

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

**CR No.1980 of 2014 (O&M)
Date of Decision: 24.12.2015**

Sheoraj Singh and othersPetitioners

Versus

Jaibir Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Pankaj Jain, Advocate
for the petitioners.

Mr. Sunil Kumar Pal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 17.02.2014 passed by Civil Judge (Junior Division), Gurgaon, whereby an application filed by the petitioners for providing Police help to implement the order dated 08.10.2013 passed by the Court has been rejected.

[2]. Petitioners alleged that they are owners in possession of residential houses constructed in khasra No.860 and 859. There is a 15 feet wide *rasta* connected to the houses of the petitioners as well as the respondents. The houses of the petitioners are marked by letters 'AGHI' and 'EFGD' in the site plan attached with the petition. The *rasta* connecting the houses of the petitioners to '*rasta sare aam*' is shown by 'orange' colour. Plaintiffs alleged that respondents have blocked the *rasta* by constructing the portion of *rasta* at 'CKJD' in the site plan,

thereby blocking access to the houses of the petitioners.

[3]. A suit for permanent injunction seeking restraint order against the respondents for raising construction over the *rasta* and from blocking the access to the houses of the petitioners was filed along with the application under Order 39 Rule 1 and 2 CPC. The suit has been contested by filing the written statement in which right of the petitioners has been denied. The existence of *rasta* has been denied. The trial Court vide order dated 08.10.2013 allowed the application, restraining respondents from raising any construction over the portion shown by letters 'CKJD'. Plaintiffs further alleged that when the matter was fixed for 15.01.2014, respondents again started raising construction over the portion in dispute which ultimately prompted them to approach the Court for seeking police help in order to enforce the order dated 08.10.2013.

[4]. The trial Court vide order dated 20.01.2014 appointed a Local Commissioner to visit the spot. The Local Commissioner visited the spot on 21.01.2014 and submitted his report on 22.01.2014 along with rough site plan. Trial Court vide order dated 17.02.2014 dismissed the application for providing police help on the basis of report of Local Commissioner. In the present revision petition, the order dated 17.02.2014 passed by the trial Court has been assailed on the ground that in the event

of violation of order of injunction passed by the trial Court, inherent power can be exercised to put the plaintiffs/petitioners back in the original position.

[5]. I have heard the matter and have also perused the material filed along with the revision petition.

[6]. It is a fact that the Local Commissioner has given a report in respect of actual and factual position existed on the spot viz-a-viz alleged *rasta* in question. The Local Commissioner in his report has reported that at point 'C' and 'K' an iron gate is in existence and at point 'J' and 'D' a pacca wall of 5 feet is in place. No incident of any further construction has been reported by the Local Commissioner. No further construction has been reported in the report. The installation of iron gate at point 'C' and 'K' and construction of pacca wall at point 'J' and 'D' cannot be conclusively opined to have been done after the grant of order dated 08.10.2013 or were in existence prior to passing of said order.

[7]. It is a settled preposition of law that no party can earn the fruits of disputed land under the garb of police help. Final adjudication in respect of factum of possession is still to be done by the Court on the basis of preponderance of evidence to be led by both the parties. Provision for police help to implement such an interim order may lead to some serious consequences

and may dislodge the person in lawful possession. An overtact indicating violation of interim order has to be proved and the Court can undo the wrong and restore the original situation, but the police help cannot be provided on mere apprehension of violation of injunction granted by the Court. In the instant case, report of Local Commissioner has only shown that there was an iron gate at point 'C' and 'K' in existence and pacca wall upto 5 feet at point 'J' and 'D' is in place. There is no material on record to infer that such installations have been made after the passing of the interim order or otherwise.

[8]. In **Malkeet Singh and others Vs. Yadwinder Singh and another 2012(2) RCR (Civil) 107**, this Court opined in the aforesaid context and held that police help cannot be ordered to facilitate any of the party to earn the fruits of the disputed property, particularly when factum of possession is yet to be determined by the Court on the basis of evidence likely to be led by the party to the litigation. In order to provide police help, there must be evidence that the alleged violation was not in existence before passing of the order and the same has been made intentionally after passing of the interim order. The breach or disobedience has to be of high potentiality. **In Kawaljit Kaur and another Vs. Gautam Cheema and others, 2007 (2) PLJ 315**, the Court observed as under:

“10. Therefore, I am of the opinion that the order passed by the learned trial Court providing police help to the plaintiffs at this stage is premature as in the facts and circumstances of the case the question of possession is required to be examined by the civil court on the basis of evidence led by the parties. Prima facie, the conduct of proceedings weighs heavily against the plaintiffs to infer that actual physical possession is not with the plaintiffs and, therefore, under the garb of police protection, the plaintiffs want to gain entry into the suit land only because ad interim order has been passed by the learned trial Court. Providing of police help to implement ad interim order may lead to serious consequence. Once the order has been passed, it is the duty of the police authorities that the parties implement the said order so as to maintain law and order. But the interim order passed on the basis of, prima facie, appreciation of documents cannot be conclusive to hold that the plaintiffs must be provided police help even if it amounts to change of actual physical possession”.

[9]. Since the question of possession is to be determined during the trial, therefore, at this stage it cannot be finally determined that the party in possession has violated the interim order after passing of the same or the alleged violation existed

even before passing the interim order. It is also settled principle that in the event of violation of injunction order by a party the appropriate remedy is to seek remedy for breach of injunction and not to seek police help. In the event of proving that the dispossession has occurred during pendency of suit and during currency of injunction, then the Court in its discretion while deciding the factum of possession at a later stage, could also order restoration of possession without any further amendment in the plaint. However, in an appropriate case of overtact, indicating violation of interim injunction, the Court can undo the wrong and restore the original position, but police help cannot be provided merely on account of apprehension of danger of violation of injunction order.

[10]. In **Meera Chauhan Vs. Harsh Bishnoi and another, 2007 (1) RCR (Civil) 597**, the Court observed in the following manner:-

“....It is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or given appropriate direction to the police authority to

render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

[11]. In the instant case, facts are different. Implementation of order of injunction could be made in the event of proving the violation with reference to evidence on record and not prior thereto. If the trial Court finds that one of the parties has forcibly entered in the land and was not in possession of the land at the time of granting interim order, then the Court could direct restoration of possession. The aforesaid mechanism is subject to evidence on record, which in considered opinion of this Court is yet to come on record at the relevant stage.

[12]. Having considered the issue, this Court is fully satisfied that the impugned order passed by the trial Court is fully in consonance with the legal position. Therefore no interference is required to be made in the order dated 17.02.2014 passed by Civil Judge (Junior Division), Gurgaon, nor any other error of jurisdiction can be pointed out in the said order. Resultantly, this revision petition is dismissed.

24.12.2015
prince

(RAJ MOHAN SINGH)
JUDGE