

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

CR-5197-2014 (O&M)

Date of decision: 26.04.2022

Munni Devi and another

.....Petitioners

versus

The Jind District Govt. Employees
Co-operative Society Ltd., Jind

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.K. Gupta, Advocate
for the petitioners.

Mr. R.N. Lohan, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The petitioners-Munni Devi and Karan Singh has come up in this petition by virtue of Article 227 of the Constitution of India seeking quashment of orders dated 29.05.2013 of the Court of learned Additional Civil Judge (Senior Division), Jind as well as the same having merged in impugned order dated 17.08.2013 of the Court of learned Additional District Judge, Jind, whereby, the appeal against the order of the learned Additional Civil Judge (Senior Division), Jind, was upheld and the appeal of the

appellants/plaintiffs, now petitioners, stood dismissed.

The brief background of this litigation is as follows:-

The brief facts of this litigation are that petitioner No.1-Munni Devi and petitioner No.2-Karan Singh, are the owners of Plots Nos.184 and 192, respectively, in the Jind District Govt. Employees Co-operative Society Ltd. It is the admitted case of both the parties that in the lay out plan, the Society left 100 feet wide bypass between both the plots along with others, for Rohtak Gohana Road and the petitioners have purchased their respective plots knowing the fact that the bypass is adjoining to their residential houses. In the year 2002, petitioner No.2-Karan Singh opened gate window projection towards eastern side of the plot by raising construction over the same which land was earmarked for proposed bypass, against which, the respondent-Society filed a suit for permanent and mandatory injunction. The Court of the learned Additional Civil Judge (Senior Division), Jind, vide its judgment/decreed dated 03.12.2007 (Annexure P-2), decreed the suit filed by the plaintiff, now respondent-Society and passed a decree for permanent injunction restraining the defendant, now petitioner No.2-Karan Singh, from making any opening towards the eastern side of plot No.192 towards the side of park and by

means of decree for mandatory injunction, was directed to close down his gate, two ventilators and Parnala within a period of two months from the date of passing of the judgment, failing which, the plaintiff would be at liberty to file an execution petition in the Court as per law. Further, the plaintiffs, now petitioners, filed a civil suit for permanent injunction and an application for ad interim injunction against the defendants, now respondent-Society, restraining it from making commercial construction over the site which is 100 feet wide and was reserved for Rohtak Road Gohana Road bypass and later on, was earmarked as Park for public use and the same was dismissed vide impugned order dated 29.05.2013 passed by the learned Additional Civil Judge (Senior Division), Jind, against which, the appellants/plaintiffs filed a civil appeal which was dismissed vide impugned order dated 17.08.2013 by the Court of learned Additional District Judge, Jind and, hence, the present civil revision has come up before this Court.

The learned Court below in the impugned findings holding that since the Society has decided to carve out plots from the vacant land which was earlier left for the proposed bypass did not find it appropriate to grant ad interim injunction during the pendency of the suit.

Upon hearing learned counsel for the parties and

perusal of the records, it is own case of the Society that the plot in question was earmarked for providing of Rohtak Road, Gohana Road bypass and had been left vacant for that very purpose. The said society has been duly approved by the concerned Department of Town and Country Planning, Haryana, without there being any due authorization seeking amendment of the area plan, the Society cannot on its own modify the site plan as per its wishes, especially, when the same has been left for a definite purpose of laying a bypass to facilitate access to the Society and it was on this very assurance and representation had sold off its plots to the public who have become members of the Society. Merely because as has been contended on behalf of counsel for the petitioners Mr. R.K. Gupta, Advocate that Society had decided and unanimously, changed the nature of the usage of the said plot does not invest them with the power to do so on its own by mere publication of a notice in a newspaper. It is there in the submissions of the two sides and the pleadings that the said area is more than 100 ft. wide *rasta* between these two plots and obviously, if any change of user is made out would certainly impact adversely to the detriment of the plaintiff/petitioners who have their plots on the two sides of this very *rasta* besides affecting their easementary rights to the use of

these plots. The Court below merely on the fact that it did not take any such plea that there was violation of the rules and byelaws or that the general body meeting had been held illegally, had denied the prayer for ad interim injunction.

From the situation before this Court on the record, it is quite apparent that by any such act by the Society, the nature of the *rasta* which is reserved for a bypass would have its impact on the residents especially the neighbouring houses and this does not empowers the Society to convert such a public *rasta* into plots and raising construction thereon to facilitate its scheme of carving out more residential units in the residential complex, especially, without there being any approval from the competent authority as to the change of the nature of the said plan earlier approved.

In light of the foregoing discussions, the impugned order is bad in law and is set aside allowing present revision, thereby, restraining the Society or its members from going ahead with its plan during the pendency of the suit.

The present suit stands disposed off accordingly

(FATEH DEEP SINGH)
JUDGE

26.04.2022

Neha

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