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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-26851-2023

Date of decision:30.11.2023

RASHPAL SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. S.S. Swaich, Advocate
for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. Notice of motion to the official respondents only.
2. Mr. Maninder Singh, DAG, Punjab, waives service of notice on behalf of the official respondents.
3. The private respondents hereins are alleged to make encroachments upon open spaces within the abadi deh. Therefore, the learned counsel for the petitioner argues, that despite representation (Annexure P-6) becoming addressed to the Authority concerned, yet no actions being taken thereons. In consequence, he prays that a mandamus be made, upon the official respondents concerned, to draw such suitable action, as deemed fit in accordance with law, thus against the errants concerned.
4. Learned State counsel has with vigor argued, that the above made mandamus cannot be passed against the official respondents concerned, as in respect of the disputed writ lands, a suit for permanent prohibitory injunction, has been instituted, through Annexure P-11, before

the Court of learned Civil Judge, Senior Division, Gurdaspur, besides he also submits, that on an application filed therein, under Order 39 Rule 1 and 2 CPC, by the plaintiffs therein, some of whom are also respondents in the instant petition, an *ad-interim* injunction has been passed in favour of the plaintiffs, thereby restraining the defendants from interfering in the peaceful possession, and/or, dispossessing the plaintiffs from the disputed lands.

5. The above made argument cannot yet completely estop, the present petitioner, to ask that a mandamus be yet made, upon the official respondents concerned, to ensure that through BDPO concerned, or through the Sarpanch of the Gram Panchayat concerned, rather lawful motions become drawn against the private respondents concerned, in the instant writ petition. The said drawing of lawful actions against the purported encroachers concerned, upon the purported open spaces, within the abadi deh may be required to be so drawn, against the errants concerned, as the said open spaces in the abadi deh are now assigned the definition of shamlat deh, thus require the said motions being drawn under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”). Therefore, any encroachment, as such made on such open spaces, within the abadi deh, require that the encroachers over such open spaces within the abadi deh, are ensured to be evicted therefrom, through a lawful decision being made by the learned Collector concerned, on the relevant petition, becoming cast before him.

6. Though, the civil suit instituted by some of the respondents in the instant writ petition, may be a well constituted suit, as abadis existing on abadi dehs are not included in the definition of shamlat deh, but definitely open spaces within the said abadi deh are included within the definition of

shamlat deh. Therefore, it appears that may be the said civil suit, apart from

including therein, the relief for injunction in respect of abadis raised on abadi deh, thus may also include thereins open spaces within the abadi deh, whereas such open spaces are included in the definition of shamlat deh, and, require the encroachments, as made thereons, to become removed through lawful action in the above manner, being drawn before the statutory authority contemplated in the Act.

7. Therefore, prima facie it appears that there are mis-joinder(s) of claim, and, mis-joinder(s) of relief, in the said suit, inasmuch as, the same also including thereins open spaces within the said abadi. Therefore, on the above ground the Gram Panchayat concerned, may raise a preliminary objection in respect of maintainability of the suit in respect of such open spaces within the abadi deh. On the said preliminary objections being raised, the learned Civil Judge concerned, may in his wisdom proceed to make such lawful decision, as may be deemed fit in accordance with law.

8. Be that as it may be, if the plaintiffs, some of whom are arrayed as respondents in the instant writ petition, have as a matter of fact made encroachments, on such open spaces over lands designated as abadi deh. Resultantly, such encroachments are required to be removed, as, such open spaces are included in the definition of shamlat deh.

9. In consequence, the learned State counsel, does not oppose the making of a direction, upon the official respondents concerned, to in respect of the encroachments, made over open spaces existing within the abadi deh being directed to be removed, through a direction being made respectively, upon the Sarpanch of the Gram Panchayat concerned, and/or, upon the BDPO concerned, to forthwith institute a petition under Section 7 of the Act, before the learned Collector concerned.

10. Before the institution of the said petition taking place, the supra shall ensure, that a valid demarcation of such open spaces, within the abadi deh is carried out by an empowered revenue officer, and, if in the demarcation report, it is revealed that encroachments are made by the errants concerned, over open spaces within the abadi deh, thereupon the said petition shall be forthwith instituted. On preferment of the said petition, the supra, shall decide the same within 6 months thereafter, but after hearing all affected persons concerned.
11. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

30.11.2023
Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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