

108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24447-2022

Date of decision:24.01.2023

BALBIR KUMAR AND ORS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. A.G. Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners have come up with the plea that they have raised construction on lands described in the revenue records, as *Makbuja Malkan*. The learned counsel for the petitioners contends, that they are members of the *Makbuja Malkan*, and, that in that capacity they could well raise the said construction on the writ lands.

2. The above made contention before this Court would definitely come under serious contest from the opponents, inasmuch as, assuming that the petitioners are members of the *Makbuja Malkan*, yet the co-members therein,

would assuredly nurse grievances, that the lands which were otherwise to be put to cultivation, rather becoming subjected to raising(s) of constructions thereons, at the instance of the petitioners, which may ultimately tantamount to change of user of the writ lands, at the instance of the petitioners.

3. Be that as it may without entering into the above aspect, this Court though tentatively deems it fit and appropriate, to as prayed for by the learned counsel, for the petitioners, qua liberty being granted to the petitioners to institute a petition under Section 13(a) of The Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Punjab & Haryana), impleading therein the Gram Panchayat concerned, as well as the other co-members of the *Makbuja Malkan*, wherein they may rear a claim *qua* the said constructions as raised on petition lands, were permissible, and, did not derogate from the valid users of the writ lands, as becomes designated either in the jamabandis or in the entries occurring in the revenue records rather as *Makbuja Malkan*.

4. The above made submission is not accepted. The reason for not accepting the above submission becomes rested upon the factum that, at this stage, this Court has noticed that since in pursuance to orders made by this Court, on 15.11.2021, upon CWP-6618-2021, the Authorities concerned, have initiated action against the encroachers concerned, under The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, (hereinafter referred to as “the Act”), and, also this Court has noticed that such proceedings are yet *subjudice*.

5. Though, the learned counsel for the petitioners submits that the lands covering the said lis are completely different from the lands in dispute in the instant petition. Therefore, there is no further necessity of making orders for enforcing the orders carried in Annexure P-13. However, the above contention

cannot be raised before this Court, and, is to be raised only before the

Authorities exercising jurisdiction under the Act. Therefore, leaving the above liberty to the petitioners, this Court, at this stage does not find any merit in the petition, and, is constrained to dispose of the same, but reiteratedly granting the above liberty to the petitioners to approach the Authority which has initiated action under The Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. In case a decision adversarial to the petitioners is recorded by the Authorities seized with the petition drawn under the Act, thereupon it is open to the petitioners to access the appropriate Courts, but in accordance with law.

6. No order as to costs.

7. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

24.01.2023

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(KULDEEP TIWARI)
JUDGE

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