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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1497 of 2021(O&M)

Date of decision : 10.08.2021

Kamruddin

...Petitioner

Versus

Smt. Hasina

...Respondent

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Mazlish Khan, Advocate, for the petitioner.

(Presence marked through video conference)

Arun Monga, J. (Oral)

Petitioner herein, defendant before the trial court, is aggrieved from the appellate order dated 11.06.2021 (Annexure P/2) passed by learned Additional District Judge, Palwal, whereby he has been restrained from installing a borewell/minor tubewell in Killa No.25/1/2 or in any Killa comprised in the joint khewat No.134, without observing the minimum inter se distance of 25 metres from the pr-existing minor/borewell. While the said injunction was earlier declined by the trial court vide its order dated 04.05.2021 (Annexure P/1), however, in appeal the application for injunction has been allowed. Hence the instant revision petition to assail the appellate order.

2. Succinctly, it is the case of the petitioner that the learned Appellate Court failed to appreciate that the respondent herein (plaintiff) has not specified any Khasra number in which she has installed tubewell and that, as per law, a co-sharer of joint a Khewat has no right to restrain the

other co-sharer from enjoying his land and/or digging a borewell therein.

Second borewell can be bored within a parameter of ten square yards.

3. Learned counsel for the petitioner argues that, a false FIR was also got registered on 18.04.2021 against the relatives of the petitioner/defendant under Sections 323, 379, 427, 506/34 IPC, which is, in fact, the real genesis of the present dispute.

4. Having gone through the impugned appellate order and after hearing learned counsel for the petitioner, no ground for interference is made out. Appellate order is based on local commissioner report, logical and sound reasoning recorded thereof, merely *prima facie* at this stage, subject to the final outcome of the trial. For ready reference relevant extract thereof is as below :-

“12. In this case, prima facie, the distance of 150 metres cannot be applicable as plaintiff’s tubewell is not a State tubewell. There is distance of 88 metres (289 feet) between the both tubewells. Had there been some government institution having govt tubewell sought the restraint order against the defendant, then the matter would have covered under sub Section 5 (a) of the Act. But the present case shall not fall within the four corners of the said provisions. However, the matter squarely falls within the ambit of section 5 (c) of the said Act. For ready reference, section 5 of Act is reproduced as under:-

5. Power to prohibit installation of tubewell- *The State Government may by notification prohibit installation of any tubewell other than a State tubewell within a distance of-*

(a) not exceeding 150 metres from a State tubewell;

(b) not exceeding 100 metres from any (-) irrigation channel other than a minor and a watercourse;

(c) not exceeding 25 metres from any minor.

xxx

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xxx

15. A perusal of the report of Local Commission clearly shows that the tubewells of both the parties

are very near to minor and as per section (c) of section 5 of the Act, there should be distance of 25 metre of any tubewell from minor. A perusal of the scaled site plan prepared by draftsman Sh. RS Dahiya shows that in the northern side of the bores of both the parties, there is kacha burm and thereafter there is Ladmaki minor towards northern side. Though no specific distance between the said minor from the bores of both the parties could be given either by the Local Commission or by the draftsman, yet the photograph placed on record by the local commission with his report shows that the bore well of defendant is very near to said minor.

XXX

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XXX

22. Hence, as an upshot of my above discussion without mentioning anything on the merits of case, civil miscellaneous appeal filed by the plaintiff is allowed with no order as to cost. Impugned order is set aside. Till final decision of suit before learned lower court, the defendant is restrained from installing tubewell in Killa No. 25/1/2 or in any killa comprised in joint khewat No. 134 without observing the minimum distance of 25 meters from Ladmaki minor. For the removal of doubt, it is made clear that if the defendant goes on digging the tubewell in his purchased land, then he can do so after observing minimum distance of 25 meter from the Ladmaki minor. Further in this regard he will have to report the said proposed construction to the concerned authorities as mandated by Hon'ble Supreme Court in its judgment dated 06.08.2020. However, defendant in that eventuality shall not be eligible to sell the tubewell water for commercial purposes, which event shall give right to the villagers of Ransika including the plaintiff, to bring to the notice of concerned authority for taking proper action against him as per the provisions of Act as well as under the Haryana State Ground Water Management and Regulation Act, 2013. Stay application stands disposed of in the terms as indicated above."

5. I am in agreement with the aforesaid reasoning given by the appellate court. It is, however, further made clear that, in case of the intended installation of the tube well, subject of course to fulfillment of the conditions as per appellate order, the plaintiff shall not later claim any

special equity on account thereof. In case, any tubewell is installed on the land in question, the same shall be at his sole risk and cost. Needless to say, subject to the final outcome of the suit pending before the trial Court.

6. Disposed of accordingly.

10.08.2021
vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No