

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 2625 of 2016

Date of Decision:5.5.2016

Yashveer

---Petitioner

vs.

XEN Jhajjar, Water Service division and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Saurabh Dalal, Advocate
for the petitioner

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

Rekha Mittal, J.

The present petition has been directed against order dated 16.2.2016 passed by the Additional District Judge, Jhajjar whereby appeal preferred by the petitioner against order dated 8.7.2014 passed by the trial court vide which application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (in short "CPC") filed by the petitioner/plaintiff was dismissed, has been rejected.

The petitioner has filed a suit for permanent injunction restraining the official respondents from constructing canal/nala Nos. 289, 282 and 292. Counsel for the petitioner contends that at the time of consolidation, the water course/khal was designed and approved to pass through killa Nos.118/14, 17, 16, 119/20,19,18,17, 16, 120/18,17,16, 121/20, 19,18,17,16, 122/20,19,18,17,16, 123/20,19 and land was left for the said purpose. It is further submitted that approval of the water course/khal through the aforesaid khasra numbers was upheld in the order of the Divisional Canal Officer, Rohtak vide order dated 12.2.1985(Annexure P-2). It is further submitted that the official respondents (respondents No. 1 and 2) in connivance with private respondents are bent upon to construct the canal through a new piece of land i.e. Killa No. 120/23 to help the opposite party where it never existed. It is further submitted that the courts below have committed a serious error rather illegality in non-suiting claim of the petitioner for grant of interim injunction as prayed for.

Before dealing with the submissions made by counsel for the petitioner, it is appropriate to recapitulate that an injunction can be allowed if the applicant is successful in making out a prima face case and further proving that balance of convenience lies in his favour and he is likely to suffer irreparable loss or injury in case the stay is not granted. Equally true is that intervention by this Court in orders passed by the courts below while disposing of an application for interim injunction is warranted if the order is found to be perverse or passed by ignoring any evidence which has a material bearing on merits of the case.

Counsel for the petitioner has tried to explain the position of

the water course/khal allegedly approved during consolidation and how the said position is decided to be changed by the official respondents in order to extend some benefit to the private respondents arrayed as defendants by referring to the site plans Annexures P4 and P5 appended with the petition and submitted that at present there is no khal running towards southern side of khasra No. 23 of mushtil No. 122 but the official respondents want to change the existing position. On a pointed query raised by the Court as to what is the status of the land allegedly owned by the petitioner in regard to the khal which was statedly designed/approved in the consolidation or actually running at the spot, counsel has submitted that khal was neither designed through his land earlier nor the same is decided to be passed through his land by the department. He has further submitted that the petitioner has been drawing water from the khal through illegal canal shown in mauve colour in Annexure P5. However, he is not in a position to say that if the alleged change is made in the water course/ khal, how the same is likely to cause any irreparable loss or injury to the petitioner. On the contrary, as the petitioner is drawing water from the canal by way of illegal means, he is not entitled to any relief when otherwise granting relief to such a litigant would amount to putting premium upon his illegal act. In this view of the matter, I find no reason to intervene in the orders passed by the courts below. This apart, counsel for the petitioner has failed to point out that the orders impugned suffer from any infirmity much less being perverse or absurd.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed. Nothing stated in this

order shall prejudice adjudication of the case on merits.

(Rekha Mittal)
Judge

5.5.2016
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