

CWP-16219-2023

**2023:PHHC:098546-DB
1**

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

122

**CWP-16219-2023 (O&M)
Date of Decision : August 01, 2023**

KARAMJEET KAUR

-Petitioner

V/S

**DIRECTOR RURAL DEVELOPMENT AND PANCHAYAT/
JOINT DEVELOPMENT COMMISSIONER (IRD) PUNJAB & ORS.
-Respondents**

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

Present : Mr. Deepak Aggarwal, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab
for the respondents No.1 and 2.

Mr. Dilpreet Singh Gandhi, Advocate
for the proposed caveator/respondent No.3.

SURESHWAR THAKUR, J. (ORAL)

1. The Gram Panchayat Lapran, Block Doraha, Tehsil Payal, District Ludhiana, instituted on 18.11.2022, a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, and, under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter respectively referred to as the 'Act of 1961', and, 'Act of 1973').
2. In the said petition, the Gram Panchayat concerned impleaded five respondents. The said respondents were alleged to block a drain, whereinto, flowed the discharging waters from the homesteads of nine persons. It was alleged in the petition (supra), that the said drain existed in an open place in the abadi deh, and thereby, it was included within the ambit of the definition of shamlat deh. Therefore, it was averred, that the respondents in the petition (supra), did not have any exclusivity of any right to solitarily

CWP-16219-2023

use it, for causing the discharge thereinto of drain waters.

3. It appears on a reading of Annexure P-2, that on the basis of an inspection report, as made by the Junior Engineer concerned, wherein, he made an finding, that the said drain was not appurtenant to, nor a part of the abadi of the present petitioner, rather it was in the open spaces within the abadi deh, that a further conclusion was drawn, that thereby the said open drain becomes included within the inclusionary definition of shamlat deh. Consequently, through Annexure P-2, the learned Collector concerned, in the operative part thereof, made a direction against the present petitioner to reopen the said drain, as became allegedly blocked by the present petitioner.

4. The above verdict (Annexure P-2) brought grievance to the respondents therein, and, led the latter to make an appeal thereagainst, before the learned appellate authority concerned. Though the statutory appeal bearing No.PUN/JDC/EV/2023/000594, has yet remained unadjudicated upon, but within the said statutory appeal, an application was filed by the aggrieved appellants, claiming therein, relief qua the operation of the challenged verdict be stayed.

5. Further, as unfolded by Annexure P-3, drawn on 06.06.2023, the learned Commissioner concerned proceeded to make an order of status quo, in respect of the disputed drain. However, the Gram Panchayat concerned moved an application for rescinding or modifying the said order, and, on the said application, the learned Commissioner concerned, as unfolded by Annexure P-4, recalled the order of status quo, as becomes embodied in Annexure P-3.

6. The rescinding of Annexure P-3, through the making of an order comprised in Annexure P-4, has resulted in the aggrieved appellants, petitioner herein, thus accessing this Court.

7. Without determining the merits of the controversy, as ultimately impinges upon the imperative fact, whether the contested drain, is appurtenant to, or, a part of the abadi of the present petitioner, and/or, whether as such cogent evidence became adduced, that since times immemorial, thus the said drain is but appurtenant to the abadi of the present petitioner. Moreover, without either delving into, nor adjudicating the contentions raised before this Court, by the learned counsel for the respondent- Gram Panchayat, that the said drain is but existing on an open space, within the abadi deh, and thereby, it is shamlat deh, besides resultantly thus, the present petitioner has no right, title and interest to exclusively drain thereinto(s), thus the discharging waters. The reason being, that an appraisal of the above controversy, besides appraisal of any evidence in respect thereof, has to be done not by this Court, but only by the learned Commissioner concerned, who is now seized of the statutory appeal (supra).

8. Be that as it may, since it is agitated today before this Court, by the learned counsel for the petitioner, that in case Annexure P-4 is permitted to be put into force, thereby it would cause the ill consequence of thereby a large part of the petitioner's abadi becoming subjected to some demolition activity. Though at this stage, there is no evidence to support the said submission, thus existing today before this Court, but since the core controversy (supra), which is engaging the contesting litigants, would on its becoming clinchingly rested by the learned Commissioner concerned, would ultimately result in, whether the petitioner before this Court rather has any exclusive right, title and interest over the contested drain, and/or, whether the Gram Panchayat concerned, thus has the exclusivity of ownership over the contested drain. Therefore this Court, in the larger interest of justice, so as to

ensure that the equities do not become unsettled through this Court permitting the ill endeavour, if any, of the Gram Panchayat concerned, to the face of making of Annexure P-4, cause any dismantlings and excavations qua the house of the petitioner, that this Court directs, that only upto a period of 15 days from today, the operation of Annexure P-4 shall remain stayed. However, it is further clarified, that within 15 days, the learned Commissioner concerned shall make a valid speaking decision on the statutory appeal (supra), but after hearing all affected persons concerned.

9. Disposed of accordingly.

**(SURESHWAR THAKUR)
JUDGE**

**(KULDEEP TIWARI)
JUDGE**

**August 01, 2023
devinder**

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