

14.12.2022
Item No.8
Ct. No.7
CHC
(disposed of)

C.O. 2251 of 2022

Mr. Vishal Gupta & anr.

Vs.

Saket Infra Developers Pvt. Ltd. & ors.

Mr. Malay Kumar Das,
Mr. Sourav Chatterjee

...for the petitioners

Mr. Farhan Ghaffar,
Mr. Y. A. Salim,
Mr. S.S. Yasmin

...for the o.p. Nos.1 and 2

Affidavit-of-service furnished by the petitioners be taken on record.

Subject-matter of challenge in this case is against the refusal of a prayer for police help for the implementation of an order granting ad interim injunction.

Admittedly, in a suit for declaration and injunction there has been an ad interim order of injunction granting *status quo* in respect of the suit property.

Learned advocate appearing for the petitioners, while assailing the impugned order submits that there has been violation of the ad interim order of injunction upon installing an iron gate in the stair case resulting in serious hardship to the plaintiffs/petitioners.

It is incidentally submitted by the learned advocate for the petitioners that an application under Order 39 Rule 2A has already been filed, which is registered as Misc. Case alleging violation of the ad interim order of injunction.

It is thus proposed by the learned advocate for the petitioners that a direction may be given to police asking the police to ensure police assistance to implement ad interim order of injunction, as and when needed.

Per contra, Mr. Farhan Ghaffar, learned appearing for the opposite party nos.1 and 2 disputes with the submission advanced by the petitioners replying to the effect that when the court below has declined to grant police assistance upon reaching a findings that there left nothing to show that defendants were actually trying to violate the *status quo* or by installing an iron gate, such discretionary order, being lawfully and reasonably recorded, should remain uninterfered with.

More so besides photographs, there is nothing to show the alleged violation of ad interim order of injunction, as in the instant case, there has been no local inspection proposed by the petitioners to reveal the alleged violation, if there be any.

It is also submitted by the opposite parties that the police assistance may not be granted on the mere asking.

Having considered the submission of both sides, it appears that prayer for police assistance was refused by the court below, having found no materials to come to the finding that defendants were actually trying to violate the *status quo* order already granted by the court below, though it is alleged that there has been installation of a gate at the stair case resulting in sufferings to the plaintiffs/petitioners.

Learned advocate for the opposite parties has rightly submitted that police assistance may not be granted at the mere asking. It is for the court below to arrive at the objective satisfaction from the materials produced, before granting police assistance. Besides photographs together with some police papers, there is nothing to render objective support to the court below in favour of granting police assistance for the implementation of the ad interim injunction.

Admittedly, uptil now, there has been no prayer made by the plaintiffs/petitioners for local inspection. In the event of local inspection being held under Order 39 Rule 7 C.P.C. the alleged violation, if there be any, may be best ascertained.

The revisional application is thus disposed of upon setting aside the impugned order with a direction upon the court below to hear out the same afresh, upon receipt of the local inspection report, providing an opportunity of hearing to either of the parties to this case.

Petitioner is given liberty to file an application for local inspection within a week from the date of communication of this order, and if any such application is filed, the same may be disposed of appointing learned Inspection Commissioner in presence of the opposite parties, with direction upon the learned Commissioner to submit report within a fortnight thereafter.

The prayer for police assistance may be heard afresh together with local inspection Commissioner's report before the second week of February, 2023.

Parties are directed to make communication of this order to the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)