

**CMs-3739-40-CWP-2023
CWP-5962-2016**

(2023:PHHC:039718)

-1-

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

(106)

**CM-3739-CWP-2023 in/and
CWP-5962-2016**

Date of decision: - 16.03.2023

Jatinder Pal Kaur

....Petitioner

Versus

Raj Ali and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rajneesh Malhotra, Advocate
for the applicant-petitioner.

Mr. Anil Bansal, Advocate
for respondent No.1.

Mr. Sandeep Punchhi, Advocate
for respondents No.2 and 3.

VIKAS BAHL, J. (ORAL)

CMs-3739-40-CWP-2023

Present applications have been filed under Section 151 CPC read alongwith Articles 226/227 of the Constitution of India for recalling the order dated 14.02.2023 whereby the main writ petition was dismissed for non-prosecution.

Notice in the applications to the learned opposite counsel.

Mr. Anil Bansal, Advocate, appears & accepts notice on behalf of respondent No.1 and Mr. Sandeep Punchhi, Advocate, appears

and accepts notice on behalf of respondents No.2 and 3.

For the reasons mentioned in the applications, which are duly supported by an affidavit of learned counsel for the applicant-petitioner, the same are allowed and the order dated 14.02.2023 is recalled and consequently, the main writ petition is restored to its original number and position.

CWP-5962-2016

This writ petition has been filed under Articles 226/227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995 for issuance of a writ in the nature of certiorari for setting aside the impugned judgment and decree dated 13.08.2015 passed by the Additional District Judge (Wakf Tribunal), Sangrur under the Waqf Act, 1955.

Learned counsel for respondents No.2 and 3 has submitted that a writ under Articles 226/227 of the Constitution of India is not maintainable and only a revision under Article 227 of the Constitution of India, would be maintainable.

Learned counsel for the petitioner in view of the above statement has prayed that the petitioner be permitted to withdraw the present writ petition with liberty to file a revision under Article 227 of the Constitution of India. Learned counsel for the petitioner has stated that in the present petition, interim stay qua dispossession was granted vide order dated 21.04.2017 and the said stay has continued till date and has thus, prayed that the said interim order be continued for a further period of one

month so as to enable the petitioner to file a revision petition.

Learned counsel appearing for the respondents have submitted that the grant of stay should not be construed as an expression on the merits of the case and continuance of the said stay order should be left to the Court before which the revision petition is to be filed.

Keeping in view the above-said facts and circumstances, the present writ petition is dismissed as withdrawn with liberty to the petitioner to file a revision petition under Article 227 of the Constitution of India and the interim relief granted vide order dated 21.04.2017 to the effect that there shall be an interim stay qua dispossession, shall continue for a period of one month from today.

It is made clear that this Court has not opined on the merits of the case and the grant of interim relief for a period of one month should not be construed as an expression on the merits of the case.

March 16, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No