

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

**Civil Revision No. 2070 of 2020
Date of decision : 06.10.2020**

Amrao Singh & others

...Petitioners

Versus

Block Development and Panchayat Officer & others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mayur Karkra, Advocate
for the petitioners/revisionists.

Mr. Deepak Kumar Grewal, DAG, Haryana.

Mr. Rajesh Gaur, Advocate
for respondent No. 2-Gram Panchayat.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition, filed under Article 227 of the Constitution of India, is for setting aside the order dated 14.02.2020 (Annexure P-5) passed by the trial Court as well as order dated 16.06.2020 (Annexure P-7) passed by passed by the lower appellate Court, vide which the application, filed by the petitioners under Order 39 Rule 1 & 2 read with Section 151 CPC, was dismissed.

Brief facts of the case are that the petitioners/plaintiffs have filed a suit seeking mandatory injunction directing the respondents/defendants to remove the construction over the suit land which, according to petitioners, vests in the Shiv Mandir and the respondents/defendants have started constructing a Community Hall on the

same. The petitioners also sought interim relief of restraining the respondents from raising any construction over the suit land during the pendency of the suit.

The trial Court, vide impugned order dated 14.02.2020, dismissed the application, filed by the petitioners, observing that as per revenue record, Shiv Mandir is situated in Khasra No. 37//26, 37//23, 48/8/2 and the remaining area is shown to be in the ownership and possession of Panchayat, which is reserved for Mela Ground. The land was found to be vacant and the Gram Panchayat, in pursuance to govt. policy, is constructing a Community Hall for the benefit of the entire village and the same is being funded by the State Government.

The trial Court also recorded a finding that Gram Panchayat has taken permission from the State Government and the official respondents are coordinating in issuing funds to Gram Panchayat for the purpose of constructing the said Community Hall.

The petitioners, feeling aggrieved, filed an appeal before the lower appellate Court, however, the same was dismissed on 16.06.2020. The operative part of the order reads as under:

“6. After giving due deliberation to the contentions of learned counsel for the parties and having gone through the record on the case file, I am of the considered view that the appeal is devoid of any merit and therefore deserves to be dismissed.

7. Admittedly, the land in dispute is owned by the Gram Panchayat. It is also not disputed that the Gram Panchayat on the direction of Haryana Government is raising construction of Community Hall on the land in dispute out of funds granted by the Government of Haryana, for welfare of all the inhabitants of the village.

8. A perusal of the lower court record summoned specifically for the disposal of the appeal shows that as per Jamabandi (at page 77) Khasra numbers i.e. 37//13, 18, 19 respectively measuring 7 Kanal 4 Marla, 8 Kanal and 10 Kanal and 7 Kanal 18 Marla were reserved for Mela Ground. Whereas only 40 x 80 ft. land out of the same was being used for construction of Community Hall.

9. A copy of Scheme Istemal year 1960-61 in Urdu language AND copy of Scheme Istemal in Hindi (Page No. 197 to 215) also confirms the fact that the land in dispute measuring 31 Kanal 2 Marla was a reserved for Mela Ground. Whereas, only 3 Kanal 9 Marla in Khasra No. 37//26 was reserved for Shiv Mandir.

10. Thus, viewed from any angle the appellants/plaintiffs could not be permitted to claim that the entire land which was reserved for Mela Ground and Shiv Mandir was being converted into a Community Hall, to the detriment of inhabitants.

11. In ***Bishamber Dayal Versus State of Haryana, 1986 PLJ 208 (FB)***, it was held that the Gram Panchayat can change the user of the land vested in Gram Panchayat and can use it in the manner it liked. However, the action of Gram Panchayat could be challenged only on the ground of being malafide or being based on extraneous consideration.

12. In ***Joginder Versus Nirmal reported as 1997 LJR 725***, it was held that when despite conversion of the land of Gram Panchayat sufficient grazing area is left, no injunction against change of nature deserves to be granted.

13. In view of the foregoing discussion, no benefit can be drawn from the observation made in ***Shimbhu Dayal Versus Gram Panchayat, Haluhera and others, reported as 2014 (12) R.C.R. (Civil) 1047***, since in that

case the Gram Panchayat was converting the entire land reserved for pond into residential plots being allotted.

14. Similarly, in *Hinduwan Shamshan Bhumi, Tosham Versus State of Haryana and others, reported as 2012 (2) L.A.R. 31*, the entire cremation ground was being sought to be changed into commercial land.

15. In view of the foregoing discussion, I am of the considered view that when only a small portion of the land reserved for the Mela Ground is being used for construction of a Community Hall for the welfare and benefit of the inhabitants, no injunction against construction of the same deserves to be granted at this stage.

16. Accordingly, the appeal is hereby dismissed. Lower court record be sent back to the concerned court along with copy of this order. Appeal filed be consigned to record room, after due compliance.”

Learned counsel for the petitioners has argued that while raising construction, the path, leading to Shiv Mandir, will be blocked and secondly, if the Community Hall is permitted to be constructed in the vicinity of the said temple, it will disturb the worshipers as there will be large gathering during different functions, marriages etc.

In reply, learned counsel for respondent No. 2-Gram Panchayat as well as learned State counsel have opposed the prayer of the petitioners on the ground that as per Jamabandi, the Community Hall is being constructed over an area of 40 x 80 ft. It is further submitted that there is a distance of about 400 ft. between the temple and the Community Hall, therefore, the hindrance in ingress and egress of the temple does not arise at all.

Learned counsel for respondent No. 2 further submitted that the entire land is about 76 Kanal, out of which, 31 Kanal is reserved for Mela Ground and 3 Kanal is reserved for the temple and the remaining land is available for the Gram Panchayat for development purposes.

It is further submitted that Community Hall is being constructed on the instructions of State Government, which has accorded permission on the basis of resolution passed by the Gram Panchayat and the amount is being spent by the State Government.

After hearing learned counsel for the parties, I find no ground to interfere with the well reasoned orders passed by the Courts below dismissing the application for stay, for the following reasons:

- (a) It is well settled principle of law that in a suit for mandatory injunction, no relief of temporary injunction can be granted, which will amount to passing a decree of mandatory injunction itself.
- (b) A careful perusal of the plaint would show that nothing is stated that any personal right of any of the petitioners is infringed, therefore, in view of Section 41(j) of the Specific Relief Act, the suit is not maintainable.
- (c) The suit has not been filed in representative capacity under Order 1 Rule 8 CPC and no application has been moved seeking permission from the Court that the suit is being filed on behalf of the entire village community, therefore, it is a suit which has been filed only by nine inhabitants of the village, whereas the

Community Hall is being constructed for the entire village.

(d) Both the Courts below have discussed the judgments of this Court, wherein it is held that the Gram Panchayat is competent to change the user of the land in a manner it likes as well as when sufficient area of Shamlat land is available, it can be used for any other development work and injunction cannot be granted regarding change of nature of land.

(e) Even a perusal of the plaint further shows that it is nowhere mentioned that the passage of the temple will be blocked, rather it is a case of Gram Panchayat that there is difference of about 400 ft. between the temple and the Community Hall.

Therefore, finding no merit in the present petition, the same is dismissed.

06.10.2020

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned Yes

Whether reportable Yes