

CR-1031-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-1031-2022 (O&M)
Decided on: December 04, 2023

Virender Kumar @ Virender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ajay Jain, Advocate, and
Mr. Bhuwesh Lakhra, Advocate,
for the petitioner.

Mr. Yuvraj Shandilya, Assistant Advocate General, Haryana.

Mr. N.K. Vadehra, Advocate,
for Mr. Arvind Seth, Advocate,
for respondent Nos. 2 to 4.

Mr. Sushil Jain, Advocate,
for respondent No. 5.

SANJAY VASHISTH, J.

1. Present revision petition has been filed by plaintiff No. 5 – Virender Kumar (petitioner herein), against the order dated 08.02.2022, passed by the Court of learned Civil Judge (Junior Division) Rewari, whereby while considering the plea of temporary injunction pleaded through an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC, filed by the plaintiffs, has been dismissed, and the order dated 18.02.2022, passed by learned Additional District Judge, Rewari, vide which the appeal preferred by the plaintiffs against the order dated 08.02.2022, has been dismissed.

2. Facts in brief are that plaintiffs have filed a suit for declaration and permanent injunction under Section 91 read with Section 151 CPC. In the suit it has been pleaded that plaintiffs are permanent residents of Sector 4, Rewari. Defendant No. 4 - Estate Officer, Haryana Shehri Vikas Pradhikaran, Rewari, had allotted plots bearing Nos. 728, 729P, 849AP, 1322 and 229 with a promise to provide better facilities to the allottees. Plaintiffs have raised their residential buildings with due permission of defendant Nos. 1 to 4, after issuance of allotment/re-allotment letters. Defendant Nos. 1 to 4 (respondent Nos. 1 to 4 herein) had reserved an area in front of houses of the plaintiffs for a park and authorities have raised construction in the reserved area meant for the park in Sector 4, for its utilization by the residents of said sector.

3. Plaintiffs further pleaded in the suit that defendant No. 5 – Sant Raj is a strong and influential person, who in connivance with defendant Nos. 1 to 4 is adamant to raise construction within and outside the said park and wants to change nature of the park. Thus, to restrain defendant No. 5 from encroaching and raising any sort of construction in the public park situated in Sector 4, suit under Section 91 of the CPC, i.e. in the representative capacity has been instituted.

4. In reply to the injunction application, filed by defendant No. 5, it is pleaded that suit property is not part of the park and same is portion of Mustatil No. 192, Killa No. 1/3, measuring 0 Kanal 4 Marlas, which has already been released in favour of Munni Ram, vide letter No. 1/95/5912, dated 10.11.1995, issued by the Director, Haryana Shehri Vikas Pradhikaran

(Defendant No. 3), and some portion was also released vide order No. 1/2000/5427-44, dated 07.08.2020, passed by the then Haryana Urban Development Authority. Possession of said part of the land was also handed over by defendant Nos. 1 to 4, vide letter dated 02.08.2021. Even defendant No. 5 also deposited development charges and obtained No Dues Certificate on 04.09.2014. Land in question was never part of the park. Thus, there being no balance of convenience lying in favour of the plaintiffs, injunction application was sought to be dismissed.

5. After taking note of three basic principles for considering the plea of temporary injunction, i.e. (a) *prima facie* case; (b) balance of convenience; &(c) irreparable loss, as well as order(s) of release of land passed by official defendants, i.e. authorities of Haryana Shehri Vikas Pradhikaran/Haryana Urban Development Authority, and other documents such as site plan & possession certificate etc.; learned Civil Judge (Junior Division), Rewari, dismissed the temporary injunction application by concluding that possession of 4 marlas of land located in front of House Nos. 728 and 729 etc., had already been delivered to defendant No. 5. It is also noticed that earlier land was acquired by State of Haryana, but later on same was released in favour of Munni Ram. Two marlas of land was purchased by defendant No. 5 from Munni Ram, after paying sale consideration of Rs.7,32,000/-. Observation made by learned Trial Court in paragraph No. 5 of the impugned order dated 08.02.2022, is reproduced hereunder:-

“5. Injunction is a discretionary relief and applicant has to prove the following three things in order to obtain injunction

order:-

(a) *Prima-facie*

(b) *Balance of convenience and*

(c) *Irreparable loss.*

In the present case, in order to prove a prima facie case in their favour applicants have placed on record photographs of the suit property. On the other hand respondent no. 5 produced copy of sale deed, copy of mutation, copy of receipts, copy of possession certificate dated 02.08.20212, copy of letter bearing no. 1/2000/5427-44 dated 07.08.2000 alongwith site plan, copy of sale deed and copy of letter dated 10.11.1995 etc. Perusal of letter dated 10.11.1995 issued by Director, Panchkula shows that in the letter it has been specifically mentioned that Khasra no. 192//1/3 of sector-4, Rewari wherein construction had already been raised in 2 Marla land got released from acquisition on 10.11.1995. Letter issued by Director Urban Estate Department Panchkula dated 07.07.2000 shows that in favour of Munni Ram son of Ratti Ram total 4 Marla land (out of which 2 Marla land got released earlier) in Khasra no. 192//1/3 got released. Site plan attached with the letter also duly corresponds with the site plan mentioned in possession certificate issued by estate officer HUDA Rewari in favour of Santraj Sharma son of Lal Singh. Possession certificate and site plan mentioned in the certificate also specifically shows that possession of 4 Marla land located in front of house no. 728, 729 etc. got delivered to respondent no. 5. From the above discussed documents relied upon by defendant no. 5 prima facie it appears that he is owner in possession of suit property. Earlier the suit land was acquired by the State of Haryana but later on the same got released in favour of Munni Ram. Sale deed bearing Vasika no. 4085 dated 08.08.2012 shows that Munni Ram son of Ratti Ram has sold his 2 Marla land to defendant no. 5 Santraj Sharma for sale consideration of Rs.7,32,000/-. Possession certificate also got issued in favour of defendant no. 5 by HUDA, Rewari. Being owner of the suit land respondent no. 5 has right to raise construction and if at this stage he be restrained from raising further construction at the spot then he would suffer great hardship. Balance of convenience also lies in favour of respondent no. 5. Keeping in view the totality the facts and circumstance discussed above, the present application is hereby dismissed being devoid of any merits.”

6. In the appeal against the order dated 08.02.2022, when the plaintiffs again addressed their arguments before the learned Appellate Court, in paragraph No. 7 of the impugned order dated 18.02.2022, plea of temporary injunction has been declined and order passed by learned Trial Court is affirmed. While examining totality of circumstances, learned Appellate Court gave its firm finding that balance of convenience lies in favour of defendant No. 5 and if any construction is raised by him, same shall be at his own risk, subject to final outcome of the case. Even defendant Nos. 1 to 4, i.e. authorities of Haryana Shehri Vikas Pradhikaran would also be at liberty to take suitable action in such eventuality. Thus, learned Appellate Court found that the plaintiffs are not entitled to any discretionary relief. Rather, facts of the case and documents available on record shows that right of defendant No. 5 is more covered with three settled and basic principles, i.e. (a) *prima facie* case, (b) balance of convenience, lies in favour of defendant No. 5 and (c) in case the owner of land is deprived from raising construction after grant of due permission by concerned authorities, he may suffer irreparable loss. Findings recorded by learned Appellate Court in paragraph No. 7 of its order, says as under:-

“7. The plaintiffs set the law into motion by filing the suit for declaration and permanent injunction and Section 91 read with Section 151 CPC before the Ld. Trial Court. They are asserting that the defendant No. 5 is raising construction upon the property reserved for public park. The defendants No. 2 to 4 through their counsel suffered statement that they do not want to contest the stay application. The defendant No. 1 through counsel also suffered the statement that he wants to argue the application without filing reply to the stay application. Letter dated 10.11.1995 issued by Director, HSVP clearly contains that khasra No.192//1/3 of Sector-4, Rewari was released from acquisition on 10.11.1995. The site plan is also attached with

the same reflecting the release of some portion from the property reserved for public park. Again letter dated 07.07.2000, 4 marla land was released in favour of Munni Ram inclusive of 2 marla land already released in his favour. The defendant No.5 deposited extra development charges on 18.06.2017. The possession certificate was issued to him by Estate Officer, HSVP, Rewari on 02.08.2012. The defendants No. 2 to 4 have not raised any objection during the course of argument. Ld. Counsel for the plaintiffs argued that the defendant No.5 is raising construction without approval of site plan from the competent authority i.e. HSVP. Nevertheless, it has been tacitly admitted by defendants No.2 to 4 that the defendant No.5 does not require the approval as the land has already been released from acquisition. Furthermore, the defendant No.5 deposited the development charges being the owner of suit land after its purchase from original owner Munni Ram. In case, the defendant No.5 is obstructed with any interim restraint he shall suffer irreparable loss as the entire documentary account is supporting his case. The plaintiffs have failed to make out any prima facie case in their favour. Balance of convenience is also tilted in favour of defendant No. 5. Further, the construction raised by defendant No. 5 shall be at his own risk, subject to the final outcome of the case and the defendants No.1 to 4 shall be at liberty to take whatever action they deem fit in such eventuality. In Esha Ekta Apartments CHS Ltd. and others Vs. The Municipal Corporation of Mumbai and another 2012(3) RCR (Civil) 933 the application for temporary injunction was refused by the trial court and it has been observed by Hon'ble Apex Court that Appellate Court is not to interfere simply because a different view was possible. It was held that Appellate court is to interfere where discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the trial court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. During the course of arguments learned counsel for plaintiffs has failed to show as to how the impugned order dated 08.02.2022 passed by the Ld. Trial Court is arbitrary or perverse or against the settled principles of law .”

7. In exercise of revisional jurisdiction, I have heard learned counsel for the parties at length and carefully gone through the documents available on record with their able assistance. Learned counsel for petitioner/plaintiff No. 5 has again made an attempt to interfere with the well reasoned findings given by learned Courts below, whereas he failed to

satisfy this Court for reaching to any other conclusion, on any of the factual position recorded in the impugned orders, proving that the same is incorrect or against record.

I do not find any reason to interfere with the findings recorded by learned Courts below. Undoubtedly, findings are in the nature of making out *prima facie* case on the basis of documents and material available on record, which is to be proved by way of leading evidence by respective parties.

This Court is also noticing that official respondents/authorities have neither controverted the stand taken by defendant No. 5 in any manner nor opposed the intention of defendant No. 5, regarding construction of building over the area in dispute. This factor also proves that a strong *prima facie* case lies in favour of defendant No. 5.

Accordingly, while maintaining the impugned orders, present revision petition is hereby dismissed being devoid of any merit.

Pending civil miscellaneous application(s) are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

December 04, 2023
Pkapoor

Whether speaking/reasoned?	✓Yes/No
Whether reportable?	✓Yes/No