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

CR-1030-2022 (O&M)
Date of decision : 08.04.2022

Vijay Kumar

.....Petitioner

versus

District Jail through Superintendent Jail & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G. S. Punia, Senior Advocate with
Mr. Amitoj Singh, Advocate for the petitioner.

Ms. Parul Khanna, AAG Punjab for respondent Nos.1 to 4

Mr. Ashish Kapoor, Advocate for respondent No.5

ALKA SARIN, J.

Heard in physical mode.

The present petition has been filed under Article 227 of the Constitution of India challenging the orders dated 22.02.2022 and 11.03.2022 passed by the Trial Court and the lower Appellate Court, respectively, dismissing the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC read with Section 151 CPC.

Brief facts relevant to the present *lis* are that in January 2022 the plaintiff-petitioner filed a suit for permanent injunction for restraining the defendant-respondents from installing a petrol pump at a site measuring 30 meters x 30 meters in Khasra No.1415/1 Khewat No.1401/1397 min Khatauni No.1654 in the revenue estate of Premgarh on the Hoshiarpur-

Chandigarh Road, Tehsil and District Hoshiarpur. The suit was also for mandatory injunction directing the defendant-respondent No.4 to withdraw the NOC issued for installation of the petrol pump. According to the plaintiff-petitioner the site for the petrol pump was in violation of the norms issued by the Indian Roads Congress vide IRC:16-2016 specifically Rule 3.5.2. It was averred that the site was within an urban area having a population of over one lakh and was 64 meters from the intersection with a 13 meter wide road and as per the Rule 3.5.2 a petrol pump could not be installed within 100 meters of such an intersection. The plaintiff-petitioner also averred that the site also violated the norms notified on 24.01.2019 by the Government of Punjab. Along with the plaint an application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC was also filed.

The defendant-respondent Nos.1 to 4 and defendant-respondent No.5 filed separate written statements and contested the suit. Replies were also filed to the application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC. It was averred by defendant-respondent Nos.1 to 4 that the plaintiff-petitioner was also running a Hindustan Petroleum petrol pump opposite to the Central Jail, Hoshiarpur and that the suit had been filed only to harass the defendant-respondents. It was further stated that the petrol pump was being installed for the rehabilitation and motivation of the prisoners confined in Central Jail, Hoshiarpur. Regarding the infringement of the norms laid down by the Indian Roads Congress and the Government of Punjab, it was submitted by defendant-respondent Nos.1 to 4 that the plaintiff-petitioner *“is misinterpreting the settled provisions and rules in order to harass the answering defendants. There is no infringement of any rules as alleged by the plaintiff”*. It was further stated that all the work for

installation of the petrol pump has been carried out as per guidelines and rules framed by the Government. Defendant-respondent No.5 filed a written statement on similar lines raising an additional plea that the road whose intersection the plaintiff-petitioner had raised a hue and cry about was not 13 meters wide but was about 15 to 18 feet wide only.

The plaintiff-petitioner filed replications to the written statements filed by defendant-respondent Nos.1 to 4 and defendant-respondent No.5.

Vide order dated 22.02.2022 the Trial Court dismissed the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC read with Section 151 CPC. The appeal of the plaintiff-petitioner against the order dated 22.02.2022 was dismissed by the lower Appellate Court vide order dated 11.03.2022. Hence, the present revision petition.

Learned senior counsel appearing for the plaintiff-petitioner contended that the Courts below have erred in dismissing the application under Order 39 Rules 1 and 2 CPC read with Section 151 CPC and refusing to grant an ad-interim order in favour of the plaintiff-petitioner. Attention of this Court was drawn to the site plan Annexure P-3 which showed the intersection of the 13 meter wide road in front of Punjab National Bank and the office of Improvement Trust with the Hoshiarpur-Chandigarh Road on which the site for the petrol pump is situated. The site, as per this site plan, is at a distance of 64 meters from the intersection. It was argued that the site for the petrol pump was in violation of the norms issued by the Indian Roads Congress vide IRC:16-2016 specifically Rule 3.5.2 and also against the norms notified on 24.01.2019 by the Government of Punjab and, as such, the Courts below ought to have granted the ad-interim injunction in favour of

the plaintiff-petitioner. Reliance has been placed on **Smt. Seema Devi vs. Indian Oil Corporation & Anr.** [2012(3) PLR 757] and **M/s Aditya HP Centre vs. Union of India & Ors.** [AIR 2021 HP 179].

Per contra, learned counsel appearing for the defendant-respondents have submitted that the NOC has been issued for installation of the petrol pump after the concerned departments gave the NOC's after proper verification and inspection of the site and after seeing all the feasibilities and practicability for installation of a petrol pump at the site. It was also contended that no loss or injury is going to be caused to the plaintiff-petitioner if the petrol pump is set up at the site and infact if any restraint order is passed against the defendant-respondents then they would suffer irreparable loss and injury. Regarding the norms issued by the Indian Roads Congress and the Government of Punjab it was submitted that the same are not mandatory and only directory. Reliance has been placed on **Palwinder Singh Oberoi vs. Union of India & Ors.** [2016(2) PLJ 618], **Environment Society of India & Ors. vs. Administrator, Chandigarh Administration & Ors.** [1997(3) RCR Civil 557] and interim order dated 29.11.2021 passed by the Supreme Court in the matter of **Indian Oil Corporation Ltd. & Anr. vs. M/s Aditya HP Centre & Ors.** [SLP (C) No.19149-19150 of 2021].

Heard learned counsel for the parties and perused the paperbook.

Both the Courts below have found that there is no prima facie case in favour of the plaintiff-petitioner and neither is the balance of convenience in his favour. Further, it has been found that the plaintiff-petitioner would not suffer any irreparable loss or injury if the relief claimed

for is not granted in his favour. The Trial Court held that *“From the perusal of jamabandi for the year 2016-2017, it appears that the Khasra No.1415/1 is in possession of Deputy Commissioner and plaintiff has no connection with the land in dispute. Further, the photocopies of no objection certificates regarding installation of petrol pump issued by various departments of the District Administration are on file. Whether the defendants have opposed the rules framed by the Government of India and Punjab Government and Punjab Petroleum Dealers Association that is matter of evidence which shall be proved by leading evidence at the later stage of the case. The genuineness of the site plan produced by the plaintiff-applicant is also a matter of evidence. At this stage, this Court is of the considered opinion that no prima facie case lies in favour applicant/plaintiff. Applicant/plaintiff has also failed to point the existence of circumstances on account of which it is likely to suffer an irreparable loss or injury, if the relief claimed for is not granted in his favour. Balance of convenience is not in his side”*.

On appeal by the plaintiff-petitioner the lower Appellate Court inter-alia found that *“The appellant-plaintiff has challenged the installation of petrol pump mainly on the round that it is in violation of guidelines IRC 12/2016 and the judgments relied upon by the learned counsel for appellant-plaintiff Aditya H.P Centre (supra) is not applicable because this judgment has already been stayed by the Hon’ble Supreme Court on 29.11.2021. The judgment Seema Devi (supra) is also not applicable as per judgment relied upon by the learned counsel for respondents i.e. Parmod Kumar (supra); Durga Dass (supra) and Palwinder Singh Oberoi (supra). In these judgments it has been observed that guidelines i.e. IRC are directory in nature and are not mandatory. It has been observed in Palwinder Singh*

Oberoi (supra) issue was pertaining to the violations of the clauses/norms of IRC guidelines of Oil companies and our Hon'ble High Court was pleased to observe that these are not mandatory and rather directory in nature. In the instant case the appellant-plaintiff has approached the court on the strength of these IRC guidelines, which are adopted by the Punjab Government also and the case of the respondents is squarely covered under the aforesaid judgments pertaining to the violations of guidelines. Perusal of file further reveals that proposed petrol pump is going to be installed in the Jail premises situated on the main road as alleged in the pleadings as well as indicated in the site plan relied upon by the appellant-plaintiff. The petrol pump is going to be installed as per the Government policy and this petrol pump is not going to be installed by any other private party. So far as the plea of learned counsel for appellant that it is not in the public interest and is dangerous to the public, is also without any force since the appellant-plaintiff under the garb of present suit is going to challenge the policy of the government, whereby all the jails are directed to install petrol pump and which is to be operated by the jail inmates/prisoners. The jail authorities are duty bound to run these petrol pump keeping in mind all the security measurements. Moreover, this court has no jurisdiction of judicial review to check the validity of policy of government".

The grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests :

- i) whether the plaintiff has a prima facie case;
- ii) whether the balance of convenience is in favour of the

plaintiff; and

- iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the “balance of convenience” lies. In several decisions the Supreme Court, while discussing the principles to be kept in mind in considering the prayer for interlocutory injunction, has held that the relief of interlocutory injunctions are granted generally to preserve the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or

irreparable harm, the Courts have evolved the guidelines as mentioned above. Being essentially an equitable relief, the grant or refusal of an interlocutory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case.

In the present case the arguments have been addressed on the point whether the the norms issued by the Indian Roads Congress vide IRC:16-2016 specifically Rule 3.5.2 and the norms notified on 24.01.2019 by the Government of Punjab IRC are mandatory and have been violated while granting the NOC in favour of the defendant-respondents. Applicability or otherwise of the said norms can be considered at the stage of interim injunction only for the limited purpose of ascertaining whether there is prima facie case in favour of the plaintiff-petitioner and not for determination of the question finally.

The case of Seema Devi (*supra*) cited by counsel for the plaintiff-petitioner is distinguishable as there was no denial by the respondents therein to the averments about violation of the IRC norms. In the present case the defendant-respondents have in their written statements averred that there is no infringement of any rules as alleged by the plaintiff-petitioner. The decision by the Himachal Pradesh High Court in the case of M/s Aditya HP Centre (*supra*), relied upon by the counsel for the plaintiff-petitioner, stands stayed by the Supreme Court vide interim order dated 29.11.2021 passed in SLP (C) No.19149-19150 of 2021.

A Division Bench of this Court in the matter of **Environment Society of India** (*supra*) has held the IRC guidelines to be recommendatory in nature. Similarly, in the case of **Palwinder Singh Oberoi** (*supra*) the IRC

guidelines have been held to be directory and not mandatory.

Further in the norms issued by the Indian Roads Congress vide IRC:16-2016, Rule 3.5.2 is part of Appendix-I with the description “*I-General Conditions/Norms for location/siting, layout and access to fuel stations along national highways*”. There is no averment in the plaint that the site where the defendant-respondents are setting-up the petrol pump is on a national highway. There is also no specific averment that the Chandigarh Road, on which the site is located, is a national highway. Thus, whether the said norms are at all applicable can be considered and determined only during the trial of the suit. Even the NOC granted in favour of the defendant-respondents makes no mention of the norms issued by the Indian Roads Congress vide IRC:16-2016 specifically Rule 3.5.2 and the norms notified on 24.01.2019 by the Government of Punjab upon which strong reliance has been placed by the leaned counsel for the defendant-respondents. The NOC also makes no mention about the site being on a national highway. Further, the site plan Annexure P-3 shows that there is already an existing petrol pump on the side of the plaintiff-petitioner’s house to the operation of which there has been no objection by the plaintiff-petitioner that it violates the norms issued by the Indian Roads Congress vide IRC:16-2016 and the norms notified on 24.01.2019 by the Government of Punjab.

As per the written statement, the petrol pump is being set up for rehabilitation and motivation of the prisoners confined in the Central Jail, Hoshiarpur after constituting the Punjab Prison Development Board which Board has been established by the Punjab Prison Development Board Act, 2020. The aims and objects of the said statute include the rehabilitation and motivation of the prisoners for their re-assimilation and social settlement.

Keeping in view the totality of the circumstances, the pleadings of the parties and the reasoning given by the Courts below to deny the interim injunction to the plaintiff-petitioner, this Court finds no error of law or jurisdiction in the impugned orders. The plaintiff-petitioner has failed to make out a prima facie case for grant of an interim prohibitory injunction. He has also not been able to convince the Court that the interim prohibitory injunction is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money and that the balance of convenience is in his favour.

Finding no merit, the present revision petition is dismissed. Pending applications, if any, also stand disposed off. Nothing mentioned in this order or in the impugned orders dated 22.02.2022 and 11.03.2022 passed by the Trial Court and the lower Appellate Court shall have any bearing on the merits of the suit.

08.04.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No