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

Date of Decision : 12.04.2023

1. CWP-6698-2015 (O & M)

DHARAM SINGH AND ORS

.....Petitioner

Versus

STATE OF PUNJAB & ORS

....Respondents

2. CWP-9516-2015 (O & M)

GRAM PANCHAYAT VILLAGE JASSOWAL

.....Petitioner

Versus

STATE OF PUNJAB & ORS

....Respondents

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

**Present : Mr. K.S.Dhillon, Advocate
for the petitioners in CWP-6698-2015.**

**Mr. Vijay Sharma, Advocate
for the petitioner in CWP-9516-2015.**

Mr. Maninder Singh, DAG, Punjab.

**Mr. Nakul Sharma, Advocate
for respondent No. 4 in CWP-9516-2015 and
for respondent No. 5 in CWP-6698-2015.**

SURESHWAR THAKUR, J. (Oral)

1. The Gram Panchayat Village Jassowal is aggrieved from the order drawn by the Joint Development Commissioner, Special Secretary, Government of Punjab (hereinafter referred to as the Secretary). The said order is enclosed in Annexure P-7. In the impugned order, the Secretary had set aside the order made by the Director concerned, whereby he had cancelled the resolution of 21.05.2011, as passed by the Gram Panchayat Jassowal. The proposal therein, that the residents of the purportedly unauthorized colony, being permitted to make lawful user of a passage or a path, to enable them to access their homesteads, despite, the said path being constructed on a *gair mumkin pond* or *gair mumkin toba*, but became rejected. The Collector had obviously concluded, that the said *Gair Mumkin pond* or *Gair mumkin Toba*, cannot permissibly be used for any other purpose, than the afore permissible user thereof, and or, the disputed lands, cannot be lawfully converted to any other user. Moreover, the Director concerned, had also concluded, that in case the resolution is approved, thereupon, the interdiction cast, against conversion of a *gair mumkin pond* to some other user, hence in a judgment made by the Hon'ble Apex Court in Civil Appeal No. 1132 of 2011, titled as 'Jagpal Singh Versus State of Punjab', decided on 28.01.2011, rather would become breached.

2. The above made reasons by the Director concerned, became completely dis-concurred by the Secretary through his drawing the impugned order. The reason as prevailed, upon, the Secretary to dis-concur with the order, as became made by the Director concerned, whereby, he had cancelled the above resolution of the Gram Panchayat concerned, became rested on anvil, that the revenue record appertaining to

khalsa No. 610 hence carrying a measurement of 9 bighas 5 biswas,

though describes the said khasra number to be a *gair mumkin pond*, but the said revenue entry is prima facie an unauthorized revenue entry, as in the latest revenue record, the above said khasra number has been entered as a *gair mumkin pit*. Therefore, a conclusion was made by the Secretary, that the decision as became made by the Director, on anvil of the above purported erroneous entry, reflecting the petition properties to be *gair mumkin toba*, is but, a completely erroneous, and or, is a fallaciously drawn conclusion.

3. Though, during the pendency of the instant writ petition, this Court had directed the Collector of the revenue district concerned, to make a report in respect of the above controversy, as engages this Court, and, the elicited report, has been placed on record. However, a perusal of the elicited report, though discloses that a passage of 7 karam width and 66 karams length, is created on Khasra No. 610. Furthermore, it also states that the area of the passages is 1 bighas 3 biswas. Moreover, it is also stated in the report, that a pond on an area of about 4 bighas 11 ½ biswas, is also in existence. Nonetheless in the said report, there is no clear depiction whether as a matter of fact, the said road/passage with the above width and length, as made on khasra no. 610, is also made, within the *gair mumkin toba*, carrying a dimension of 4 bighas 11 ½ biswas. Therefore, in the face of the above deficit report qua whether the passage has been created, on a pond or not, this Court prima facie cannot disagree with the conclusions, as have been drawn by the Secretary, rather in his making the impugned order.

5. Be that as it may, it appears that the Secretary though may not have made ad nauseam discussion in respect of the validity of the initial

made entries in the revenue records, depicting the suit lands to be *gair*

mumkin pond, and or, may not have made any further ad nauseam discussion nor any firm valid conclusion about the validity of the latest entries in the revenue records rather depicting the petition lands to be not a *gair mumkin toba* rather thereons being a *gair mumkin pit*. However, the above deficiency, in the makings of pronouncements, about the validity of the said entries rather cannot, at this stage, be either looked into by this Court, nor can become adjudged by this Court, as the jurisdictional competence to decide, the issue qua validity of the revenue entries, respectively initially depicting the petition lands as a *gair mumkin pond*, and, subsequently depicting them as *gair mumkin pit*, is at this stage, not vested either in this Court or in the Secretary. Contrarily, the jurisdiction to make a valid decision in respect of the validity of the makings of the revenue entries concerned, respectively initially depicting the petition lands as a *gair mumkin toba* or subsequently depicting them as *gair mumkin pit*, rather does solitarily vest in the civil Court concerned.

6. Therefore, at this stage, after affirming the impugned order, yet this Court makes the said order to be subject to a decision to be arrived at by the learned Civil Court of competent jurisdiction, wherebefore, the aggrieved concerned, may institute a civil suit, claiming a declaratory relief that the latest revenue entries, depicting the petition lands as *gair mumkin pit*, are unauthorizedly made, and, that the initially made revenue entries, in the revenue record, depicting the petition lands as *gair mumkin pond*, rather was an authorizedly made revenue entry in the revenue record.

7. The said civil suit be ensured to be forthwith instituted.

8. Both the petitions are disposed of alongwith all pending

applications, if any, with the afore common order.

9. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

12.04.2023
kavneet singh

(KULDEEP TIWARI)
JUDGE

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