

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.422 of 2015 (O&M)
Date of Decision: 19.01.2015

Thola Musahik Village Kanoh through its Shareholders.

...Petitioner

Versus

Gram Panchayat Village Kanoh and others

...Respondent

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Ajay Jain, Advocate
for the petitioner.

R.P. Nagrath, J.

Petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 04.11.2014 (Annexure P-2) passed by the appellate Court declining the prayer for ad interim injunction during pendency of the appeal.

The suit was filed by petitioners claiming themselves to be the shareholders of Thola Musahik, village Kanoh, Sub Tehsil Uklana and as such the owners in possession of the disputed land. It was further alleged that the respondent-Gram Panchayat does not have any right, title or interest therein. The land in dispute belongs to Jumla Mushtarka Malkan. This was meant to be apportioned

amongst the shareholders. It was further stated that the land was being used for common purpose from the time of their ancestors. The Sarpanch of the village has tried to take forcible possession of the suit land and threatened to lease out the same to different persons. It was the contention of the Gram Panchayat that the land is being auctioned by Gram Panchayat for the past many years for the purpose of fisheries to the inhabitants of the village on lease. On 15.02.2013, the Gram Panchayat had already leased the pond in question for fisheries in open auction for five years for lease amount of ₹ 5,20,000/- per annum.

The suit filed by the petitioner was for declaration with consequential relief of permanent injunction. The trial Court dismissed the suit primarily on the ground of bar of jurisdiction of the trial Court in entertaining and trying the suit in terms of Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the 1961 Act) as applicable to the State of Haryana.

I have heard learned counsel for the petitioner, perused the impugned order and also the paper book.

It was vehemently contended by learned counsel for the petitioner that once appeal is admitted by the appellate Court, the appellate Court should have protected the property by ordering the maintenance of status quo during pendency of the appeal, otherwise the whole purpose of appeal would be frustrated.

Learned counsel for the petitioner relies upon the judgement in ***Mool Chand Yadav and another Vs. Raza Buland***

Sugar Co. Ltd., Rampur, 1983(1) All India Land Laws Reporter, 455 of Hon'ble Supreme Court in support of his contention. That judgement of Hon'ble Supreme Court cannot bring support to the contention of the petitioner. The question in that case basically was to suspend the order of punishment passed for violating temporary injunction during pendency of appeal against the said order. In that case before Hon'ble Supreme Court, in the suit filed by respondents injunction was granted restraining the appellant or their officers from occupying Hari Bhawan against which an appeal was filed and that appeal was pending. Subsequently, an application was made alleging flouting of the Court order and the Court was invited to hold the Corporation and its officers in contempt and to punish them for the same. That application resulted in the following order: –

“Accordingly the application Exhibit IV-1 is being accepted. One month's time is being granted to defendant, Mool Chand Yadav, to vacate the disputed room and if he does not do so all the movable property of defendant Nos. 2 and 3 will be attached in compliance with the order of temporary injunction passed on 2.11.1979.”

Appeal from that order was preferred being F. A.F.O. No. Nil of 1982. The said appeal was admitted and notice was taken for suspension of the order under appeal. But the Division Bench of Allahabad High Court declined to grant stay. Therefore, that Hon'ble Supreme Court held that if order is challenged and appeal is

pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal and that during pendency of the appeal operation of the order having serious civil consequences must be suspended, moreso when appeal is admitted.

Otherwise, I am of the clear view that in order to be able to seek ad interim injunction during pendency of a lis, plaintiff-appellant has to make out three ingredients (i) that there is prime-facie case (ii) that balance of convenience lies in favour of the appellant-plaintiff and (iii) that in case injunction is not granted, the appellant would suffer irreparable loss.

Learned appellate Court while declining the injunction has found prima-facie no case made out against the petitioner. The whole dispute in the instant case is whether the land in question vested or deemed to be vested in the Gram Panchayat, which apparently is barred in terms of clause (a) of Section 13 of the 1961 Act.

It has been observed in the impugned order that from 1890-91 till 1960-61, the land was entered in the ownership and possession of Thola Musahik. But it is not the contention of the petitioner that the land was still so entered in the name of Thola Musahik even after coming into force of the Act of 1961. Rather this was the contention on behalf of the petitioner that it was for the respondents to show how the ownership has changed from Thola Musahik to Gram Panchayat.

Learned appellate Court observed in the impugned order as under: –

“Moreover, in this case, question of title is involved as plaintiffs are claiming title of the suit land whereas as per current revenue record the suit land vests in the Gram Panchayat. So, jurisdiction of the civil court is barred under Section 13 of Punjab Village Common Lands (Regulation) Act. Moreover, in the year 2004 i.e. on 10.10.2004 (part of Ex.D10 copy of register of agreement, lease etc) the suit land was leased out to one Manoj. Hence, in this way, the plaintiffs have failed to show that the judgment and decree dated 29.09.2014 of learned trial Court is not in accordance with law and no stay can be granted to the plaintiffs.”

In view of the aforesaid discussion, I find that the view adopted by the appellate Court cannot be faulted on the ground of illegality or perversity. There is no merit in the instant petition.

Dismissed.

The petitioner would be at liberty to make prayer before the appellate Court for early disposal of the appeal.

19.01.2015
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(R.P. Nagrath)
Judge