

109

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-12103-2023

Date of Decision : 31.05.2023

NAKLI SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

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

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

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. Vijay Kumar Chaudhary, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J. (Oral)

1. The present petitioner has earlier motioned this Court through instituting CWP-10007-2022. The grievance ventilated in the said petition was that, despite the statutory appeal being subjudice, before the Appellate Authority concerned, and, despite an application being also instituted, for seeking interim relief, for thus staying of the operation of the judgment challenged in appeal, before the Appellate Authority, yet no decision being made on the said application.

2. Through a decision made on 20.05.2022, upon, the petition (supra), this Court disposed of the said writ petition, by observing that status quo with regard to possession, as it exists today, be maintained till

the disposal, by the Appellate Authority concerned, hence of the apposite application for interim relief. Now, the Appellate Authority concerned, through an order drawn on 16.05.2023 (Annexure P-4), has declined the espoused relief, as, claimed in the said interim application, to the petitioner, thus yet during pendency of the statutory appeal before it.

3. Feeling aggrieved, the petitioner is led to institute thereagainst the instant petition before this Court.

4. This Court in a case bearing No. CWP-1706-2023, decided on 30.01.2023, had in paragraphs No. 5 and 6 of the verdict (*supra*), paras whereof becomes extracted hereafter, had impliedly set forth the principles governing the makings of decision on an interim application, thus seeking stay of the operation of the verdict challenged before the Appellate Authority. The said implied principles, do vividly portray, that till a decision upon the statutory appeal, is made by the Competent Appellate Authority, thus thereupto, rather for ensuring that the equities relating to the possession of the disputed property, do not become unsettled, whereby obviable multiplicity of litigation would emerge, rather the verdict challenged in appeal be not enforced. The reason being that, in case a decision favourable to the appellant, is made on the statutory appeal, by the competent Appellate Authority, thereupon with either no decision being made on the interim application or thereons a decision adversarial to the appellant being made by the competent Appellate Authority, and as such possession of the disputed lands, being assumed by the adversary litigant. Resultantly the appellant, on succeeding, in the appeal, thus being led to institute an application, for restitution of the possession of the disputed lands to him, from the Gram Panchayat concerned. The above ill

event would obviously occur in case the impugned order is sustained.

“.....5. Learned State counsel fairly states that status quo regarding possession as on today may be directed to be maintained, during pendency of the appeal, however, with a direction to the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, to decide the pending appeal in a time bound manner.

6. We find this submission to be extremely fair, as unless the said order is passed, and, was required to be passed rather would render infructuous the statutory appeal. Accordingly, order dated 05.12.2022 (Annexure P-3), passed by the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, is set aside. Status quo regarding possession as on today regarding land in question be maintained during pendency of the appeal, which be decided by the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, in accordance with law, within a period of three months from receipt of certified copy of this order, after affording due opportunity to all concerned.”

3. It appears that the said settled principles rather governing the exercising of jurisdiction, on an interim application, has been completely misunderstood by the competent Appellate Authority, inasmuch as, it's yet proceeding, to through the impugned order, rather declining to stay the operation of the impugned verdict, despite the statutory appeal being subjudice, before the said statutory authority. The declining decision, as made on the interim application, would obviously result, but for all the reasons set forth herein, thus in avoidable multiplicity of litigation

4. In short, the impugned order (Annexure P-4) is ridden with a

vice of gross illegality and also with a vice of gross material impropriety, as the jurisdiction exercised on the interim application, thus has not been exercised in the manner required by law.

5. In aftermath, the petition is allowed and the impugned order (Annexure P-4) is quashed and set aside. However, the competent Appellate Authority is directed to within two months from today, make a lawful speaking decision on the statutory appeal, but after hearing all affected persons.

(SURESHWAR THAKUR)
JUDGE

31.05.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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