IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 7279 of 2019
DATE OF DECISION :- November 18, 2019

Hawa Singh and others **...Petitioners**

Versus

Gram Panchayat, Anipura through its Sarpanch and others.

...Respondent

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

Present:- Mr. Shalender Mohan, Advocate for the petitioner.

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Briefly stated the facts of the case are that plaintiff Manjeet, Hawa Singh, Peerdan, Ram Kumar, all residents of village Anipura, Tehsil Hansi, District Hisar had brought a suit against Gram Panchayat, Anipura as well as B.D.P.O, Hansi-I seeking a decree for permanent injunction restraining defendant No. 1 from raising any construction illegally over the land belonging to Harijan Majra Dhana bearing Khasra No. 285/1(801) situated at Village Dhana, Tehsil Hansi, District Hisar and for issuance of a direction to defendant No. 1 to remove the encroachment made by it over the suit land belonging to Harijan Majra Dhana besides seeking damages to be ascertained by the Court to the plaintiff on account of illegal construction raised by defendant No. 1.

As per version of the plaintiffs, the suit property belongs to the plaintiff and defendant Gram Panchayat having no concern therewith has been trying to grab it in the garb of making a cremation ground. A cremation ground

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is already there in Village Ghadi which is being used for decades. Defendant No. 1 Gram Panchayat has no right to use that land without taking permission of Government of Haryana. No notice was issued to the plaintiffs before evicting them from the suit property. The plaintiffs are in possession of the suit land for may decades and using it for putting their dung cakes. Defendant No. 1 Gram Panchayat has forcibly dispossessed the plaintiff from the said land along with the plaint. The plaintiffs have moved an application for grant of ad-interim injunction.

On getting notice, both the defendants appeared and filed written statement and reply to the application opposing the suit as well as application raising various legal pleas including maintainability of the suit. According to the defendants-respondents the suit land is owned and possessed by Gram Panchayat and no notice as required under Section 205 of the Panchayati Raj Act was served upon defendant No. 1 Gram Panchayat before filing of the suit. The plaintiffs have not impleaded Government of Haryana as a party to the suit. No notice under Section 80 CPC had been served upon the defendants before filing of the suit. The land situated in Village Ghadi has been transferred to Indian Railways for construction of Railway line. Resultantly, the cremation ground which was being used earlier has ceased to exist now. The inhabitants of village have no other option but to use the land of Gram Panchayat measuring 8 Kanals 1 Marla for this purpose. The Gram Panchayat has no other government land except the suit land and this fact has been concealed by the plaintiff-applicants; that Gram Panchayat has received many letters from the higher authorities regarding modification of cremation ground in all the villages of Haryana, as such Gram Panchayat, Anipura has passed a resolution for the purpose of establishing a cremation ground. About a year earlier, the

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Gram Panchayat had got the suit land demarcated through the revenue officers and two persons namely Mr. Sandeep Kumar and Dharam Chand were found to be in illegal possession of the suit property. The encroachment was done and encroached suit land was duly vacated. The plaintiffs have never remained in possession of the suit land. Even otherwise they themselves have admitted in the plaint that they have been removed from the suit land meaning thereby that they are not in possession of the suit land, as such suit is not maintainable.

After hearing arguments, the trial Court dismissed the application for grant of ad-interim injunction vide impugned order dated 1.3.2019 for the following reasons : -

1. That the plaintiffs themselves have admitted that they have been removed from the suit land by defendant no. 1 about a month ago. Meaning thereby that they are not in possession over the suit property at the time of filing of the suit.

2. The plaintiffs have concealed material facts from the Court regarding acquirement of land of Village Ghadi by Indian Railways which was being earlier used as cremation ground by inhabitants of Village Anipura and Gram Panchayat has no other land except the suit land to establish the cremation ground.

3. Under Clause IV Section 2(g) of Punjab Village Common Land Act, 1961 the State Government may by notification in the Official Gazette make rules for carrying out the purposes of this Act and Government of Haryana has provided the rules in that regard which include use of land by the Panchayat as burial ground with proper approval of State Government. Therefore, no ground for grant of ad-interim injunction was made out and application was dismissed. The plaintiffs have preferred an appeal before

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District Judge, Hisar which was assigned to Additional District Judge, Hisar who vide order dated 1.3.2019 had dismissed the appeal observing that Gram Panchayat is the owner of the suit land and in terms of judgment of this Court 'Jagdish Singh Vs. State of Haryana 2005(4) RCR (Civil)322' the Panchayat is competent to change the user for which it was reserved in the changed circumstances for its use in the best possible manner.

The plaintiffs have approached this Court by way of filing revision petition challenging the order passed by the Courts below refusing to grant ad-interim injunction to them.

I have heard learned counsel for the revisionist-plaintiffs besides going the record.

I find that there absolutely no merit in the revision petition. The orders passed by the Courts below are well reasoned, based upon proper appreciation of facts of the case and correct interpretation of law. The orders are certainly not perverse and have not been passed in an arbitrary manner ignoring the settled principles for grant/refusal of ad-interim injunction. No ground for interfering with the said orders exercising revisional jurisdiction is made out. The revision petition being without merit stands dismissed.

(H.S. MADAAN)
JUDGE

November 18, 2019
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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