

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

227

CWP-18450-2020

Date of Decision : February 01, 2023

DALJIT SINGH AND ORS.

.....Petitioners

VERSUS

STATE OF PUNJAB AND ORS.

.....Respondents

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

Present : Mr. Inderjit Sharma, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. Parminder Singh, Advocate
for Mr. Vivek Chauhan, Advocate
for the respondent No.4- Gram Panchayat.

SURESHWAR THAKUR, J.(ORAL)

1. As revealed by Annexure P-9, the Gram Panchayat of Village Sidhpur, Tehsil and District Gurdaspur, through its Sarpanch Angrej Singh, instituted against the respondents therein, a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter referred to as the 'Act' for short). Through the above petition, the petitioner sought the eviction of the respondents from the suit land(s) concerned. However, since a question of title was raised by the respondents concerned, and, it related to the fact that the suit land(s), were saved from vestment, in the Gram Panchayat concerned, therefore, with the leave of the learned Collector concerned, who was seized with the petition (supra), the respondents therein, instituted a title suit under Section 11 of the Act, before the learned Collector concerned.

2. It is stated at the bar by all the appearing counsels, that the said petition, has progressed upto the stage of production of evidence, on the relevant issues, and, it is now listed on 07.02.2023 before the authority concerned.

3. Be that as it may, what is to be tested is the legality of the ex parte interim order passed by the learned Collector concerned, who then was seized with the petition under Section 7 of the Act. The said interim order, is appended as Annexure P-11, to the instant writ petition. Through the said ex parte interim order, the respondents therein, who are the petitioners before this Court, were restrained from cutting and removing the trees, as were existing on the suit land, and, also through the said ex parte interim order, the parties were directed to maintain status quo, in respect of the suit land(s).

4. The learned counsel for the petitioners submits with much vigor before this Court, that there is no provision in Section 7 of the Act, rather empowering the Collector concerned, to, on any interim application, pass any interim orders, alike the ones, which became rendered on an application, as became may be cast under Order 39 Rules 1 and 2 CPC, within the principal suit concerned. Therefore, he argues that the above made ex parte order, and, also the above directions contained therein, are completely unlawful.

5. However, for the reasons, to be assigned hereafter, the above made submission, is to be rejected. The primary reason for rejecting the above submission, is that, the proceedings drawn under the Act (supra), are civil proceedings, and, are to be tried obviously as civil proceedings, and, but naturally, the relevant procedural law governing the trial of the suit, or the trial of the petition, is the one, which is encapsulated in the CPC. Only if, through a specific non obstante clause occurring in the Act (supra), there was an exclusion of the mandate of Order 39 Rules 1 and 2 CPC, either to the principal suit, under Section 11 of the Act, or, to a petition under Section 7 of the Act, then thereupon the learned counsel for the petitioner, would be construed to be well capacitated to make the above address before this Court.

However, a reading of the Act (supra), does not disclose, that therein occurs

any non obstante clause, rather explicitly excluding the mandate of Order 39 Rules 1 and 2 CPC to the Act (supra), nor is there any other mechanism stipulated therein, for regulating the trial of a suit, or, a petition respectively cast under Section 11, or, under Section 7 of the Act.

6. As but naturally, an application for interim relief, as cast within the principal suit concerned, or, within the petition under Section 7 of the Act, was both maintainable before the learned Collector concerned, and, also valid orders were amenable to be drawn thereon(s). If so, the challenge made to the above orders, is obviously not maintainable.

7. However, since it is also brought to the notice of this Court that the proceedings, in the petition cast under Section 7, have been adjourned sine die, given the title suit become instituted at a subsequent stage, at the instance of the petitioners, and, which is subjudice before the learned Collector concerned, and, has arrived the stage of adduction of evidence thereon. Therefore, the above made order adjourning sine die the petition, under Section 7 of the Act, cannot be either re-called at the instance of this Court, nor, a piecemeal revival thereof can be ordered, only for the purposes of permitting the petitioners herein, through an application cast under Order 39 Rule 4 CPC, cause the modification or variation of the said order of status quo, and, with the order (supra) also hence restraining the petitioners herein from felling the tress, as growing on the suit land(s).

8. Even it may not be possible for this Court to permit the aggrieved therefrom petitioners to institute an appeal thereagainst, as then, obviously on the premise that an appeal is a continuation of the main petition, and but, for the above limited purpose, as thereupon, there would be an implied untenable revival of adjourning sine die of the petition, under Section 7 of the Act, given the title suit being instituted. Therefore, even otherwise, when the respective

titles over the petition land(s) respectively vesting in the petitioners herein, and/or, vesting in the respondents, will be decided in the said suit. Therefore, even if the said order remains intact, till a lawful decision is made on the title suit, the said order, appeals to the judicial conscience of this Court, to be a prima facie validly drawn order, as thereupon, the equities amongst the contesting litigants, would remain settled, or, shall not remain disturbed, and, in case, disturbance to those equities, is caused through an interference being made by this Court, with the order challenged before this Court, thus would ultimately lead to an ill fate qua in the event of dismissal of the title suit by the learned Collector concerned, prima facie the petitioners herein may be made unlawful beneficiaries, of, the *profits a prendre*, through an order being made by this Court, hence quashing the order of status quo, as rendered by the learned Collector concerned. To avoid the above ill consequences, therefore, this Court deems it fit to close the instant writ petition, but, with a direction to the learned Collector concerned, as, seized with the petition, cast under Section 11, of the Act, to preferably within a period of three months from today, make a decision in accordance with law, upon the said suit.

9. Disposed of in above terms.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 01, 2023
devinder

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