

CWP-9025-2024 (O&M)

-: 1 :-

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

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**CWP No.9025 of 2024 (O&M).
Date of Decision: 23.04.2024.**

Lakhpatt @ Lakhi Ram and another

....Petitioners.

VERSUS

State of Haryana and others

....Respondents.

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Ashish Gupta, Advocate and
Mr. Divyam Singh, Advocate for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana, with
Mr. Saurabh Mago, Deputy Advocate General, Haryana.

SURESHWAR THAKUR, J. (Oral)

1. The present petitioners filed Case No.24/District Collector before the District Collector, Nuh, whereby they claimed the rendition of a declaratory decree in respect of suit land. A decision was made on 22.02.2024 upon the said case, Annexure P-1, whereby the declaratory decree (supra) became declined to the petitioners.

2. The making of Annexure P-1 led the aggrieved therefrom, to prefer a statutory appeal, thus before the Appellate Authority concerned. Alongwith the statutory appeal, an application seeking stay of operation of Annexure P-1 was filed but no relief thereon was granted. The denial of relief to the present petitioners on their application seeking stay of operation of Annexure P-1 is embodied in the impugned Annexure P-3.

3. The contents of impugned Annexure P-3 are extracted hereinafter:-

“Today this appeal was filed alongwith an application for passing restrain order by the appellants through their counsel. The same be registered. Learned counsel for the appellants was hearing regarding issuance of restrain order. After hearing the arguments of learned counsel for the appellants, the same is hereby dismissed being devoid of any merits. Now the case file be put up for 15.5.2024.”

4. Feeling aggrieved, the petitioner is led to institute thereagainst the instant petition before this Court.

5. This Court in a case bearing No.CWP-1706-2023, decided on 30.01.2023, had in paragraphs No.5 and 6 of the verdict (supra), paras whereof becomes extracted hereafter, had impliedly set forth the principles governing the makings of decision on an interim application, thus seeking stay of the operation of the verdict challenged before the Appellate Authority. The said imperative principles, do vividly portray, that till a decision upon the statutory appeal, is made by the Competent Appellate Authority, thus thereupto, rather for ensuring that the equities relating to the possession of the disputed property, do not become unsettled, whereby obviabile multiplicity of litigation would emerge, rather the verdict challenged in appeal be not enforced. The reason being that, in case a decision favourable to the appellant, is made on the statutory appeal, by the competent Appellate Authority, thereupon with either no decision being made on the interim application or thereons a decision adversarial to the appellant being made by the competent Appellate Authority, and, as such possession of the disputed

lands, being assumed by the adversary litigant. Resultantly the appellant, on succeeding, in the appeal, thus being led to institute an application, for restitution of the possession of the disputed lands to him, from the Gram Panchayat concerned. The above ill event would obviously occur in case the impugned order is sustained.

“.....5. Learned State counsel fairly states that status quo regarding possession as on today may be directed to be maintained, during pendency of the appeal, however, with a direction to the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, to decide the pending appeal in a time bound manner.

6. We find this submission to be extremely fair, as unless the said order is passed, and, was required to be passed rather would render infructuous the statutory appeal. Accordingly, order dated 05.12.2022 (Annexure P-3), passed by the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, is set aside. Status quo regarding possession as on today regarding land in question be maintained during pendency of the appeal, which be decided by the Joint Development Commissioner (IRD), (exercising the powers of Commissioner) Rural Development and Panchayat Department, SAS Nagar, in accordance with law, within a period of three months from receipt of certified copy of this order, after affording due opportunity to all concerned.”

6. It appears that the said settled principles rather governing the exercising of jurisdiction, on an interim application, has been completely misunderstood by the competent Appellate Authority, inasmuch as, it's yet proceeding, to through the impugned order, rather declining to stay the

operation of the impugned verdict, despite the statutory appeal being subjudice, before the said statutory authority. The declining decision, as made on the interim application, would obviously result, but for all the reasons set forth herein, thus in avoidable multiplicity of litigation.

7. In short, the impugned order (Annexure P-3) is ridden with a vice of gross illegality and also with a vice of gross material impropriety, as the jurisdiction exercised on the interim application, thus has not been exercised in the manner required by law.

8. In aftermath, the petition is allowed and the impugned order (Annexure P-3) is quashed and set aside. However, the competent Appellate Authority is directed to within two months from today, make a lawful speaking decision on the statutory appeal, but after hearing all affected persons.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

23.04.2024

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No