

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

CR No.8511 of 2017 (O&M)
Decided on:-March 27, 2018.

Vikram Singh Gill and others

.....Petitioners.

Versus

Anurag Kaushal and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Harsh Aggarwal, Advocate
for the petitioners.

Mr. Amit Aggarwal, Advocate
for respondent No.1.

HARI PAL VERMA, J. (Oral)

The petitioners have filed the present revision petition under Article 227 of the Constitution of India for quashing the order dated 28.11.2017 (Annexure P-7) passed by learned lower appellate Court in Civil Miscellaneous Appeal No.73 dated 30.08.2017 vide which the order dated 08.08.2017 (Annexure P-6) passed by learned Civil Judge (Junior Division), Kurukshetra was reversed.

Prayer has also been made for issuance of any appropriate order or direction for restraining the respondents from raising any construction on the land in dispute during pendency of the suit.

Learned counsel for the respondent No.1 states that vide order dated 11.12.2017, this Court has directed the parties to maintain status quo

with regard to the existing scenario/construction as it stands on that day. As a consequence thereof, the construction started by the respondent No.1 and the excavation of earth upto basement level was stopped. Because of the pendency of the litigation, the excavated portion has caused threat to the already constructed five storey building which is abutting the land in dispute. In the abutted building, a 50 bed hospital is functioning. The respondent No.1 has purchased the share as detailed in the sale deed. Now, as the rainy season is ahead, in order to avoid any threat to the building, the respondent No.1 may be allowed to fill up the excavated area of the plot in dispute. The architect has advised to fill up the excavated area, as it may otherwise prove fatal and is not safe for the adjoining building.

Learned counsel for the petitioner has submitted that in case the respondent No.1 is granted permission to fill up the excavated portion, the respondent No.1 should not plead ownership of the area without there being partition and declaration of permissible portion.

I have heard learned counsel for the parties.

Considering the nature of dispute and the limited prayer made by learned counsel for respondent No.1 that in order to avoid any untoward incident, he be allowed to fill up the excavated portion, this Court finds that prayer made by the respondent No.1 carries weight. Therefore, the respondent No.1 is granted permission to fill up the excavated portion of the land in dispute.

Accordingly, the present petition is disposed of at this stage with a direction that the parties shall be governed with the ultimate decision of the suit pending between the parties before the civil Court.

Since the main case has been disposed of, the pending miscellaneous application, if any, also stands disposed of.

March 27, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No