

CR No.5988 of 2016 (O&M)

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

CR No.5988 of 2016 (O&M)

Date of decision:09.12.2016

Daya Sukh and others

... Petitioners

Vs.

Dakshin Haryana Bijli Vitran Nigam and others

... Respondents

CR No.8309 of 2016 (O&M)

Daya Sukh and others

... Petitioners

Vs.

Dakshin Haryana Bijli Vitran Nigam and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Mittal, Advocate
for the petitioners (in both petitions).

Ms. Vibha Tewari, Advocate
for respondents No.1 to 3 (in CR No.5988 of 2016).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions
bearing Nos.5988 and 8309 of 2016.

C.M.No.25080-CII-2016 in CR No.5988 of 2016

The application is allowed subject to all just exceptions.

Documents are taken on record.

CR No.5988 and 8309 of 2016 (O&M)

The petitioner-plaintiffs are aggrieved of the impugned order

dated 11.08.2016, whereby, the application moved under Order 1 Rule 10 CPC at the instance of Gram Panchayat, Madhosinghana, for impleading them as party in a suit filed under the provisions of Order 1 Rule 8 CPC seeking following relief has been allowed :-

“Suit under Order 1 Rule 10 CPC

Suit for permanent injunction, restraining the defendants from illegally and forcibly shifting the domestic supply of the consumers of village Baruwali-II, Tehsil and District Sirsa, from existing and running 11 KV Madhosinghana Feeder (Urban Feeder 24 hours line) on any other feeder, on the basis of evidence of every description, oral, as well as documentary.”

Mr. B.S.Mittal, learned counsel for the petitioner-plaintiffs submits that the suit aforementioned has been filed on the premise that they are the resident of village Baruwali-II, Tehsil and District Sirsa and are consumers of DHBVN, vide their respective electric connections. They have been getting electric power supply through 11KV Madhosinghana Feeder and also getting the power supply of Urban Feeder 24 hours line for the village inhabitants, school, water works and hospital etc, for the last more than 8 years. The officials of respondents did not disclose the fact that the Feeder of the electric connection was to be changed from existing and running feeder to some other ruler feeder. It is in this background of the matter, the suit was filed. No relief has been sought against the Gram Panchayat, though the electricity was supplied by DHBVN from the

aforementioned 11 KV Feeder. It was the arrangement of 11 KV Feeder to supply the electricity and therefore, the Gram Panchayat, Madhosinghana had no role to pay. Even the application filed under Order 1 Rule 10 CPC does not disclose as to how their presence is necessary for adjudication. He has drawn the attention of this Court to application (Annexure P-3) in CR No.5988 of 2016, particularly, paragraphs 2, 7 and 8 which are reproduced herein below:-

“2. That the applicant Gram Panchayat Madho Singhana had given about 12 ½ of land to the Haryana State Electricity Board for installation of setting up a 33 KV station in the area of village Madho Singhana. This land was in fact given by the Gram Panchayat Madho Singhana free of cost for the benefit of his own villagers as the residents of village Madho Singhana are not getting proper supply of power. This land was given by the Panchayat sometimes in the year 1960-62 and the power house has been set up since then.

7. That the result of the suit whatsoever it may be, will adversely effect the other consumers and especially it will effect the residents of village Madho Singhana, the Gram Panchayat of which has given the land for setting up the power house.

8. That the decision in the present case will thus directly effect the residents of village Madho Singhana as this station will not be able to meet the requirements of residents of village

Madho Singhana.”

Thus, the order under challenge is not sustainable in the eyes of law. He further submits that despite there being stay of the operation of the impugned order, the trial Court had accepted the written statement of newly impleaded Gram Panchayat and as well as reply to the application seeking ad interim injunction. The ad interim application has been dismissed by the trial Court, vide orders dated 13.10.2016 and 09.11.2016 Annexures P-6 and P-7 (in CR No.8309 of 2016) and therefore, they have been constrained to file the revision petition bearing No.8309 of 2016 as the aforementioned exercise could not have undertaken by the trial Court owing to an interim order, thus, the orders are not sustainable in the eyes of law, therefore, revision petition aforesaid. The first revision petition, i.e., 5988 of 2016 is against the impleadment of the Gram Panchayat as party.

Ms. Vibha Tewari, Advocate had put in appearance on behalf of respondents No. 1 to 3.

As per office report, respondent No.4 has been served. However, there is no representation on his behalf. This fact was noticed by this Court in the order dated 29.11.2016.

Ms. Vibha Tewari, Advocate submits that there is no illegality and perversity in the orders under challenge. The stand of the defendants had been reflected in the impugned order, for, villages namely, Madhosinghna, Kuttabadh, Mallekan, Dhani Kahan Singh, have been getting the electricity supply from the Feeder installed for the construction of sub-station.

Mr. B.S.Mittal, has also drawn the attention of this Court to the information received on 13.11.2015 under Right to Information Act from the office of Sub Divisional Officer, DHBVN, (Annexure P-8) to contend that there is no proposal to change the electricity supply of Baruwali-II from the running Feeder on the spot by the office and electricity supply of village Baruwali-II is going on as per the Police Radio Message (PRM) of the department and on the spot which PRM is there.

I have heard learned counsel for the parties and appraised the paper book.

The information received under Right to Information Act, the contents of letter dated 13.11.2015 (Annexure P-8) are extracted herein below:-

“DAKSHIN HARYANA BIJLI VITRAN NIGAM

From

*Sub Divisional Officer,
DHBVN, Madhosighana*

To

*Executive Engineer,
City Division, DHBVN,
Sirsa.*

Letter No.1764/RTI-250 dated 13.11.2015

Sub:- For obtaining information under Right to Information Act, 2005 by Sh. Vishnu Bhagwan, Advocate, Court at Sirsa.

In reference to your office letter No.19500-RTI-250/2015-16 dated 19.10.2015.

On above subject, demanded information para wise is as under:-

- 1. The power supply of village Baruwali-II on 24 hours line is given as per the rules of the department, the copy of the same is enclosed with this letter.*
- 2. The electricity supply of the village Baruwali-II is going on from RDF Feeder Madhosighana Feeder from last 6 years.*
- 3. There is no provision to change the electricity supply of Baruwali-II from the running Feeder on the spot by the office.*
- 4. The electricity supply of village Baruwali-II is going on as per the PRM of the department and on the spot which PRM is there, the copy of the same is enclosed with this letter.*
- 5. There is no estimate to change the electricity supply of village Baruwali-II running on the spot.*

This is sent for information of your office and for further necessary action.

*Sd/-
SDO
O.P., Division
DHBVN, Madhosighana.”*

On juxtaposition of the aforementioned information received under RTI and as well as contents of the application filed under Order 1 Rule 10 CPC, at the instance of the Gram Panchayat Madhosinghna, no cause has been spelled out as to how and under what circumstances, pendency of the suit is seriously going to prejudice. As per the contents and

averments of the plaint, primarily the dispute is between the plaintiffs filed in representative capacity, i.e., petitioners and DHBVN. In my view, by impleading the Gram Panchayat as party, the Court below has unnecessarily enlarged the scope. If at all the Gram Panchayat has any grievance, they have an independent cause of action but not in the manner and mode as sought to be projected in the application under Order 1 Rule 10 CPC.

I am of the view that the orders under challenge are not sustainable in the eyes of law and therefore, the same are set aside. Since I am setting aside the orders dated 13.10.2016 and 09.11.2016, Annexures P-6 and P-7 as the same are based upon the stand taken by the Gram Panchayat, defendant No.4 and reply to the ad interim application, despite the fact that there was an interim order dated 14.09.2016 and order dated 13.10.2016 passed by the trial Court, yet astoundly, the trial Court decided the application without taking into consideration the reply. This fact is evident from the presence (Annexure P-6) which reads thus:-

“Present: Shri JBL Garg, Advocate, for the plaintiff.

Shri Bhagirath Singh, SDO in person on behalf of defendant.

Shri M.S.Gill, Advocate for the defendants No.1 to 3.

Shri R.P.Kaswan, Advocate, for defendant No.4.”

Even the miscellaneous appeal filed against thereto has also met with the same fate, vide order dated 09.11.2016.

Accordingly, orders dated 13.10.2016 and 09.11.2016 are set aside with a direction to the trial Court to decide the ad interim application afresh without taking into consideration the written statement/reply.

CR No.5988 of 2016 is allowed and CR No.8309 of 2016 is disposed of.

December 09, 2016
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No