2023:PHHC:153680

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6 of 2021 (O&M)
Reserved on: 01.12.2023
Date of decision: 04.01.2024

Hari Ram

....Petitioner

Versus

Jagdeep Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Kanwaljit Singh, Sr. Advocate
with Mr. C.M. Munjal, Advocate
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate
with Mr. Kunal Mulwani, Advocate
Mr. Vikas Thakur, Advocate
and Mr. Daksh Uppal, Advocate
for the respondent.

NAMIT KUMAR J. (Oral)

1. The instant revision petition has been preferred by the petitioner/plaintiff impugning the order dated 23.12.2020 passed by the Court of learned Additional District Judge, Gurugram, whereby the order passed by the learned trial Court dated 16.09.2020, allowing the application under Order 39 Rules 1 & 2 CPC, filed by the petitioner/plaintiff has been set-aside. Parties to the lis, hereinafter, shall be referred to by their original position in the suit.

2. The brief facts as have been pleaded in the petition are that the petitioner/plaintiff filed a suit for permanent injunction along with an application under Order 39 Rules 1 & 2 CPC and it was pleaded in the suit that he is owner-in-possession of property, shown with letters ABCDEF in the site plan attached with the plaint, situated at village

Jharsa. The property is part of khewat No.1302, khatuni No.1656, Rect. No.56 kila No.9/2 as per jamabandi for the year 2001-02. The plaintiff and his two brothers are recorded as owners of land comprised in Rect. No.56, Kila No.9/2. Bale Ram [father of plaintiff] was in possession of afore-mentioned property as a Gair Maurushi. Later on, it was purchased by plaintiff and their brothers. At the time of consolidation of holdings, the land measuring 2 Kanals 16 Marlas comprised in Khewat No.624, Khatoni No.758, Khasra No.179 was left as ***'rasta a aam'*** (hereinafter to be referred as passage-in-dispute). The passage-in-dispute has been shown in aks-sijra and it has two karam width. It runs from North to South. Land comprised in Khasra No.26 kila No.9/2 abuts on the passage-in-dispute. The plaintiff has constructed his residential house and a shop which open in the passage-in-dispute. The plaintiff has right to access through passage-in-dispute which is public passage. The defendant has no right to cause interference in the use of passage-in-dispute by the plaintiff. The defendant threatened to interfere in the right of the plaintiff to use the passage-in-dispute. If the defendant succeeded in creating obstruction in the use of passage by plaintiff, then the plaintiff would suffer irreparable loss. With these pleadings, he has claimed the interim relief.

3. The respondent/defendant contested the suit by filing a detailed written statement wherein it was submitted that suit has been filed to extort money from the defendant as plaintiff is aware that school is required to be constructed over the land earmarked to the same within a limited period otherwise possession of the site

would revert back to the government. Vide Award No.02 dated 07.06.2004, land comprised in khasra No.179 to the extent of 179/2 (0-14) and 179 /3 (0-5) was acquired by Land Acquisition Collector and was transferred to HUDA. M/s Pioneer Land infrastructure Ltd. purchased the land comprised in afore-mentioned khasra number as per sale deed bearing No.17265 dated 11.12.2009. Mutation No.5826 was entered and sanctioned in favour of the purchaser. M/s Pioneer Land Infrastructure amalgamated the land comprised in khasra No.179/2 and 179/3 with other land owned by it and constructed and developed a residential colony. It obtained various licenses from time to time from Director of Town and Country Planning, Haryana. The colony is known as Greenwood City. License No.74 of 2010 was granted by competent authorities regarding land comprised in khasra No.179/2 and 179/3 and the character of land has been changed. Part completion certificate was granted by Director of Town and Country Planning, Haryana on 03.04.2019. The land earmarked for construction of nursery school was allotted to defendant vide allotment letter dated 10.06.2019. Possession letter was issued in favour of the defendant on 21.12.2019. He purchased land as per conveyance deed dated 04.11.2019. He is owner-in-possession of said land and is entitled to use the land in any manner. No passage ever existed at spot after grant of license No.74 of 2010. The passage in question was never utilized by plaintiff after its acquisition by HUDA. The plaintiff and his predecessor never challenged conversion of land sanctioned vide license No.74.

4. The learned trial Court allowed the application under Order 39 Rules 1 & 2 CPC by recording a finding that the plaintiff has been using the passage in dispute since long and its closure would cause irreparable loss to the plaintiff and, therefore, till the decision of the suit, the defendants were restrained from causing any interference in use of the passage of the plaintiff forcibly and the defendant is free to take steps regarding passage in dispute in due course of law. The relevant portion of the order dated 16.09.2020, passed by the learned trial Court, reads as under:-

> *"5. It is well settled law that fulfillment of certain conditions is must for grant of interim injunction. These are prima-facie case, irreparable loss and balance of inconvenience. A prima-facie case means that a case of trial has been made out in favour of the plaintiff-applicant. In the present suit, the plaintiff has sought relief of permanent injunction to the effect that defendant be restrained from causing interference in use of passage-in-dispute by the plaintiff. He has also sought relief of mandatory injunction. As per the version of the plaintiff, he has been using the passage-in-dispute which is public passage. The passage-in-dispute was left at the time of consolidation of holdings and has been shown in aks-sijra. On the other side, the version of the defendant is that plaintiff never used the passage-in-dispute after its acquisition by HUDA. No passage ever existed at spot after grant of license No.74 of 2020.*
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> *6. In order to prove the existence of passage-in-dispute, the plaintiff has placed on file jamabandi for the year 1961-62 and 2001-02 and aks-sijra. In the jamabandi, it has been mentioned that land comprised*

in khasra No.179 is Gair Mumkin Rasta. Aks-sijra also shows existence of passage-in-dispute. The defendant has placed on record copy of award vide which land comprised in khasra No.179 and others was acquired. The defendant has also placed on file demarcation plan. It also shows existence of passage-in-dispute on the spot. In this way, document of the defendant also proves the existence of passage-in-dispute on the spot. The learned counsel for the defendant has argued that acquisition is always free from all encumbrances and therefore, the plaintiff cannot claim right in the land comprised in khasra No.179 and passage-in-dispute. His contention is correct. But the defendant has not placed on file any such document which can show that after acquisition of the land comprised in khasra no.179, the passage-in-dispute was closed/obstructed or any building or other structure was erected over it. Rather his document itself shows existence of passage-in-dispute on the spot. The Award was passed 07.06.2004. The defendant has also not produced any such document which can establish that plaintiff has not been using the passage-in-dispute after its acquisition and grant of license dated 25.09.2010. The questions: whether passage-in-dispute is public passage, whether only plaintiff is using the passage-in-dispute or other persons are also using the passage-in-dispute; whether there exists any other passage via which plaintiff can approach his property; cannot be determined at this stage. All these questions shall be decided after adducing of evidence by both the parties. As passage-in-dispute exists on the spot and the plaintiff has been using the same, there is prima-facie case in favour of the plaintiff. As the plaintiff has been using passage-in-dispute since long, its closure would cause *irreparable loss to the plaintiff. Balance of convenience is also in favour of the plaintiff. Hence, till the decision of the suit, the defendant is restrained from causing any interference in use of the passage by the plaintiff forcibly. However, the defendant is free to take steps regarding passage-in-dispute in due course of law. The application stands disposed of. Nothing observed herein shall have any bearing on the merits of the case."*

5. Aggrieved by the said order, the respondent/defendant preferred an appeal before the learned Lower Appellate Court, challenging the order dated 16.09.2020 passed by the learned trial Court and the said appeal has been allowed by the learned Lower Appellate Court vide order dated 23.12.2020. The relevant portion of the said order, reads as follows:-

"15. Learned trial court, vide impugned order dated 16.09.2020 has disposed of the application filed under Order 39 Rule 1 and 2 read with Section 151 CPC with the opinion that a prima-facie case had been made out in favour of the plaintiff/respondent on the basis of the revenue record as the passage in question had been reflected in the jamabandies upto the year 2001-02 as well as the Aks Shizra. These jamabandies commencing from the year 1961-62 upto the year 2001-02 had been made a part of record which shows that the property shown in khasra no.179 measuring 2 kanal 16 marla situated at village Jharsa was a common passage i.e. rasta-sare-aam. Undoubtedly, the opinion of learned trial court is correct upto the extent that a presumption is raised by such revenue record that this passage in dispute had existed in khasra no. 179 upto the year 2001-02. Now this is a disputed question of fact to be determined, whether the

passage in question had existed at the spot subsequent to the year 2001-02 or not, and, whether this presumption of correctness of the revenue record has been rebutted by the appellant/defendant in the matter in hand or not.

16. From the side of the appellant/defendant, some important documents have been placed on record which apparently have not been appreciated by learned trial court like the award no.2 dated 07.06.2004 through which the total land measuring 19 marla out of khasra no. 179/2 and 179/3 was acquired by HUDA. Even mutation No. 5816 was also sanctioned in favour of HUDA on the basis of that award. This award as well as mutation prima-facie reflect that the possession over this land measuring 19 marla comprised in khasra no. 179/2 (0-14), 179 (0-5) was also handed over to HUDA. Whether those acquisition proceedings were legally correct or not, the same was never challenged by the plaintiff or his predecessor at any point of time before the Hon'ble High Court. It has never come in question, how the land comprised in khasra no.179/2 (0-14) and 179/3 (0-5) was acquired by HUDA through the award no.2 dated 7.6.2004 specifically when if the said khasra number was shown in revenue record as a common passage and to whom the compensation of acquisition was paid. Even HUDA also subsequently sold out some land including this land measuring 19 marla comprised in khasra no.179/2 and 179/3 to M/s Pioneer Land Infrastructure Limited vide sale deed dated 11.12.2009. A mutation No.5826 was again entered and sanctioned on the basis of that sale deed suggesting the delivery of possession over this land measuring 19 marla comprised in khasra no.179/2 and 179/3 to M/s Pioneer Land Infrastructure Limited. This sale deed was also never challenged in any court of law by the plaintiff or his *predecessors. It is also very important to mention that this sale deed dated 11.12.2009 was got registered after a period of nearly 20 years of the purchasing of the property by the plaintiff and his two brothers of the land comprised in khasra no.9/2 through the sale deed dated 27.12.1989. If the rights of the plaintiff had been adversely affected to use the alleged passage comprised in khasra no.179 by passing of the award dated 07.06.2004 or the registration of the sale deed dated 11.12.2009, the plaintiff was entitled to challenge all these documents i.e. acquisition of khasra no.179/2 and 179/3 upto the extent of 19 marla as well as subsequent sale of the same property through the sale deed dated 11.12.2009 by HUDA to M/s Pioneer Land Infrastructure Limited. However, the plaintiff failed to pursue his such lawful remedies.*

17. Not only this, after obtaining the licence from Director Town and Country Planning Department, Haryana on 25.09.2010, a residential colony 'Greenwood City' had been developed by M/s Pioneer Land Infrastructure Limited as well as M/s Unitech Limited over the land measuring 127.475 acre including the land measuring 19 marla comprised in khasra No.179/2 and 179/3. A completion certificate dated 03.04.2019 has also been issued by Director, Town and Country Planning Department in regard to this residential project. Even this land comprised in khasra no.179/2 and 179/3 upto the extent of 19 marla had also been purchased subsequently by the present defendant through the conveyance deed dated 04.11.2019 from its earlier owner namely M/s Pioneer Land Infrastructure Limited in whose favour the sale deed dated 11.12.2009 had been earlier executed for this property by HUDA. This conveyance deed dated 04.11.2019 has been executed by M/s Pioneer Land

Infrastructure Limited in favour of the defendant for the construction of nursery school for which the possession letter dated 21.12.2019 has also been issued in favour of the defendant. Even the plaintiff or his brothers, despite of being adversely affected, has also never challenged this conveyance deed dated 21.12.2019 in any court of law. In this manner, though the presumption raised by the revenue record in regard to the existence of passage in question in the land comprised in khasra no.179 up to the year 2001-02 has been rebutted with the subsequent revenue record placed in the shape of mutation no.5816 and 5826 sanctioned on the basis of award no.2 dated 07.06.2004 as well as the sale deed dated 11.12.2009 respectively, yet the plaintiff has not placed any document on record subsequent to the year 2001-02 which may suggest that this passage is still existing in khasra no.179 being used by the plaintiff or his brother. Once the mutation no. 5816 and mutation no. 5826 had been sanctioned by the revenue authorities, then these two mutations would have naturally been incorporated in jambandies prepared subsequent to the year 2001-02. However, ***no revenue record like jamabandies prepared after the year 2001-02 has been placed on record by the plaintiff, or, that has been deliberately withheld by the plaintiff from this court.***

18. As a cumulative implication of the above mentioned facts and circumstances as well as considering the documents placed before this court from both the sides, this court is having a view that learned trial court has failed to appreciate the events taken place subsequent to the year 2001-02 which have been recorded in various documents like the award dated 07.06.2004, sale deed dated 11.12.2009, licence dated 25.09.2010, completion certificate dated 03.04.2019, conveyance deed dated

> *04.11.2019 executed in favour of the defendant which suggest an inference contrary to the opinion in regard to the existence of the primafacie case recorded in favour of the plaintiff vide the impugned order dated 16.09.2020. The authorities cited by the learned counsel Sh. R. A. Gupta appearing for the respondent are not applicable in the matter in hand due to the reason that in the instant matter, the presumption raised by the revenue record in regard to the existence of the passage in question up to the year 2001-02 has been rebutted and in view of this court, the learned trial court has not exercised the discretion correctly on the basis of documents placed on record which warrants interference of this court. Accordingly, this court differs in its opinion from the learned trial court recorded in the order dated 16.09.2020 and the said order is hereby set aside. This civil miscellaneous appeal is hereby allowed with no order as to costs.*
>
> *19. It is made clear that nothing observed in this order shall be construed by the learned trial court as an expression of opinion on the merits of the case.*
>
> *20. Lower court file with a copy of judgment be sent back to the learned trial court. Parties through their counsel are directed to appear before learned trial court on 07.01.2021. Memo of costs be prepared. After due compliance, file be consigned to record room."*

6. Hence, the instant revision petition has been filed by the petitioner/plaintiff, challenging the order dated 23.12.2020, passed by the learned Lower Appellate Court, Gurgaon.

7. Learned Senior counsel appearing for the petitioner contends that the petitioner is using the said rasta/passage which is in existence since long. He further submits that the petitioner has

constructed his residential house and a shop opening in the passage/rasta, which is part of Khasra No.179 and the petitioner has right to use this rasta being a part of public rasta and has a right of enjoyment as passage. He further submits that the consolidation took place in the village Jharsa about more than 40 years back and the passage were carved out during the consolidation proceedings and whatever passage was left were duly incorporated in the revenue record and the rasta in Khasra No.179 (2-16) was also left as ***"Rasta Aam"*** as is clear from the Jamabandis from the year 1961-62 and 2001-02. In support of his contentions, he has placed reliance upon the judgments of the Hon'ble Supreme Court in ***"Neon Laboratories Limited vs Medical Technologies Limited and others",*** **2015(4) RCR (Civil) 860,** ***"Hari Ram vs Jyoti Prasad and another",*** **2011(2) RCR (Civil) 515,** ***"Municipal Board, Manglaur vs Mahadeoji Maharaj",*** **AIR 1965 SC 1147,** ***"Shri Partap Singh (Dead) Through LRs and Ors. vs Shiv Ram (Dead) Through LRs",*** **2020(2) RCR (Civil) 120** and ***"Seema Arshad Zaheer and others vs Municipal Corporation of Greater Mumbai and others",*** **2006(4) RCR (Civil) 293**. Further, reliance has been placed upon the judgments passed by this Court in ***"Balvir Singh and another vs Ranjit Singh and others",*** **2017(5) RCR (Civil) 207,** ***"Amar Nath (Deceased through LRs and another vs Beli Ram and another",*** **1991(1) SLJ 378,** ***"Gurmail Singh and another vs Baljit Kaur",*** **2014(3) PLR 436,** ***"Kartar Singh vs State of Haryana and others",*** **2013(3) LAR 605** and ***"Jiya Lal vs Muni Lal",*** **2000(4) RCR (Civil) 471**.

8. On the other hand, learned senior counsel appearing for the respondent/defendant submits that since the land where this rasta exists had already been acquired in the acquisition proceedings and the possession of the said land has already been taken over by Haryana Urban Development Authority (hereinafter to be referred as "HUDA") vide award No.02 dated 07.06.2004 and even thereafter, mutation was sanctioned in favour of HUDA and the said acquisition proceedings were in the knowledge of the petitioner/plaintiff and were never questioned by him in any Court of law. In support of the said contention, he has drawn attention of this Court to the averments made in the plaint in Para 6, which reads is as under:-

> ***"6. That plaintiff and Ramesh, thus, became co-owner to the extent of ½ share each in the land of Rectangle No.56 Killa No.9/2 measuring 0 kanal 11 marla. The said area became residential and commercial. The State of Haryana issued Notification under Section 4 of Land Acquisition Act in respect of land of Rectangle No.56 Killa No.9/2 but the same was released."***

9. He further submits that the petitioner/plaintiff is not the owner of the land, in question and even as per the map attached with the suit itself, he has an alternative rasta to his residential house and shop and, therefore, cannot claim injunction against the defendant. He also submits that once the land has already been acquired by the Government, all its previous rights stand dissolved as the said land has not been exempted from acquisition and, therefore, he cannot claim any right for usage of the passage. He also refers to the Zoning Plan dated 22.06.2012, which has been duly approved by the concerned statutory

authorities much prior to filing of the suit. In support of his contention, he has placed reliance upon the judgments ***"Jatinder Nath Sharma vs Chandigarh Administration"*** **in CWP No.12468 of 2012, decided on 22.04.2015** and ***"Lakhmeer Singh and others vs State of Punjab and others",*** **2014 (75) RCR (Civil) 144**. Lastly, he submits that once the land has been acquired, the Civil Court has no jurisdiction to entertain a suit and to buttress this contention, he has placed reliance upon a judgment of the Hon'ble Supreme Court in ***"Commissioner, Banglore Development Authority and another vs Brijesh Reddy and another",*** **2013 (3) SCC 66**.

10. I have heard learned counsel for the parties and perused the record of the case.

11. It has come out from the record that prior to 2001-02, there was a rasta in Khasra No.179, which already stood acquired and vide award No.02 dated 07.06.2014, the land comprised in Khasra No.179 measuring 2 Kanals 16 Marla to the extent of 179/2 (0-14) and 179/3 (0-5), among other land parcels, was acquired by the Land Acquisition Collector, Urban Estate, Haryana and the possession of the same was transferred to HUDA and thereafter, Mutation No.5816 was sanctioned in favour of HUDA. Subsequently, M/s. Pioneer Land Infrastructure Limited had purchased land comprised in Khasra No.179/2 (0-14) and 179/3 (0-5), among other land parcels, from HUDA vide sale deed dated 11.12.2009 bearing Vasika No.17265 on payment of valuable sale consideration. The possession of the aforesaid land was duly transferred to M/s. Pioneer Land Infrastructure Limited by HUDA and Mutation

No.5826 had been sanctioned in favour of M/s. Pioneer Land Infrastructure Limited and thus, on the basis of the aforesaid sale deed dated 11.12.2009, M/s. Pioneer Land Infrastructure Limited became an absolute and lawful owner in possession of the aforesaid land and has been in continuous and exclusive possession thereof since then and residential colony i.e. Greenwoods City, has been constructed and developed by M/s. Pioneer Land Infrastructure Limited by amalgamating the land in Khasra No.179/2 (0-14) and 179/3 (0-5) with other land and M/s. Pioneer Land Infrastructure Limited and M/s. Unitech Limited along with its associates have acquired and purchased 127.45 acres of land and obtained various licenses from time to time. License No.74 of 2010 dated 24.09.2010, has been granted by the competent authority with respect to the land in Khasra No.179/2 (0-14) and 179/3 (0-5) and the character of the land has been changed measuring 0.85 acres and Zoning Plan dated 22.06.2012 for Nursery School site measuring 0.20 acres in Block – G, has been approved by the authorities concerned and thereafter, part Completion Certificate dated 03.04.2019 has been granted by the Director, Town and Country Planning, Haryana, vide Memo No.LC-386-DTP(NK)/2019/9020 and on 10.06.2019, allotment of school site earmarked for Nursery School measuring 0.20 acres in favour of the defendant has been issued and thereafter, possession letter has also been issued in favour of the defendant on 21.12.2019 and no passage ever existed at the spot after grant of License No.74 of 2010.

12. The Division Bench of this Court in ***Jatinder Nath***

Sharma's case (supra), has held that ***once the land is acquired by the Government, all its previous rights stands dissolved in case the same is not exempted from acquisition and once the compensation qua the said land has been paid, the claim for passage and Kutcha Rasta also stands dissolved***. The operative part of the said judgment, reads as follows:-

> *"6. On notice of motion having been issued, the respondents have filed their written statement, wherein it has been submitted that the petitioners are seeking passage/kutcha path to their land situated in Village Baltana, Tehsil and Distt. Mohali, but the State of Punjab has not been impleaded as a necessary party and therefore, the writ petition is liable to be dismissed on account of non- joinder of necessary parties. The petitioners cannot seek the relief from Chandigarh Administration, as the land of the petitioners falls in Village Baltana, Tehsil and District Mohali, Punjab, whereas the passage/kutcha path, which they claim to be there since the time immemorial, is completely irrelevant, because the passage/kutcha path which is situated now, belongs to UT, Chandigarh. Moreover, the land was acquired for setting up of industrial area and other allied uses for 3rd phase, vide award dated 28.3.2003. All the objections and the claims with respect to acquisition were settled and even compensation was also disbursed to the landowners including the petitioners, which was duly accepted by them without laying any challenge. It has been further pleaded that if any passage/kutcha path is provided to the land of the petitioners, the same is to be provided by the State of Punjab only and not by the UT, Chandigarh.* ***Once the land is acquired by the Government, all its previous rights***

stand dissolved in case the same is not exempted from acquisition. Since the land of the petitioners has been acquired and compensation qua the said land has already been accepted by the petitioners, their claim for passage and kutcha rasta also stands dissolved. Moreover, even the survey plan of the acquired land does not show any passage/kutcha rasta on the land which goes to the land of the petitioners. Copy of survey plan for acquisition of land has been placed as Annexure R-2. *The open spaces/passages shown in the earlier drawings were only for connecting internal blocks/parking etc. above the scheme area. Annexure P7 is the final layout plan of the Chandigarh Administration, which does not show any rasta/passage to the land in question. After the acquisition of the land, the land upon which the passage/kutcha rasta is situated has been earmarked for CTU Depot and for 66 KV Grid sub-station and the same was approved by the Chandigarh Administration on 21.11.2011 and on 3.5.2012. In case the passage/kutcha rasta is provided to the land in question, which falls in the State of Punjab, then the whole planning of Industrial Area, Phase-III will be disturbed and the very purpose of acquisition shall become redundant.*

7 & 8. xxxx xxxx xxxx xxxx

9. The relief claimed by the petitioners regarding passage/kutcha path to approach their land situated in Village Baltana in the State of Punjab is completely irrelevant, as the land upon which the passage/kutcha path is situated now belongs to UT, Chandigarh. The said land was acquired for setting up industrial and other allied uses for the third phase, vide award dated 28.3.2003. All objections and claims with respect to acquisition have already been settled and compensation has been disbursed

> *to the landowners including the present petitioners. The petitioners have accepted the compensation without raising any challenge. Therefore, they cannot claim any passage on the acquired land which already vests with the Chandigarh Administration. On acquisition of land by the Government, all previous rights of the landowners are automatically dissolved. In the present case, the claim for passage/kutcha rasta being raised by the petitioners is unfounded, as such claims are automatically dissolved once the land in question is acquired by the Government and they have accepted the compensation without any challenge. Even the survey plan for the acquired land does not show any passage of kutcha rasta which goes towards the land of the petitioners."*

13. Further, it has been held by the Hon'ble Division Bench of this Court in ***Lakhmeer Singh's case (supra)*** that ***acquisition of the revenue Rastas was based on the policy of the State, which clearly provides for acquisition of revenue Rastas and provision for alternative developed roads in lieu thereof and therefore, the objections raised by the land owners are not tenable***. The relevant portion of the said judgment, reads as follows:-

> ***"After taking into consideration the facts and the arguments addressed, we find no reason to hold that there was any illegality in disposal of the objections filed by the petitioners by the State leaving any illegality that can lead to a successful challenge to the acquisition itself. While doing so we are not unmindful of the fact that the right granted to the land owners under Section 5-A cannot be lightly brushed aside but in the instant case, we find no reason to hold that the decision taken on the objections is in any manner vitiated. This is evident from the fact that***

> ***the acquisition of the revenue Rastas was based on the policy of the State which clearly provides for acquisition of revenue Rastas and provision for alternate developed roads in lieu thereof. The main objection of denial of access, made by the petitioners was therefore correctly rejected.***

14. Similarly, it has been held by the Hon'ble Supreme Court in ***"Commissioner, Bangalore Development Authority and another vs Brijesh Reddy and another",* 2013 (2) RCR (Civil) 444**, that once the scheduled lands were acquired under the land acquisition proceedings, the Civil Court has no jurisdiction to entertain a suit. The operative portion of the said judgment, is reproduced hereunder:-

> *"14) No doubt, in the case on hand, the plaintiffs approached the civil Court with a prayer only for permanent injunction restraining the defendant Nos. 1 and 2,i.e., BDA, their agents, servants and any one claiming through them from interfering with the peaceful possession and enjoyment of the schedule property. It is true that there is no challenge to the acquisition proceedings. However, in view of the assertion of the BDA, in their written statements, about the initiation of acquisition proceedings ending with the passing of award, handing over possession and subsequent action etc., the said suit is not maintainable. This was rightly concluded by the trial Court. For proper compensation, the aggrieved parties are free to avail the statutory provisions and approach the court concerned. All these aspects have been clearly noted by the trial Court and ultimately rightly dismissed the suit as not maintainable. On the other hand, the learned Single Judge of the High Court though adverted to the principles laid down by this Court with reference to acquisition of*

land under the Land Acquisition Act and Section 9 of CPC committed an error in remanding the matter to the trial Court on the ground that the plaintiffs were not given opportunity to adduce evidence to show that their vendor was in possession which entitles them for grant of permanent injunction from evicting them from the scheduled property without due process of law by the defendants. In the light of the specific assertion coupled with materials in the written statement about the acquisition of land long ago and subsequent events, suit of any nature including bare injunction is not maintainable, hence, we are of the view that the High Court is not right in remitting the matter to the trial Court for fresh disposal.

15) Having regard to the fact that the acquisition proceedings had been completed way back in 1960-70, the plaintiffs who purchased the suit land in 1995 cannot have any right to maintain the suit of this nature particularly, against defendant Nos. 1 and 2, namely, the BDA. The High Court clearly erred in remanding the matter when the suit was not maintainable on the face of it. The High Court failed to take note of the fact that even in the plaint itself, the respondents herein/plaintiffs have stated that the suit land was acquired and yet they purchased the suit land in 1995 and undoubtedly have to face the consequence. The possession vests with the BDA way back in 1969 and 1978 and all the details have been asserted in the written statements, hence the remittal order cannot be sustained.

16) In the light of the above discussion, the impugned judgment dated 27.07.2005 passed by the High Court in R.F.A. No. 947 of 2003 remitting the matter to the trial Court is set aside and the judgment dated 18.06.2003 of the trial Court in O.S. No. 4267 of 1996 is restored.

15. Before proceeding further in the matter, it would be

appropriate to reproduce Order 39 Rules 1 and 2 CPC as the facts and circumstances of the present case and proper adjudication thereof need the same :-

"ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

1. Cases in which temporary injunction may be granted - Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the

> *breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*
>
> *(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise as the Court thinks fit."*

16. An injunction is a judicial process whereby a party is required to do, or refrain from doing, any act. It is the remedy in the form of an order of the court addressed to a person that either prohibits him from doing or continue to do such act. Thus, injunction is a relief that prevents or restricts from doing an act or may include the order from doing any act for the purpose of prevention. In its essence, a temporary injunction is an interim remedy to maintain the status quo of the parties with regards to the property in dispute during the pendency of the case. The aim of temporary injunctions in the Indian Law is to protect a party to the suit 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 favor at the trial. (*See M/s Gujarat Pottling Co. Ltd. And ors. V. The Coca Cola Company and ors-1995 AIR (Supreme Court) 2372*).

17. The Hon'ble Supreme Court in the case of ***Dalpat Kumar and another vs Prahlad Singh and others",*** **(1992) 1 SCC 719,** has settled the three main requirements for granting a temporary injunction, they are :

1. **<u>Prima Facie Case</u>**

A suit consists of a seriously disputed question. The term prima facie connotes that the case they build for their injunction must be meritorious enough, not to be rejected instantly.

2. **Irreparable Loss**

Irreparable injury is likely to be caused to the plaintiff, which cannot be compensated for in terms of money.

3. **Balance of convenience**

The Court needs to compare the case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

18. Achieving justice is the main aim of the Indian judiciary but achieving their aim in an equitable process is also important.

19. The rationale behind the provision of Order 39 of the Code of Civil Procedure as laid down by Hon'ble Supreme Court in the case of ***"M. Gurudas and Ors. Vs. Rasaranjan and ors."*** **2006(8) SCC 367** can be summarized as "While considering an application for injunction, the Court would pass an order thereupon having regard to *prima facie* case, balance of convenience and irreparable injury". The Hon'ble Supreme Court in ***M. Gurudas and others v. Rasaranjan and others, 2006(8) SCC 367,*** held as under:-

> *"19. While considering an application for injunction, it is well-settled, the courts would pass an order thereupon having regard to:*
> *(i) Prima facie*
> *(ii) Balance of convenience*
> *(iii) Irreparable injury.*
> *20. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for*

grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhawan that the decision of House of Lords in American Cyanamid v. Ethicon Ltd. [1975] 1 All ER 504 would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. [(1999) 7 SCC 1] and S.M. Dyechem Ltd. v. Cadbury (India) Ltd. [(2000) 5 SCC 573], but we are not persuaded to delve thereinto.

x x x x

22. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only on a mere triable issue. [See Dorab Cawasji Warden v. Coomi Sorab Warden and Others , (1990) 2 SCC 117, Dalpat Kumar and Another v. Prahlad Singh and Others (1992) 1 SCC 719, United Commercial Bank v. Bank of India and Others (1981) 2 SCC 766, Gujarat Bottling Co. Ltd. and Others v. Coca Cola Co. and Others (1995) 5 SCC 545, Bina Murlidhar Hemdev and Others v. Kanhaiyalal Lokram Hemdev and Others (1999) 5 SCC 222 and Transmission Corpn. of A.P. Ltd (supra)]"

20. The Hon'ble Supreme Court in ***Seema Arshad Zaheer and others v. Municipal Corpn. Of Greater Mumbai, 2006(5) SCC 282*** has held as under: -

"30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary

> *injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."*

21. To the same effect is the judgment of the Hon'ble Supreme Court in ***M/s Gujarat Bottling Co. Ltd. and other v. Coca Cola Company and others, 1995(5) SCC 545*** wherein the Hon'ble Supreme Court has held as under: -

> *"45. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court 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 existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before 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. [see:**Wander Ltd.& Anr. v,. Antox India P. Ltd., 1990 (suoo) Scc 727 at pp. 731-32**]. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."*

22. For the purpose of deciding the plea of injunction, this Court is guided by three basic principles for grant of injunction, laid down by the Hon'ble Apex Court in catena of judgments, which are as follows:-

(i) Prima facie case;

(ii) Balance of convenience; and

(iii) Irreparable loss or injury.

23. From the perusal of the record, it is crystal clear that prior to 2001-02, there was a rasta in Khasra No.179, which already stood acquired vide award dated 07.06.2004 by the Land Acquisition Collector, Urban Estate, Haryana and the possession of the same was transferred to HUDA and thereafter, mutation was sanctioned in favour

of HUDA and subsequently, M/s. Pioneer Land Infrastructure Limited had purchased the land comprised in Khasra No.179/2 (0-14) and 179/3 (0-5), among other land parcels, from HUDA vide sale deed dated 11.12.2009 and Mutation No.5826 had been sanctioned thereafter, in favour of M/s. Pioneer Land Infrastructure Limited and thus, on the basis of the aforesaid sale deed dated 11.12.2009, M/s. Pioneer Land Infrastructure Limited became an absolute and lawful owner in possession of the aforesaid land and a residential colony i.e. Greenwoods City, has been constructed and developed by M/s. Pioneer Land Infrastructure Limited by amalgamating the land in Khasra No.179/2 (0-14) and 179/3 (0-5) with other land and M/s. Pioneer Land Infrastructure Limited and M/s. Unitech Limited along with its associates have acquired and purchased 127.45 acres of land and obtained various licenses from time to time. Even, the License No.74 of 2010 dated 24.09.2010, has been granted by the competent authority with respect to the land in Khasra No.179/2 (0-14) and 179/3 (0-5) and the character of the land has been changed measuring 0.85 acres and Zoning Plan dated 22.06.2012 for Nursery School site measuring 0.20 acres in Block – G, has been approved by the authorities concerned and thereafter, part Completion Certificate dated 03.04.2019 has been granted by the Director, Town and Country Planning, Haryana, vide Memo No.LC-386-DTP(NK)/2019/9020 and on 10.06.2019, allotment of school site earmarked for Nursery School measuring 0.20 acres in favour of the defendant has been issued and thereafter, possession letter has also been issued in favour of the defendant on 21.12.2019 and no passage ever existed at spot after grant of License No.74 of 2010 and apart from not meeting out any of the three principles, even equity does not lie, in favour of the petitioner and therefore, granting injunction at this stage, against the person/company holding title as well as possession for a cause or purpose, may cause irreparable loss and injury to any such person/company. The acquisition proceedings have never been challenged by the petitioner so far.

24. The judgments cited by learned senior counsel for the petitioner does not advance the case of the petitioner in any manner whatsoever and are not squarely applicable to the facts and circumstances of the present case.

25. In view of the above, there is no illegality or infirmity in the impugned order dated 23.12.2020 passed by learned Lower Appellate Court, Gurugram, accordingly finding no merit, the revision petition is dismissed. Interim order dated 21.01.2021, passed by this Court stands vacated.

26. Pending applications, if any, are also disposed of.

27. Any finding given or observation made or reasoning recorded by the Court in the present revision petition will not be considered as a conclusive and final result on the merits of the case, rather, the same is *prima facie* view only, to decide the plea of injunction and the learned Court below would take its final decision on

any of the issue arising before it, during the pendency of the suit or at final stage, without getting impressed in any manner, with the present order.

(NAMIT KUMAR)
JUDGE

04.01.2024
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No