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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 5th OF JANUARY, 2024

WRIT PETITION No. 879 of 2015

BETWEEN:-

1. **BABULAL S/O SHRI MULLA, AGED-75 YEARS, R/O
PATHAR MOHALLA GUNA (MADHYA PRADESH)**
2. **BAHGWANLAL S/O SHRI BABULAL KUSHWAH,
AGED-45 YEARS, R/O PATHAR MOHALLA, NEAR
HANUMAN MANDIR GUNA (MADHYA PRADESH)**
3. **ROOP SINGH S/O SHRI BABULAL KUSHWAH,
AGED-42 YEARS, R/O PATHAR MOHALLA, TAHSIL
AND DISTRICT GUNA (MADHYA PRADESH)**
4. **GOPAL S/O SHRI BABULAL KUSHWAH, AGED-39
YEARS, R/O PATHAR MOHALLA, TAHSIL AND
DISTRICT GUNA (MADHYA PRADESH)**
5. **LAXMAN S/O SHRI BABULAL KUSHWAH, AGED-30
YEARS, PATHAR MOHALLA, TAHSIL AND
DISTRICT GUNA (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI YOGESH SINGHAL- ADVOCATE)

AND

**MATHURALAL S/O SHRI MULLA, AGED-65 YEARS, R/O
PATHAR MOHALLA GUNA (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI RISHIKESH BOHRE- ADVOCATE)

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*This petition coming on for admission this day, the court passed the
following:*

ORDER

The present petition under Article 227 of the Constitution of India has

been preferred by the petitioners being aggrieved by the order dated 17.07.2014 passed by learned Trial Court, whereby an application preferred by respondent/plaintiff under Order 39 Rule 2 (a) of the CPC has been allowed and the petitioners/defendants were held to be guilty of breach of injunction and willful disobedience of the order dated 05.09.2012 passed by the Trial Court and, therefore, the petitioners were directed to be kept in Civil prison for the period of one month.

Petitioners had assailed the aforesaid order in appeal, but the appellate Court vide order dated 09.01.2015 had dismissed the said appeal and had affirmed the order passed by the learned Trial Court.

Aggrieved by the aforesaid, the present petition under Article 227 of the Constitution of India has been preferred.

Learned counsel for the petitioner has vehemently argued that the order passed by the learned Trial Court invoking the provisions under Order 39 Rule 2 (a) of CPC dated 17.07.2014 is *per se* illegal as it was *dehors* the pleadings of the respondent/plaintiff and, therefore, was not sustainable in the eyes of law.

It was further contended that from the bare allegations made by the respondent/plaintiff, it would be evident that the allegations were regarding flouting of order of injunction dated 05.09.2012, whereby they were restrained from interfering with the peaceful possession of the respondent/plaintiff by themselves or by any other means, but on 16.10.2012 petitioner no.1 to 5 armed with deadly weapons (axe, farsa, talwar, and lathi) and along with female members of their family entered the fields (land in dispute) and had severed Soyabean crop standing and when the son of the plaintiff Gendalal, Mohana and Lalu tried to stop them they hurled filthy abuses and were ready to fight.

In furtherance of his arguments it was contended that in the complaint, it

was further averred that when the respondent/plaintiff tried to show the order of the Trial Court, the petitioners refused to accept it and tried to assault them and somehow the plaintiff and his family members escaped and, thereafter, in total derogation of the very order of injunction, the petitioners severed 60 quintals of Soyabean by means of a thresher of Gajraj Singh, looted it and went away and though the plaintiff tried to report the matter to the police, the report was not written and on 20.10.2012 the petitioners again came to the disputed land and started ploughing the field and when the plaintiff tried to stop them, he was threatened for life, thus, since the petitioner in the aforesaid manner had flouted the order of injunction, the application under Order 39 Rule 2(a) was filed, which goes to show that there was no question of possession being taken by the petitioners and, therefore, the learned Trial Court on a wrong assumption that the petitioners have forcibly taken possession of the land in dispute, had passed the impugned order which is *per se* illegal.

It was further submitted that the learned Trial Court in paragraph 9 has categorically held that the factum of loot of the Soyabean crop has not been established beyond doubt against the petitioners, which was the basic allegation of flouting the interim injunction order and when the said allegation itself was not held to be proved, the order dated 17.07.2014 is bad in law. It was lastly contended that aforesaid aspect has not been considered by the learned Appellate Court and had dismissed the appeal in a routine manner and had upheld the order passed by the learned Trial Court which also deserves to be set aside.

Shri Rishikesh Bohre appearing for the respondent/plaintiff submits that no interference is warranted in the present petition as two fact finding courts

have given concurrent findings against the petitioners regarding flouting of the interim injunction order dated 05.09.2012. Thus, prayed for dismissal of the present petition.

After hearing the rival contentions and perusing the impugned orders, this Court finds that the learned Trial Court as well as the appellate authority had not considered the allegations made by the respondent/plaintiff in his application under Order 39 Rule 2(a) in its right perspective. The relevant extract of the allegations as mentioned in the application against the petitioner of flouting the interim injunction order is reproduced herein below:

5. यह कि आवेदक की उक्त सोयाबीन की फसल पक कर तैयार होने पर दिनांक 16.10.12 मंगलवार कुंवार सुदी एकम को अनावेदक क्रमांक 1 लगायत 5 बाबूलाल और उसके लडके भगवान सिंह, रूपसिंह, गोपाल, एवं लक्ष्मण ने दिन के 10 बजे घातक हथियारों कुल्हाड़ी, फर्शी, तलवार, लाठी लेकर महिलाओं के साथ उक्त भूमि के खेत में घुसकर सोयाबीन काटना शुरू किया तब आवेदक ने अपने पुत्र गेंदालाल, मोहना तथा लल्लू के साथ खेत पर जाकर अनावेदकगण को सोयाबीन काटने से मना किया। तब अनावेदकगण ने आवेदक को अश्लील मों-बहन की गंदी गालियों दी और लडने झगडने तैयार हो गए तब आवेदक ने न्यायालय श्रीमान के अस्थाई निषेधाज्ञा आदेश, स्टे-ऑर्डर दिनांक 5.9.12 को अनावेदकगण को दिखाया तब अनावेदकगण ने आवेदक को अश्लील मों-बहन की गंदी गालियों देते हुए कहा कि ऐसे अदालतों के स्टे-ऑर्डर हमने कई देखे हैं और हम स्टे-ऑर्डर नहीं मानते हमारे हथियारों में और हम में ताकत है इसलिए हम सोयाबीन काट कर ले जाएंगे भले ही हमें अदालत से सजा हो जाए। अनावेदक क्रमांक 1 बाबूलाल ने अपने लडकों भगवान सिंह बगैरह से कहा कि इन्हें जान से मार दो और सजा होगी उसे मैं भुगत लूंगा तब अनावेदक क्रमांक 1 लगायत 5 घातक हथियार लेकर आवेदक और उसके लडकों को मारने दौड़े तब आवेदक और उसके लडकों ने भाग कर जान बचाई।

6. यह कि अनावेदक क्रमांक 1 लगायत 5 ने न्यायालय के स्टे-ऑर्डर को भंग करके जबर-जस्ती ताकत के भर विवादित भूमि में खड़ी सोयाबीन की फसल जो करीब 7 क्वंटल सोयाबीन निकला है और 21 हजार रुपये मूल्य की है उसे चोरी करके गजराज सिंह पुत्र धन्नालाल कुशवाह पवन कॉलोनी पठार मोहल्ला गुना के थ्रेसर से उक्त सोयाबीन फसल निकलवाकर ले गए हैं।

7. यह कि आवेदक ने उक्त घटना की रिपोर्ट करके दिनांक 16.10.12 को पुलिस कोतवाली केन्ट गुना को घटना का हाल बताया तथा रिपोर्ट दर्ज करने का निवेदन किया लेकिन पुलिस ने रिपोर्ट दर्ज नहीं की और यह कहकर भगा दिया कि तुम्हारा अदालत में मुकदमा चल

रहा है इसलिए वहीं कार्यवाही करो।

8. यह कि आवेदक की उक्त विवादित भूमि में अनावेदक क्रमांक 1 लगायत 5 ने पुनः दिनांक 20.10.12 शनिवार को विनोद पुत्र रामकुमार शर्मा बाडई निवासी चौदशाहवली गुना का ट्रेक्टर ले जा कर और खेत में घुसकर हाकाई जुताई करने लगे और आवेदक के खेत की बागड तोड़ दी। जब आवेदक मना करने पहुँचा तो लड़ने-झगड़ने तैयार हो गए और जान से मारने की धमकी दी। इसकी रिपोर्ट करने भी आवेदक दिनांक 20.10.12 को पुलिस कोतवाली गया लेकिन पुलिस ने रिपोर्ट दर्ज नहीं की और अदालत में कार्यवाही करने का कह कर भगा दिया।

अतः निवेदन है कि आवेदक की ग्राम गुना पहाना 75 तहसील गुना में स्थित भूमि सर्वे नं. 800 मिन 2 में से रकवा 0.335 हे. पर न्यायालय श्रीमान के अस्थाई निषेधाज्ञा आदेश दिनांक 05.09.12 का भंग करने और जबरजस्ती ताकत के बल उक्त भूमि में खड़ी आवेदक की 21 हजार रुपये की सोयाबीन की फसल दिनांक 16.10.12 को काटकर ले जाने तथा पुनः दिनांक 20.10.12 को स्टेटऑर्डर का उल्लंघन कर विवादित भूमि में ट्रेक्टर से हाकाई जुताई करने और मेड तोड़ने का अनावेदक क्रमांक 1 लगायत 5 को उचित व शिक्षा प्रद दण्ड दिया जावे।

From the aforesaid allegations it would be evident that on 16.10.2012 the petitioners are stated to have entered the fields (land in dispute) of the respondent/plaintiff and had harvested/severed the Soyabean crop standing and had threatened plaintiff and his family members and had forcibly taken the crop. There is no allegation of taking the forcible possession of the said land.

Learned Trial Court in paragraph 9 has categorically held that so far as the loot of the Soyabean crop by the petitioners is concerned, it was not established, but on the basis that the petitioners have taken forcible possession of the land in question, it was held that the petitioners have flouted the interim injunction order dated 05.09.2012 which appears to be beyond the pleadings and completely illegal. It further observed by this Court that this aspect has also not been considered by the appellate Court.

Both the orders, therefore, appears to be perverse and *per se* illegal, accordingly, are hereby set aside.

The petition is **allowed** to the above extent.

Chandni

