

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1)

CR-1857-2020

Ravinder & another

....Petitioners

Versus

Gram Panchayat, Damla, Yamunanagar through its Sarpanch & others

...Respondents

(2)

CR-1858-2020

Ajay Sharma & others

....Petitioners

Versus

Gram Panchayat, Damla, Yamunanagar through its Sarpanch & others

...Respondents

(3)

CR-1859-2020

Shyam Lal & others

....Petitioners

Versus

Gram Panchayat, Damla, Yamunanagar through its Sarpanch & others

...Respondents

Reserved on: 26.08.2020

Pronounced on: 03.09.2020

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Harsh Mehla, Advocate, for the petitioners.

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

Mr.A.K.Khubbar, Advocate, for respondent No.2.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. SANDHAWALIA, J.

Present judgment shall dispose of 3 revision petitions, filed under Article 227 of the Constitution of India. Facts have been taken from **CR-1857-2020** titled *Ravinder & another Vs. Gram Panchayat, Damla, Yamuna Nagar through its Sarpanch & others*, since common questions of law and facts arise and the respondents have also filed documents in the said revision petition in support of their case.

2. The orders impugned in the revision petition are dated 29.02.2020 (Annexure P-6) and 04.03.2020 (Annexure P-7), passed by the Civil Judge (Jr.Divn.) Jagadhri & Yamunanagar whereby status quo which had been ordered earlier qua the possession of the suit property, has been vacated. Resultantly, in the present petition, status quo regarding possession of the suit property till the application under Order XXXIX Rules 1 & 2 CPC is decided, has been prayed for by the plaintiff/petitioners.

3. A perusal of the said orders would go on to show that on account of an application filed under Order 1 Rule 10 CPC, early date was sought by respondents No.2 to 4 and to decide the application under Order 1 Rule 10 along with application under Order XXXIX Rules 1 & 2 CPC. The impugned order was passed on the ground that certain directions had been issued by this Court on 02.09.2019 in **CWP-20034-2017** and therefore the Trial Court was under the impression that counsel for the petitioners had mislead the Court and obtained the order of status quo which had been extended. Resultantly, the order dated 04.03.2020 was passed vacating the earlier order of status quo passed and the case was fixed for hearing arguments in applications filed under Order 1 Rule 10 and under Order XXXIX Rules 1 & 2. The plaintiff-petitioners being aggrieved, have approached this Court under Article 227 of the Constitution of India.

4. The primary ground on which counsel for the plaintiff-petitioners has prayed for the ad interim injunction is that the application

under Order XXXIX Rules 1 & 2 is admittedly pending before the Trial Court and without considering the same on merits since reply had to be filed by way of written statement and to the stay application, the Trial Court was not justified in vacating the status quo order.

5. Counsel for the Gram Panchayat, Mr.Amit Kohar, Advocate has contested the revision on the issue of maintainability by taking up the plea that under Order 43 Rule 1(r) CPC, an appeal would be maintainable and that this Court in the writ petition had upheld the orders of the Revenue authorities whereby the private-respondents who were sitting in the land of the Gram Panchayat were held to be having no right, title or interest.

6. Counsel for the private-respondents, on the other hand, submitted that the matter can be decided by the Trial Court since the application under Order XXXIX Rules 1 & 2 is yet to be decided. He thus, in principal, indirectly supported the case of the plaintiff-petitioners and also while arguing that the elected representative of the Gram Panchayat was not contesting the suit before the Trial Court which has led to the vacation of the stay order.

7. In order to adjudicate upon the controversy of the matter, few relevant facts have to be crystalized. The suit for permanent injunction was filed by the plaintiff-petitioners on 14.08.2017 whereby permanent injunction was sought against respondent No.1-Gram Panchayat from disturbing the physical possession of plaintiff-petitioners which was in the form of shops which had been disclosed in the site-plan.

The same were forming part of Khewat No.1086, Khatauni No.1297, Khasra No.58//22/2, 23/1, 72//1, 2, 3/1, 4/1, 8/2, 9, 10, 12, 13/1 situated at Village Damla, H.B. No.484 now Bus Stand, Damla (Yamuna Nagar). Resultantly, the said respondent was sought to be restrained from forcibly or illegally damaging or demolishing any part of the shop or cause any damage to the shop in any manner.

8. The claim of the plaintiff-petitioners was that they were in possession of the shops from the time of their forefathers and it was the only source of income. Some persons of the Gram Panchayat had come to the shops and had threatened them that they would eject them and the shops were located at the bus-stand, Damla. The application under Order XXXIX Rules 1 & 2 read with Section 151 CPC for ad interim injunction was also filed along with the suit.

9. The Gram Panchayat put in appearance on 16.08.2017 through its Advocate and the case was adjourned for filing of attorney and written statement/reply to the stay application and the Trial Court directed that both the parties shall maintain status quo qua the suit property.

10. An application for impleadment was filed under Order 1 Rule 10 on 15.12.2017 by Sonia Rani that her husband, Anil Kumar had filed a petition under Section 13 of the Punjab Village Common Land Act, 1961 regarding the suit land which had been decided by the Assistant Collector 1st Grade, Yamunanagar on 11.12.1997 against one Anand Parkash, holding that the land vested in the Gram Panchayat.

Initially, the matter had been decided in favour of the Gram Panchayat on 17.12.1997 by the Assistant Collector, 1st Grade which was upheld by the Collector on 13.10.1998. The said order had been upset by the Commissioner, Ambala on 09.11.1999 and the husband of applicant-Anil Kumar had thus come to this Court by way of **CWP-1931-2000** on 30.05.2013 and the order of the Commissioner had been set aside.

11. Thereafter, the Gram Panchayat had filed petition under Section 7 of the Punjab Village Common Lands Act, 1961 which had been allowed on 18.12.2015 and the appeal of Anand Prakash had been dismissed on 17.11.2016 by the Collector. Thereafter, false resolutions had been passed by the Gram Panchayat giving the land for lease for 33 years and the said resolutions had been rejected by the DDPO and the Collector had directed that the order dated 17.11.2016 be complied with. It was thus averred that the Sarpanch was not defending the interest of the Gram Panchayat and the status quo order had been passed. The land was stated to be measuring 45 kanals 1 marla owned by the Gram Panchayat and title had been decided by this Court earlier on 30.05.2013. The execution was pending which had been delayed on account of the status quo order passed by the Trial Court.

12. On 21.01.2020, the Trial Court fixed the case for 12.03.2020 for arguments on the applications under Order 1 Rule 10 CPC and under Order XXXIX Rules 1 & 2, while maintaining the status quo. The application dated 29.02.2020 (Annexure P-5) for early hearing and deciding the application under Order 1 Rule 10 along with application

under Order XXXIX Rules 1 & 2 came to be filed at the hands of the applicant/private-respondents that the order of status quo had been taken by concealing true facts and in view of the orders passed by this Court since possession had to be taken over.

13. Resultantly, the case was taken up on 29.02.2020 (Annexure P-6) itself. Keeping in view the directions issued by this Court in **CWP-20034-2017** on 02.09.2019 (Annexure P-8), the Trial Court issued notice to the applicant and to the Gram Panchayat for 03.03.2020 as to the fact whether it was the same property and therefore, why the said order extended on 21.01.2020 be not treated as vacated and the matter was treated to be urgent. Thereafter, on 04.03.2020, on reply to the early hearing application not being filed by the petitioners, the order of stay granted on earlier occasion on 02.12.2019 and the order of status quo dated 21.01.2020 were treated to be vacated and the case was fixed for filing reply to the applications under Order 1 Rule 10 and under Order XXXIX Rules 1 & 2. In such circumstances, the petitioners chose to approach this Court.

14. Keeping in view the cumulative facts above, one aspect is apparently clear that the final order on application under Order XXXIX Rules 1 & 2 has not been passed whereas the status quo order stands vacated. This aspect would be clear from the last order passed by the Trial Court before the applicants had approached this Court by way of filing the present revisions on 20.03.2020. The order dated 12.03.2020 reads as under:

“Reply to the application for recalling the order dt. 03.03.2020 has been filed by defendant Gram Panchayat. Copy has been supplied.

Arguments heard on two applications under Order 1 Rule 10 read with Section 151 of CPC for impleading the applicants as defendants in the present case moved by applicants namely Sonia, Ved Raj and Sanjeev Kumar. Vide my separate order of even date, the present applications are allowed.

Arguments also heard on an application for recalling the order dt. 03.03.2020. Vide my separate order of even date, the present application is hereby dismissed being not maintainable before this Court. Now, the case is adjourned to 25.03.2020 for filing amended titled as well as for filing written statement and reply to the stay application by impleaded defendants.”

15. It is in such circumstances the argument which has been raised by counsel for the Gram Panchayat-defendant that an appeal would lie under Order 43 Rule 1(r) CPC is not liable to be accepted since the impugned order would not be an order passed under Rule 4 of Order XXXIX which is an appealable order under the above-said provisions of Order 43. The order which has been vacated by the Trial Court is an ad interim order and not a temporary order on injunction which had been adjudicated upon by the Trial Court after hearing the parties in its proper perspective. Order XXXIX Rule (4) reads as under:

“4. Order for injunction may be discharged, varied or set aside.-

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in an affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interest of justice:

Provided further that where an order for injunction has been passed after giving a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting side has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.”

16. A perusal of the above would go on to show that the order of injunction may be discharged or varied or set aside by the Court on an application made thereto by any party dissatisfied with such order. The proviso further provides that if in an application for temporary injunction or in any affidavit supporting such application, a party knowingly makes a false or misleading statement in relation to a material particular whereby the temporary injunction was obtained by way of false and misleading statement and the same was granted without notice to the opposite party, the Court shall vacate the injunction. Similarly, the second proviso further provides that the injunction order can be set aside in changed circumstances or in case of causing undue hardship to a party.
17. The respondent-Gram Panchayat has also filed the affidavit of Sarpanch wherein in para No.3, it has been mentioned that it was the

owner of the suit land measuring 45 kanals 1 marla comprising in Khewat No.1033/1000, Khatauni No.1268, Khasra No.72//1(8-0), 23/1(0-2), 72//2(8-0), 3/1(6-13), 4/1(0-5), 8/2(6-12), 9(7-12), 10(2-18), 12(1-2), 13/1(1-6) situated in Village Damla HB No.484, Tehsil Jagadhri, District Yamuna Nagar, in which, it has been further averred that the husband of respondent No.2 had taken directions from this Court regarding 45 kanals 1 marla of land. It has accordingly been averred that the present petitioners are in connivance with Anand Prakash who was the original person contesting the litigation with the Gram Panchayat. It has also been mentioned that the suit land for temporary injunction is for 2 kanals out of the 45 kanals 1 marla and the shops constructed fall in Khasra No.23/1, 72//1, 2, 3/1, 4/1, 8/2, 9, 10, 12, 13/1 and not on Khasra No.58//22/2 as alleged in the suit which is a vacant land. Accordingly, it has been contended that the same is identical with the suit land whereby this Court had directed to take the possession of the land.

18. These facts this Court does not wish to opine on merits as to which of the land was in dispute earlier and the fact that the civil suit had been initiated on 14.08.2017 prior to any directions having been issued by this Court on 02.09.2019 (Annexure P-8). It was the duty of the Trial Court to go into the merits of the case by taking into account the written statement and the reply to the application under Order XXXIX Rules 1 & 2 but it did not do so. In haste it decided the application for early hearing and taking up the case which had been preferred by the applicant/private-respondents. It is now brought to the notice of this Court that the

pleadings are complete and reply by way of written statement has been filed by the parties including the Gram Panchayat and the case is now fixed for 22.09.2020.

19. In such circumstances, this court is of the opinion that the three basic factors which have to be taken into account by the Trial Court namely whether there is balance of convenience in favour of the petitioners; whether prima facie irreparable loss or damage would be caused to them or not and whether they would suffer irreparable injury if the shops are demolished, have yet to be considered while deciding the application under Order XXXIX Rules 1 & 2. On its decision, if any of the parties are dissatisfied with the same, they can prefer an appeal under Order 43. But the same has not been done and the Trial Court has followed a procedure alien to the Code of Civil Procedure, by vacating the status quo order in haste. It also had to opine whether the petitioners were party in the earlier litigation or not and apparently the land involved in the present litigation is only 2 kanals and not 45 kanals, which was earlier subject matter of litigation.

20. Thus, Mr.Kohar's reliance upon the judgment of the Apex Court in **CA-7764-2019** titled *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & others Vs. Tuticorin Educational Society & others*, decided on 03.10.2019, is without any basis. The said judgment pertains to a case where injunction had been granted by the Trial Court by hearing both the sides. Some of the defendants filed regular civil appeal under Order 43 Rule 1(r) CPC but others chose to file a civil suit before the

Madurai Bench of the Madras High Court. Inspite of the ground of alternative remedy being raised before the High Court, which had vacated the order of injunction granted by the Trial Court the plaintiffs had approached the Apex Court. Resultantly, the Apex Court held that the order of the High Court was not justified. The said judgment would, accordingly, be not applicable to the present case, in the facts and circumstances as the facts would go on to show that the application under Order XXXIX Rules 1 & 2 was never decided in the present case.

21. Accordingly, the said orders dated 29.02.2020 (Annexure P-6) and 04.03.2020 (Annexure P-7) cannot be held to be justified and are set aside. A direction is issued to the Trial Court to decide the application for temporary injunction filed under Order XXXIX Rules 1 & 2, on merits, expeditiously, after taking into account all the documents which have been placed on record by the parties in question. Needful be done on 22.09.2020, which date is stated to be fixed before the Trial Court or thereafter immediately. Anything observed herein is only for the purpose of deciding the present revision petitions and not on the merits of the application under Order XXXIX Rules 1 & 2.

Revision petitions stand allowed, in the above-said terms.

03.09.2020
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*