

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 8423 of 2018

Date of Decision: 10.01.2019

Brahama Nand and others

.....Petitioners

Versus

Gram Panchayat, Village Indri, Tehsil and District Nuh,
through its Sarpanch and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Hooda, Advocate
for the petitioners.

AVNEESH JHINGAN, J.(oral)

The present civil revision petition has been filed being aggrieved of the order dated 01.10.2018 passed by the Additional Civil Judge (Senior Division), Mewat, declining to grant ad-interim injunction.

The facts in brief are that the petitioners filed a suit for declaration with consequential relief of mandatory as well as permanent injunction.

The grievance raised in the suit is that the petitioners are the proprietors of agricultural land in the revenue estate of Village Indri. During the consolidation, the proprietors of the village gave their share to the Gram Panchayat for common purposes. Later on, the said land was reserved for *Charagah*. It was further pleaded that the nature of the suit land was being changed by the Gram Panchayat and the land is being used for construction of Secretariat of the Village and for construction of power station by Dakshin Haryana Bijli Vitran Nigam (DHBVN). Along with the suit, the petitioners filed an application under Order XXXIX Rule 1 and 2 read with Section 151

of the Code of Civil Procedure (for short 'CPC'), seeking interim injunction.

Learned counsel for the petitioners states that the said application is pending till date.

The grievance in the present petition is that the learned trial Court has refused to grant interim injunction ex-parte.

Learned counsel for the petitioners argues that the nature of the *Charagah* is being changed by the Gram Panchayat illegally and there would be irreparable loss if ex-parte interim injunction is not granted. He relied upon the decision of the Supreme Court in *Hinch Lal Tiwari Versus Kamala Devi and others, 2001 Supp(1) SCR 23* and decision of this Court in *Shimbhu Dayal Versus Gram Panchayat, Haluhera and others, Civil Revision No. 3719 of 2013 decided on 24.09.2013.*

The contention raised by learned counsel for the petitioners lacks merit. During the course of arguments he candidly admitted that the *Charagah* no longer exists at the spot, as the DHBVN and Revenue Department have uprooted the trees etc. and the building material is lying there.

In view of his above statement, no case is made out for granting ex-parte injunction without hearing the other party.

Order XXXIX Rule 3 of the CPC is quoted below:

3. Before granting injunction, Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party:

[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant

— (a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant, relies, and (b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]

From the perusal of the provision it is clear that before granting injunction, the Court shall issue notice to the opposite party. It is only an exception given in the proviso that where the Court is of the opinion that the object of granting injunction would be defeated by delay, an ex-parte order shall be passed for which the Court shall record reasons for forming its opinion that the purpose of injunction would be defeated by delay.

In the present case, no such circumstance has been pointed out by the petitioners either before the trial Court or before this Court that the delay in granting injunction would defeat the object of injunction especially when it is not being disputed that on the land in question the building material has already been stored by the DHBVN and the Revenue Authority. Moreover, as per the pleadings of the suit, the *Charagah* is being used for a purpose which is in larger public interest.

Reliance on the decisions of the Supreme Court and of this Court do not enhance the case of the petitioner. The authorities relied upon are not dealing with the issue of granting ex-parte injunction order.

No interference is called for in the impugned order. More so,

when it is brought to the notice of this Court that the application under Order XXXIX Rule 1 and 2 CPC is pending for 16.1.2019.

The petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

10.01.2019

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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No