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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10370-2023

Date of decision:12.05.2023

HARCHAND SINGH AND OTHERS

...Petitioner

Versus

JOINT DEVELOPMENT COMMISSIONER AND OTHERS

...Respondents

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

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

Mr. Athar Ahmed, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners suffered a verdict of eviction on a petition cast under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). The said decision thus resulted in warrants of possession (Annexure P-10) becoming issued, and, the same being strived to be executed, at the instance of the judgment debtors.

2. Be that as it may, the aggrieved judgment debtors-respondents, in the said petition, who allegedly made encroachments, upon, the panchayat lands, challenged the said verdict of eviction passed, on a petition cast under Section 7 of the Act, by the learned Collector concerned, in favour of the plaintiff-petitioner Gram Panchayat concerned, Mahima Block Rajpura, District Patiala, thus through theirs instituting a statutory appeal thereagainst, before the learned Competent Appellate Authority concerned. It is fairly stated at the bar, that the

said statutory appeal is still subjudice before the learned appellate Authority concerned.

3. However, during the pendency of the said statutory appeal, the aggrieved respondent judgment debtors, moved an application claiming therein relief of staying the execution and enforcement of the decree of eviction, as became passed in favour of the Gram Panchayat concerned, by the learned Collector concerned. However, on 28.03.2023 (Annexure P-9) a declining order was made thereon. A reading of the said declining order reveals, that it is most cryptically drawn, and, as such, it does not contain the relevant reasons, for the said declining order being made, whereas, it was incumbent upon the competent Appellate Authority concerned, to in its concluding, that the relief, on the said application, was to be granted or in its concluding, that relief was to be declined, thus to record convincing, and, cogent reasons. The said reasons were to fall within the ambit of the triplicate test(s) rather regulating the grant of interim relief inasmuch as I) A prima-facie case being made out in favour of the applicants-appellants II) Irreparable loss being caused to the appellants-applicants in the event of theirs being declined, the relief of operation(s) of the verdict assailed before it, thus being stayed. III) Whether balance of convenience becoming loaded against the appellants-applicants.

4. As stated above, neither the above triplicate test, thus became discussed nor it is unfolded in the said annexure, that all the triplicate test(s) (supra) were not applicable to the application whereon Annexure P-9 was passed.

5. It is but lack of application of mind to the above triplicate test, rather by the Authority who drew Annexure P-9, that it can be firmly stated, that the jurisdiction exercised on the application, claiming therein an interim relief, thus for staying the operation of the verdict of eviction, as, passed against the

appellants-applicants, rather became exercised with a gross illegality besides with a material impropriety. Even otherwise, unless there were strong and cogent reasons, for declining the relief, and more importantly that there is the completest necessity for making promptest execution of the warrants of possession, against the appellants-applicants, that thereby declining order would be construed to be validly made. However, since there would be evident multiplicity of litigation, on the makings of execution of warrants of possession, as necessarily a petition for restitution of possession of the petition lands, from the Gram Panchayat concerned, to the appellants-applicants thus would becoming initiated. Therefore, on the above situation, it was *prima-facie* but incumbent upon the learned Appellate Authority concerned, to rather proceed, to grant the interim relief, than to decline the espoused relief.

6. In view of the above stated reasons, this Court finds merit in the petition, and, is constrained to allow it. The petition is allowed, and, the impugned order of 29.03.2023 (Annexure P-9) is set aside. The parties are directed to maintain status quo in respect of the petition lands. Moreover, the warrants of possession if issued, and, if are attempted to be enforced against the estates of the appellants-applicants, thus be not enforced against the estates of the appellants-applicants, uptill a binding, and, conclusive decision, is recorded on the petition, cast under Section 7 of the Act. Moreover, the said statutory appeal be ensured to be decided, but positively within 3 months from today, but after hearing all affected persons concerned.

7. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

12.05.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No