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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : April 19, 2023

MUKHWINDER SINGH AND ANR.

-Petitioners

V/S

STATE OF PUNJAB ETC.

-Respondents

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

Present : Mr. Tarun Singla, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. V.K. Chaudhary, Advocate
for the respondent No.5.

Mr. Akhil Sharma, Advocate for
Mr. Ramnish Puri, Advocate
for the respondent No.6.

SURESHWAR THAKUR, J.(ORAL)

1. The prayer in the instant writ petition is, that a mandamus be made upon the respondent(s) concerned, to ensure, that the house(s), if any, as become raised by the errant(s) concerned, on shamlat deh land(s), and, as purportedly exist on Khasra No.597/1, situated in the revenue limits of Village Maluwal, Hadbast No.412, Tehsil Attari-II, District Amritsar, are ordered to be demolished.

2. Though, the above asked for mandamus could not be granted to the petitioners, unless a binding, and, a conclusive decree of eviction, or, of demolition was made by the competent statutory authority(ies) below, besides the said decree remaining unenforced. However, since there is no binding

eviction verdict, made by the competent statutory authority(ies), rather

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directing the encroacher(s), on purported shamlat deh land(s), to remove the house(s), if any, as raised thereon, nor when there is any delay in evicting the encroacher(s). Consequently prima facie, the institution of the instant writ petition, with the above prayer, is not, at this stage, maintainable before this Court. Resultantly, the instant writ petition is mis-constituted, and, requires to be dismissed.

3. Even otherwise, a perusal of the reply, on affidavit, furnished to the writ petition, on behalf of co-respondents No.1 to 4, especially a perusal of paragraphs 6 and 9 thereof, paragraphs whereof are reproduced hereinafter, make clear and graphic speakings, that the house(s), as exist on the khasra number (supra), do not exist on shamlat deh land, rather is exist on the land, designated in the revenue record, as abadi deh land.

“6. That, thereafter, the office of the answering respondent again wrote a letter dated 7.10.2022 to the office of the Naib Tehsildar, Attari to submit a report pertaining to the land in question so that action can be taken, if any illegal encroachment of respondent no. 6 is found. In response to the said letter, the officials of the department of the answering respondent submitted that report dated 27.10.2022 stating that the land in question is abadi deh. The true translated copy of the letter dated 7.10.2022 containing the report dated 27.10.2022 by the officials of the revenue department is being annexed herewith as ANNEXURE R-4/2T.

9. That in response to the above letters dated 31.10.2022 and 3.11.2022 (Annexure R-4/4), the office of the Naib Tehsildar, Attari, informed by making endorsement on the letter dated 33.10.022 vide report dated 11.11.2022 that the ownership of above Khasra Number 597-597/1 is continuing as abadi deh as per the Jamabandi for the year 1965-66 to 2020-21. As per record, Panchayat is not owner. The fard jamabandi for the year 1965-1966 is enclosed herewith and the ownership of Khasra no. 597/1 is also entered as Abadi Deh and the

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cultivation is continuing with Karnail Singh son Sohan Singh resident of Village Malluwal with Khasita Singh, which was transferred by Ghasita Singh. The true translated copies of the letter dated 31.10.2022 containing the report dated 11.11.2022 are being annexed herewith as ANNEXURE R-4/5 respectively.”

4. Therefore, when only, in the event of the petition land(s) being depicted, in the revenue records, to be shamlat deh land(s), thus the Panchayat concerned will be construed to be valid owner thereof. Contrarily, when the land(s) does not fall in any of the inclusionary clauses of the definition of shamlat deh, defined under Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961, as detailed in the above reproduced paragraphs, but are abadi deh land(s), thus thereons, the Panchayat does not have any right, title or interest, so as to be permitted to institute an eviction petition, under, the relevant statutory provisions, before the learned Collector concerned.

5. In view of the above made observations, the writ petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 19, 2023
devinder

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No