

2024:PHHC:114564



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-21919-2024 (O&M)
Date of decision : 03.09.2024

RAZAK ALI

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manoj Kumar Sood, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Prayer in the present writ petition filed under Article 226/227 of the Constitution of India is, *inter-alia*, for issuance of a writ in the nature of *prohibition* restraining respondent No. 4 from raising construction over the land, which was leased to the petitioner by respondent No. 2 (Haryana Wakf Board) vide allotment letter dated 12.03.1986 (Annexure P-1).

2. It is the case of the petitioner that in Village Gouchi, Ballabgarh, District Faridabad; land measuring 13 *Kanal* 12 *Marlas* comprised in *Khasra No.* 49//15/2, 16 was in the name of respondent No. 2 (Haryana Wakf Board), out of which, 2121 sq. yards was leased to him by respondent No. 2 (Haryana Wakf Board) vide allotment letter dated 12.03.1986 (Annexure P-1).

2.1 It appears that respondent no. 2 (Haryana Wakf Board) filed a Civil Suit No. 440 dated 22.05.1989 for ejectment and recovery of rent, which was decreed on 04.01.1992 and an appeal filed by petitioner against the said decree dated 04.01.1992 was dismissed by learned Additional District Judge, Faridabad vide judgment & decree dated 01.12.1994. It further transpires that an execution petition filed by respondent no. 2 (Haryana Wakf Board) was dismissed vide judgment dated 08.12.2015 (Annexure P-2).

2.2 Petitioner claims that he inducted respondent No. 4 (Ramesh Khatri) as his tenant on the aforesaid land; however when he filed an ejectment petition against respondent No. 4 before the learned Rent Controller, Faridabad, the same was dismissed on the ground that the petitioner had failed to prove relationship of landlord and tenant between him and respondent No. 4. An appeal filed by petitioner before the learned Appellate Authority was also dismissed vide judgment dated 08.02.2018 (Annexure P-3).

2.3 It appears that the petitioner has filed a suit for declaration and possession (Annexure P-4) before the Tribunal, constituted under Section 83 of the Wakf Act, 1995; wherein he has sought declaration that the allotment order No. 24/LU (1286/95) in favour of respondent No. 4 and also the subsequent agreements executed by respondent No. 4 in favor of respondents No. 5 and 6, are null and not binding on his rights. According to the petitioner, respondent No. 4 has started raising construction over the property, for which the petitioner has filed an application dated 08.07.2024 (Annexure P-5) before the Wakf Tribunal, however since the quorum of the Tribunal was not complete, therefore, his suit was adjourned. In this regard, petitioner has placed on record various *zimni* order(s) as Annexure P-6.

2.4 In the backdrop of the aforementioned facts, the instant writ petition has been filed before this Court for the relief/s, as noticed above.

3. Heard.

4. Without commenting on the merits of the claim of the petitioner, it is observed from the various *zimni* orders (Annexure P-6) that notice in the suit filed by petitioner was issued to the defendants therein, which were not received back either served or otherwise and fresh notice was issued to defendants in the suit, on filing of requisite copy of plaint, which has not been done by the petitioner. The matter is still at the stage of service and presently the matter stands adjourned to 28.11.2024.

5. As regards the prayer of petitioner for issuance of writ in the nature of *prohibition* for restraining respondent No. 4 from raising construction over the land, is concerned; it is observed that so far as the writ of *prohibition* is concerned, it is judicial writ issued from a Court of superior jurisdiction to an inferior Court or a Tribunal or an inferior temporal Court or a quasi-judicial authority to prevent those Courts/tribunals from continuing their proceedings in excess or abuse of their jurisdiction or in violation of the rules of natural justice or in contravention of the laws of the land.

6. In ***Govinda Menon v. Union of India (AIR 1967 Supreme Court 1274)***, it was held that '*prohibition*' is a judicial writ, issuing out of a superior Court, to an inferior Court, preventing the inferior Court from usurping jurisdiction with which it is not legally vested, or in other words, to compel Courts with judicial duties to keep within, the limits of their jurisdiction, or to prevent them from violating the rules of natural justice. The writ of *prohibition* can be issued to an inferior Court or Tribunal to forbid that Court from continuing proceedings therein in excess of its

jurisdiction or in contravention of the law of the land. It is a discretionary remedy. Where the defect of jurisdiction is not apparent on the face of the proceedings, Courts need not exercise that discretion.

7. No such circumstance has been brought forth in the present case so as enable this Court to consider and/or issue a writ of *prohibition*, as prayed for by the petitioner.

8. In view of the above, it is held that the instant writ petition is not maintainable and a writ of *prohibition* cannot be issued as prayed for by the petitioner. Accordingly, the present writ petition is dismissed.

9. All pending applications (if any) shall also stand closed.

September 03, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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