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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27599-2019 (O&M)

Date of decision:10.05.2023

LABH SINGH

...Petitioner

Versus

THE STATE OF PUNJAB AND ORS

...Respondents

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

Present: Mr. Hardeep Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab

Mr. Arun Jindal, Advocate
for respondent No.6.

SURESHWAR THAKUR, J. (ORAL)

CM-1729-CWP-2023

Allowed as prayed for.

CWP-27599-2019

1. Gram Panchayat Dodra, Block Samana, Tehsil Samana, District Patiala, through its Sarpanch Lakhvir Singh, instituted a petition under Sections 4 and 5 of The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, thus impleading therein one Jarnail Singh, and, others as party respondents-defendants concerned.

2. In the said eviction petition the Gram Panchayat claimed that an order of eviction be made against the respondents-defendants, who thus became impleaded, as such in the said petition.

3. The learned Collector concerned, through an order drawn thereon on 08.06.2017 (Annexure P-2) after considering the entire documentary evidence, and, as became placed before him proceeded to grant the asked for relief for a decree of eviction being made in favour of the Gram Panchayat concerned.

4. The learned counsels appearing before this Court firmly submit, that the said order of eviction has remained un-appealed or unchallenged, before the Competent Appellate Authority, therefore as such it acquires binding, and, conclusive effect, and, as such was required to be, in the quickest promptitude of its making, thus put to the completest efficacious execution.

5. However, since the above binding, and, conclusive decree of eviction Annexure P-2 rather yet has remained unenforced, at the instance of the Gram Panchayat concerned, therefore the present petitioner though he was not arrayed as a party-performa respondent in the said lis. Therefore, though he may not be having the *locus standi* to ensure that this Court make a mandamus, upon the learned Executing Court, to forthwith draw, and, enforce warrants of possession in respect of the disputed lands.

6. However, since it is stated at the bar, by the learned counsel for the petitioner that the petition lands are designated in the revenue records to be amenable for their user by the entire village proprietary body, of which the petitioner is a member. Therefore, the present petitioner has a *locus standi* to maintain the instant petition before this Court. Necessarily also when on the eviction petition being directed to be completely enforced, his joint interest along with other members of the village proprietary body, thus become fully protected.

7. Be that as it may, though there is some lethargy on the part of the Sarpanch of the Gram Panchayat concerned, to ensure that he, in sequel of the

binding, and, conclusive order being made against respondents therein rather ensure prompt action whereof on his petition may be ordered, that it is put to the completest, and, promptest execution, but yet when on a reading of the reply on affidavit furnished to the present petition on behalf of the learned Deputy Commissioner, Patiala, it is revealed that excepting 1 acre 10 kanal 11 marlas of lands, possession of a substantial portion of the encroached, upon lands, by the respondents-defendants concerned, in the eviction petition, rather has been assumed from the encroachers concerned, by the Gram Panchayat concerned.

8. Resultantly, though only a minimal tract of land, has not been ensured to be freed from the encumbrance of encroachments, as, made thereon, but yet when houses are raised thereon. Therefore, at this stage unless the learned Collector concerned, wherebefore whom, the execution petition is *subjudice* or may be filed, thereupon when he alone becomes vested with jurisdiction to receive objections from the judgment debtors concerned, against the execution of Annexure P-2, in respect of the above tract of the encroached, upon lands (*supra*), thus remaining yet under the encumbrance of encroachment(s). Therefore, at this stage, this Court does not deem it fit, and, appropriate to make a mandamus in respect of the above tract of lands, upon, the learned Executing Court concerned, as he alone has jurisdiction to decide the objections, if any, which may be raised in the execution petition filed or *subjudice* before him, by the judgment debtors concerned, and, who alone has the jurisdiction, to through a speaking decision either accept or reject the said objections, and, thereafter has the jurisdiction to issue warrants of possession, and, also to enforce them against the said persons, who occupy the above tracts of land.

9. In the light of the above, since a substantial portion of the encroached, upon, lands by the encroachers concerned, has been subjected to the

apt completest execution thus in pursuance to the verdict of eviction Annexure P-2, as such, the further mandamus (*supra*), is declined to the present petitioner. Resultantly, as the above stated qua remaining area(s) of lands, the execution petition, if not already *subjudice*, the same be forthwith drawn before the learned Executing Court concerned, who shall thereafter issue notice to the judgment debtors concerned, if not already issued, in a *subjudice* execution petition, whereafter the judgment debtors may proceed to, if permissible under law raise objections to the execution of the binding, and, conclusive verdict of eviction (Annexure P-2), thereafter the said objections shall be decided in accordance with law. On a decision adversarial to the judgment debtors concerned, being made on the said objections by the learned Executing Court, thereupon the judgment debtors may challenge the same, but in accordance with law.

10. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

10.05.2023

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(KULDEEP TIWARI)
JUDGE

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