his application for allotment has not been finally decided, yet the authorities are proceeding to take possession from the petitioner and has referred to memo dated 27.01.2023 with respect to the same. It is further argued that the application filed by the petitioner for

allotment of 40 kanals and since the ejectment order has been passed with respect to the 42 kanal 9 marlas, therefore, as far as land measuring 2 kanal 9 marlas of land is concerned, the petitioner is ready to give the possession of the same to the respondent authorities. It is stated that the petitioner would not challenge the orders passed by the authorities evicting the present petitioner but has prayed that the execution of the said order be stayed till the time the application filed by the petitioner for allotment is finally decided in pursuance of the order dated 07.07.2022 passed by the Commissioner. It is submitted that in case the said application for allotment is finally decided against the petitioner, then, he would have no objection to the execution of the orders dated 23.03.2021 and 29.09.2021. It is further submitted that the petitioner is ready to deposit an amount of Rs.5,00,000/- and in case the allotment case is decided in favour of the present petitioner, then, the said amount be adjusted in the total amount that is to be paid by the petitioner to the authorities and in case the said allotment case is decided against the petitioner, then, the petitioner would have no objection in the forfeiture of the said amount of Rs.5,00,000/- to the respondent-State authority.

3. Learned State counsel has submitted that the respondent-State has no objection with respect to the disposal of the present writ petition as suggested by the learned counsel for the petitioner and also that the competent authority to whom the matter has been remanded with respect to the application of the petitioner for allotment of 40 kanals of land would decide the same as expeditiously as possible, preferably, within a period of three months from the date of receipt of certified copy

of the present order. It is further submitted that the petitioner must give possession to the respondent authorities with respect to land measuring 2 kanal 9 marlas, within a period of 15 days from the date when the notice is issued to the petitioner.

4. Keeping in view the above-said facts and circumstances, the present writ petition is disposed of with the following directions: -

- (i) Petitioner would hand-over the possession of land measuring 2 kanals 9 marlas to the respondent authorities within a period of 15 days from the date the notice is given by the authorities to the petitioner for the said purpose.
- (ii) Order dated 23.03.2021 (Annexure P-7) and order dated 29.09.2021 (Annexure P-11) ordering the eviction of the petitioner are upheld.
- (iii) The said orders would not be executed till the time the application for allotment of the petitioner for 40 kanals of land, filed under the Act of 2016, is finally decided.
- (iv) The Competent authority to whom the matter is remanded by the Divisional Magistrate, Patiala vide order dated 07.07.2022 is directed to decide the case of allotment of the petitioner, as expeditiously as possible, preferably, within a period of three months from the date of receipt of certified copy of the present order.
- (v) This Court has not commented on the merits of the said application and the same would be decided by the Competent Authority independently, in accordance with law.
- (vi) The petitioner is directed to deposit an amount of Rs.5,00,000/- within a period of three weeks from today with the Competent Authority before whom the case of allotment is pending.
- (vii) In case the said amount is not deposited by the petitioner within the said period of three weeks, then, the present writ

petition would be deemed to have been dismissed.

- (viii) In case the application of the petitioner for allotment is finally accepted by the authorities, then, the said amount of Rs.5,00,000/- deposited by the petitioner would be adjusted in the total amount that is to be paid by the petitioner in pursuance of the allotment.
- (ix) In case the allotment case of the petitioner is finally rejected, then, the said amount of Rs.5,00,000/- would be forfeited by the authorities, being mesne profit/use and occupation charges and it would be open to the respondent authorities to execute the order of eviction.
- (x) In case of non-compliance of any of the conditions stipulated in the allotment if so made in favour of the petitioner, then also, it would be open to the respondents to execute the order of eviction.

May 02, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No