

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

**Civil Revision No.669 of 2014 (O&M)
Decided on :10.06.2016**

Surender Singh and others

... Petitioners

Versus

Gram Panchayat Bal Jattan and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Gaurav Singla, Advocate for
Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Arvind Singh, Advocate
for respondent No.1.

G.S. Sandhawalia, J. (Oral)
CM-11287-CII-2016

Application for placing on record Annexures R-1/1 and R-1/2
and from filing certified copies of the same is allowed, subject to all just
exceptions. The same are taken on record.

CM stands disposed of.

Main case

Main case is taken up today itself after preponing the date,
since the counsel for the parties yesterday had agreed to argue the matter.

CM-11288-CII-2016 for the modification of the order dated
29.09.2015 granting stay has been filed.

The challenge in the present revision petition is to the order of
the Courts below declining the grant of interim injunction to the
petitioners/plaintiffs.

It is not disputed that the land in dispute was also subject
matter of proceedings under Sections 145/146 Cr.P.C. for appointment of

receiver vide order dated 07.07.2011, which was challenged before this Court in Criminal Misc. No.21553 of 2011 by the petitioner. The said petition was dismissed on 02.05.2013 (Annexure R-1/1) by noticing that the injunction had been declined by the trial Court on 09.08.2011. The findings recorded by this Court regarding the land in question read as under:-

“Mere pendency of the civil suit is not a ground to stay the criminal proceedings. In the present case, the present petitioners claim injunction against the gram panchayat and their application was dismissed by the civil court. In authority Ram Sumer Puri Mahant (supra). The Hon'ble Apex Court has held that parallel criminal proceedings should not be permitted. However, in the present case, the facts are totally different. The claim of the petitioners is in respect of a collusive decree obtained by them on the basis of statement made by their father who happened to be the Sarpanch of the village. So, the previous decree does not cloth with any right in favour of the petitioners. Otherwise also as discussed above, the said decree has not find favour by any of the court and has been discarded in proceedings under reference 18 of the Land Acquisition Act by this Court in proceedings under Section 7 of Eviction Act. So, none of authorities relied upon by the petitioners is applicable to the facts of the present case as no such dispute was involved in the present case.

So far as the submissions made by the petitioners in Crl.Misc.No.28210 of 2011 that notice has not been served upon the petitioners. In this connection, the petitioners have already approached the Sub Divisional Magistrate and their application has been stated to be dismissed vide order dated 3.8.2011 (Annexure P-11). So, it does not lie in the mouth of the petitioners that they are not being heard. It is not ought to place to mention here that land of gram panchayat can not be allowed to be

illegally encroached. During the course of arguments, it is revealed that Lakhmi Chand father of Surender one of the petitioners, had been leasing the land prior to the decree of 1982. So, this is a clever move by the petitioners to usurp the land of gram panchayat.

So, in these circumstances, Tehsildar who has been appointed as a receiver, is directed to take the possession of the suit property immediately but not later than 15 days on receipt of the certified copy of this order.”

It is further pointed out that the said order was upheld by the Apex Court in SLP No. 4764 of 2013 on 26.07.2013. These facts have also been noticed by the lower appellate Court and it is in such circumstances, the injunction application has been declined by upholding the order passed by the trial Court. It is further pertinent to mention that the said orders passed by this Court *inter se* parties were never appended with the paper-book while filing the civil revision petition, though the petitioner was well aware that the order appointing receiver and issuance of direction that possession be taken has already been decided against him.

Counsel for respondent No.1 has pointed out that the appellate authority had dismissed the appeal on 05.09.2013 and there was no interim order till the order 29.09.2015 was passed. It is further pointed out that in the interim period the property was leased out by the Gram Panchayat-applicant for a sum of Rs.1,14,75,500/- for the year 2014-2015 and for Rs.1,03,83,100/- for the year 2015-2016 by way of conducting open auction. The Panchayat, thereafter, again has the right

to auction the land for the year 2016-2017 and thus is likely to loose revenue.

In such circumstances, it is apparent that there is patent concealment of facts and, therefore, the present revision petition is not liable to be entertained, even on merits. The Apex Court in ***M/s Prestige Lights Ltd. Vs. State Bank of India 2007 (9) SCR 112*** held that party which comes to the Court with soiled hands is not entitled to be heard on merits. In the present case the material facts have not been candidly stated and effort has been made to suppress the background of the case.

The civil suit is based on the decree dated 11.08.1982, which has already been commented upon by this Court by noticing that admission had been made by the father of the present petitioner in favour of the villagers, as in the capacity of a Sarpanch, which was a fraud which has been upheld till the Apex Court. Rather a direction had been issued to the Tehsildar that possession be taken.

In the case of party seeking grant of injunction, it has to be demonstrated that there is a balance of convenience in its favour and irreparable loss would be caused to it, in case the interim injunction is not granted. The facts do not show the two factors are leaning in favour of the petitioner. The orders passed by the Courts below also do not suffer from any irregularity or illegality, which would warrant interference under Section 115 of the CPC. Rather the grant of injunction would materially prejudice the respondent-Gram Panchyat, who would not be

able to earn valuable revenue.

In such circumstances, it cannot be said that the orders passed declining injunction suffer from any irregularity or illegality, which would entitle the petitioner for discretionary relief of injunction.

Accordingly, keeping in view the same, the orders of the courts below are upheld. Consequently, the present civil revision petition is dismissed. However, nothing said herein will prejudice the trial Court while taking a decision on the main case.

JUNE 10, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE