



(117) In the High Court of Punjab and Haryana at Chandigarh

CWP-10837-2024
Date of Decision: 10.05.2024

HARMINDER LAL PETITIONER
VERSUS

STATE OF PUNJAB AND OTHERSRESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Rajesh Bhateja, Advocate for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner alleges that encroachments become made upon the Government path, which is reserved for the common user of the entire village proprietary body and despite the said encroachments becoming reflected in the demarcation report in Annexure P-4, and, also despite Annexure P-11, becoming passed by the BDPO concerned, upon the said made encroachers, thus for theirs vacating the said encroachments upon the *Gair Mumkin path*, yet no further action becoming taken on said Annexure P-11.
2. Consequently, the learned counsel for the petitioner prays that a mandamus be made upon the encroachers upon the *Gair Mumkin path*, as well as upon the official respondents concerned, to ensure that the *Gair Mumkin path* becomes freed from all encumbrances.
3. Furthermore, a representation Annexure P-8 is also stated to be not yet decided, and, as such, a mandamus is prayed to be made upon the authority concerned, seized with Annexure P-8, to promptly make a lawful decision thereons.
4. For all the reasons stated hereinafter, the writ petition is not maintainable, at this stage, and as such is disposed of in the hereinafter extracted manner.

Since no jurisdiction becomes vested in the BDPO concerned, to make an order (Annexure P-11), nor when therebys Annexure P-11 is executable. Conspicuously when the petition for eviction, on the basis of Annexure P-4, was to be constituted by the Sarpanch of the Gram Panchayat concerned or by the BDPO

concerned, only before the learned Collector concerned. In short when the apposite jurisdiction under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'), is to be exercised solitarily by the Collector concerned. Therefore, tritely the order (Annexure P-11) passed rather by the BDPO concerned, cannot be stated to be executable, besides in the face of the said specific(supra) remedy being available to the concerned, rather for therebys, the encroachers being directed to make the Gair Mumkin Path free from all encumbrances, thereby representation (Annexure P-5) is an aptly recoured remedy.

5. For all the reasons aforesaid, the writ petition is disposed of, but with a mandamus made the BDPO concerned, or upon the *Sarpanch* of the Gram Panchayat concerned, to forthwith in terms of Annexure P-4, to thus institute a petition for eviction, cast under Section 7 of the Act in respect of the subject lands, before the Collector concerned.

6. On such a petition being filed, it shall be lawfully decided through a speaking decision made thereons, but the said decision shall be made only after hearing all affected persons concerned, and, shall be positively made within a period of four months from its preferment.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 10, 2024

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