

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

RSA-3526-2010(O&M)

Date of decision:-31.10.2019

Balbir Singh

...Appellant

Versus

Punjab State Electricity Board and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Phull, Advocate for
Mr.B.S. Bhalla, Advocate for the appellant.

Mr.R.L. Sharma, Advocate
for respondents No.1 to 3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs, Balbir Singh, Kartar Singh and Hoshier Singh sons of Sh.Jowala Singh son of Sh.Santa Singh, all residents of village Dhalle Ke, District Moga had brought a suit against the defendants i.e. Punjab State Electricity Board (hereinafter referred to as PSEB) through its Secretary, The Mall, Patiala and its Executive Engineer and Sub Divisional Officer, stationed at Moga seeking a decree for permanent injunction restraining the defendants from installing a new electric line shown as red in the site plan, besides craving

for grant of mandatory injunction directing the defendants to remove the newly installed poles at point AB and the electric wires shown red in the site plan installed in Killa No.148 forcibly, illegally against the rules and regulations of PSEB and the sanctioned scheme.

According to the version of the plaintiffs, the suit property was originally owned by their father Jowala Singh, who has since expired and after his death his inheritance had devolved upon the plaintiffs; most of the family members of the plaintiffs are residing abroad; the defendants in collusion with one Chand Singh had installed an electric motor tubewell in the land of plaintiffs; the plaintiffs had already filed a suit for shifting the connection of Chand Singh, which is pending; that two electric poles have been installed in the suit land; the suit property was situated near the abadi area and is recorded as *gair mumkin* in the revenue record; the plaintiffs want to raise construction in the suit property for residential purposes; a few days before filing of the suit the defendants had drawn new electricity wires shown as red in the site plan and had installed three poles forcibly and illegally; they threatened to continue the supply of electricity through new electric line. According to the plaintiffs in case the defendants succeed in doing so, it would be dangerous to the human beings and the animals of the plaintiffs and it will also create hindrance in the construction work and there had always been an apprehension of spark coming out from the wires. The plaintiffs requested the defendants a number of times to admit their claim and not to take law into their own hands and not to energise the electric line shown as red and further to remove the electric poles but to no effect. Hence the suit in

question.

On notice the defendants had put in appearance through counsel but subsequently they stopped putting in appearance, as such they were proceeded against ex-parte.

During the course of their ex-parte evidence, the plaintiff No.1 – Balbir Singh had got his statement recorded as PW1 and repeated on oath their case as given in the plaint. In addition to that, the plaintiffs further examined Sh.Davinder Singh, Draughtsman as PW2, who had proved the site plan and PW Kuldip Singh, who had supported their case on material points.

After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Moga vide judgment and decree dated 23.3.2009 dismissed the suit. The relevant para No.7 of the judgment for ready reference is being reproduced as under:

7. I have heard the contentions of Ld. Counsel for plaintiffs and have gone through the file carefully. Plea of plaintiffs is that defendants have installed poles and new electricity line in their land illegally and against rules of PSEB and in gross violation of sanctioned scheme. They have not placed on file record/copy of any such scheme and rules of PSEB. It is the duty of plaintiffs to prove their own case by leading their evidence. Moreover, if poles and electricity line have been installed by defendants in the land of plaintiffs, they have a right to claim damages under rules. But certainly they have no right to claim relief of permanent

injunction or mandatory injunction. The Electricity Board is duty bound to provide electricity to consumers under rules.

Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Moga, which was assigned to learned Additional District Judge, Moga, who vide judgment and decree dated 14.6.2010 dismissed the same.

Still feeling dissatisfied, the plaintiff No.1 – Balbir Singh has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiffs be decreed.

Notice of the appeal was given to respondents/defendants and contesting respondents No.1 to 3 have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The reasoning given by the learned Additional District Judge, Moga while dismissing the appeal is contained in paras No.7 to 10, which for ready reference is being reproduced as under:-

7. After hearing both the sides and having perused the entire record, available before this Court, it is found that the instant appeal filed by plaintiffs-appellants Balbir Singh and others merits dismissal. Mr. Balbir Singh while stepping into the witness box as PW-1 has testified that the land fully described in the head note of the plaint was previously owned by Jowala Singh son of Santa

Singh. After the death of Jowala Singh that land was inherited by the plaintiffs. They generally lived out side of the village and most of the family members are residing in foreign countries. He has further stated that the respondents collusion with one Chand Singh have installed an electric motor tube well in the land of the plaintiffs, who filed a suit for shifting the connection of Chand Singh. There are two electric poles in the land in question. The property is situated near the abadi area. Now the plaintiffs intend to raise construction in the suit property for residential purposes. The defendants installed a new electric line shown in colour red in the site plan in the land of the plaintiffs illegally and forcibly against rules of PSEB and in gross violation of sanctioned through the new electric line. PW-3 Kuldeep Singh has supported the version of the plaintiffs. The plaintiffs have also examined Devinder Singh Draftsman as PW-1, who has proved site plan Ex.P1.

9. *It is vehemently contended by learned counsel for the appellants Mr. R.P. Shahi that on the strength of ex-parte evidence of the plaintiffs the suit filed by the appellants should have been decreed. The case of the plaintiffs was fully proved and the learned trial Court has wrongly disbelieved the unrebutted evidence of the plaintiffs. Also learned trial Court has failed to appreciate the oral as well as documentary evidence available on the file. The learned trial Court has also ignored the basic law and principles of natural justice. Learned counsel for the appellants has placed reliance on the citations titled as Haryana Vidyut Prasaran Nigam Ltd.*

Versus Siyya Ram, 1993(3) Civil Court Cases 660 (Punjab and Haryana) and Sarwan Singh Versus Ranjit Singh, 1992(2) Recent Revenue Reports 515 (Punjab and Haryana) in support of his contentions. However, these contentions put forth by learned counsel for the appellants are misconceived. It is the plea of the appellants that the respondents have installed poles and new electricity line in their land illegally and against rules of PSEB but the same was done in gross violation of sanctioned scheme. It is well settled by now that it is incumbent upon the plaintiff to establish his own case. He can not be permitted to take benefit of weaknesses of the adversary. The appellants were well within their right to get the record of PSEB produced to prove that the PSEB has installed poles and new electricity line without any sanctioned scheme. Since the appellants have failed to get the record of PSEB/respondents produced, an adverse inference has to be drawn against the appellants that if they had got produced the record of PSEB, the same would have gone against them. Besides this, it is well settled law that if the poles and electricity line have been installed by the defendants in the property of the plaintiffs they have got a legal right to claim compensation/damages under rules but the appellants have no right to claim relief of permanent injunction or mandatory injunction as prayed for. The electricity board is duty bound to provide facility of electricity to its consumers. Here learned counsel for the respondents has rightly placed reliance on the citation titled as *Gagandeep Vs. State of M.P. and others,*

Latest Judicial Reports 2003(Supp.) 460 wherein it has been held as under:

"It is clear that the plaintiff/appellant at best would be entitled to compensation as per law. If he has any grievance regarding the quantum of compensation, legal remedies as against such determination of compensation by respondents no. 1 and 2 are available to him. However, on that count, the Scheme cannot be directed to be stayed and the respondents no.1 and 2 can not be asked to keep their hands off from laying down the electricity line as is proposed by them. The balance of convenience is certainly preponderantly in favour of the respondents no.1 and 2 and not in favour of the plaintiff/ appellant. It also appears that as the plaintiff/ appellant is only entitled to compensation as per law he is not likely to suffer irreparable loss in case temporary injunction as prayed by him is not granted. In view of the above, the prayer of the plaintiff/appellant that, respondents no.1 and 2 be restrained from implementing the proposed scheme of laying down the electricity line over the land of the plaintiff-appellant, does not deserve to be allowed."

*Learned counsel for the respondents has also placed reliance on the citation titled as **Sukhmander Singh Versus Punjab State Electricity Board, Bargari and Others Vol. CL. VI 2009(4) The Punjab Law Reporter 261** in support of his contentions.*

10. *In such a scenario, the citations of learned counsel for*

the appellants do not extend any help to the case of the appellants.

More so facts of cited authorities are distinguishable from the facts and circumstances of the case in hand.

The main crux of the case of the plaintiffs is that poles have been affixed and electricity line drawn by defendants No.1 to 3 are in violation of sanctioned scheme. However, the plaintiffs have failed to establish this fact. The electricity is a form of energy, which is supplied through cables and wires and there is no concept as yet of supply of electricity without cables/wires. To support the electricity wires, poles are required to be affixed in the land. The scheme is prepared by PSEB as per technical feasibility, therefore poles are required to be affixed in the adjoining land, may be belonging to the consumer(s) or neighbouring owner(s), which support the wires/cable. There is nothing on record to show that defendants No.1 to 3 have affixed the poles and drawn the electricity wires deliberately in the land of the plaintiffs instead of other neighbouring owner to favour them in violation of the sanctioned scheme. As has been rightly observed by the Courts below, the plaintiffs are not entitled to the relief of permanent injunction though they can sue for compensation.

Learned counsel for the respondents No.1 to 3 has referred to judgment **Thakar Singh s/o Sada Ram (since deceased) through LRs Versus Punjab State Electricity Board, Patiala, through its Chairman, Vol.CLXX-(2013-2) The Punjab Law Reporter 835** in support of his argument that plaintiff/appellant cannot seek injunction and they can ask to compensation only.

Thus I do not see any reason to differ with the concurrent findings recorded by the Courts below that the plaintiffs are not entitled to a decree for permanent injunction and mandatory injunction, as prayed for.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

31.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No