

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.666 of 2017

(Arising out of order dated 2-8-2017 in Misc. Civil Appeal No.26/2016 of the learned 5th Additional District Judge, Ambikapur)

Dawoodi Bohra Samaj (Dawoodi Bohra Jamat), Through President Dawoodi Bohra Samaj (Dawoodi Bohra Jamat), Through Famous Footware, Near Ram Mandir, Ambikapur, Distt. Surguja (C.G.), Through Gulam Asgar, S/o Shri Ahmed Ali, Aged about 62 years, C/o Famous Footware, Near Ram Mandir, Ambikapur, Distt. Surguja (C.G.)

(Def. No.2)
---- Petitioner

Versus

1. Gram Panchayat – Sargawan, Through Sarpanch, Narayan Prasad, S/o Late Hariram, Gram Panchayat – Sargawan, P.O. Sakalo, P.S. Gandhi Nagar, Tahsil Ambikapur, Distt. Surguja (C.G.)
2. Benjamin Kumar Lee, S/o Late Mangal Kumar Lee, Aged about 78 years, Caste Gond, Occupation Agriculture,
3. Janardan, S/o Shri Dalel, Aged about 57 years, Caste Baheliya, Occupation Agriculture,
4. Pradip Roy, S/o Dilbandhu, Aged about 42 years, Caste Namoshudra, Occupation Agriculturist,
5. Ajit Niar, S/o Shri U. K. Kup, Aged about 40 years, Occupation Agriculturist, R/o Cherwapara,
6. Ravikant Singh, S/o Late Narendra Singh, Aged about 43 years, Caste Kshatriya, Occupation Agriculturist,
7. Deepak Kushwaha, S/o Shri Dev Beer Kushwaha, Aged about 42 years, Caste Koyeer, Occupation Agriculture and Business,

No.2 to 7 are permanent R/o Village Sargawan, Village Panchayat Sargawan, Manjhalipara, Post Sakalo, P.S. Gandhi Nagar, Janpad Panchayat and Tahsil Ambikapur, Distt. Surguja (C.G.)

(Plaintiffs)

8. State of Chhattisgarh, Through Collector, Distt. Surguja, Ambikapur (C.G.)

(Def. No.1)
---- Respondents

For Petitioner:

Mr. Pramod Kumar Verma, Senior Advocate with
Mr. Ali Asgar, Advocate.

For Respondents No.1 to 7: -

Mr. A.N. Bhakta, Advocate.

For Respondent No.8 / State: -

Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/11/2017

1. This writ petition is directed against the order passed by the miscellaneous appeal court setting aside the order of the trial Court rejecting the application for temporary injunction filed by respondents No.1 to 7 / plaintiffs, and granted temporary injunction to them.
2. Learned Senior Counsel for the petitioner would submit that the order passed by the first appellate court is contrary to facts and law available on record. The miscellaneous appeal court did not meet with the reasonings and findings recorded by the trial Court rejecting the application for temporary injunction and allowed the appeal which is unsustainable and bad in law.
3. Learned counsel for respondents No.1 to 7 / plaintiffs would support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order as also the copies of other orders and documents available on record with utmost circumspection.
5. The Collector by its order dated 2-8-2013 allotted land of 0.20 hectare at Village Sargawan to the petitioner for the purpose of graveyard. Some of the respondents/plaintiffs challenged the same before the Commissioner, Surguja Division, Ambikapur and the Commissioner by order dated 9-9-2014 affirmed that order. Thereafter, Gram Panchayat Sargawan preferred civil suit before the trial Court stating

that the petitioner / defendant be restrained from constructing graveyard in the suit premises and for using the same as a graveyard. The trial Court while deciding the application found no prima facie case and no balance of convenience in favour of the respondents and also that they will not suffer irreparable injury if temporary injunction is not granted, and rejected the application. On appeal being preferred by the plaintiffs, the relief of temporary injunction has been granted by the miscellaneous appeal court. In fact, the miscellaneous appeal court did not meet with the reasonings of the trial Court like prima facie case, balance of convenience and irreparable loss, recorded by the trial Court for rejecting the application and even did not meet with the reasonings recorded by the trial Court rejecting the application and held that near the suit land, one Girls Hostel is there and nistar rights will be affected which will cause nuisance and it will destroy public health and safety. The fact remains that the order of the Collector granting land to the petitioner for graveyard has become final after rejection of revision by the Commissioner on 9-9-2014 and that has not been challenged and even in the civil suit filed, the order passed by the Collector and affirmed by the Commissioner have not been questioned on the ground that they are void or the Collector has no jurisdiction to allot land for graveyard in the said village. The said order as on this date has become final.

6. In the matter of **Wander Ltd. and another v. Antox India P. Ltd.**¹, the Supreme Court has held that miscellaneous appeal court hearing appeal under Order 39 Rule 1(r) of the CPC, which is appeal on principle, should not interfere with the exercise of discretion of the court of first instance lightly and substitute its own discretion unless

¹ 1990 (Supp) SCC 727

the discretion has been exercised by the trial Court arbitrarily, or capriciously or perversely.

7. In the instant case, the miscellaneous appeal court did not meet with the reasonings of the trial Court and did not record finding that findings recorded by the trial Court while rejecting the application are perverse and passed the impugned order.
8. In light of the decision of the Supreme Court in **Wander Ltd.** (supra) and the manner in which the appeal has been decided, the impugned order deserves to be set aside and it is accordingly set aside. However, looking to the fact that substantive civil suit is pending consideration, the trial Court is directed to consider and dispose of the suit within three months from the date of production of a copy of this order. Parties are directed to cooperate and not to seek unnecessary adjournment so that suit may be disposed of within three months.
9. It is made clear that the aforesaid observation is made only for deciding this writ petition and the trial Court will decide the suit on its merit strictly on the basis of oral and documentary evidence recorded without being influenced by any of the observations made herein-above.
10. However, no further construction will be made by the parties till the disposal of the suit, in the interest of justice, which has been directed to be disposed of within three months.
11. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge