

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No. 125)

LPA No.973 of 2024 (O&M)

Date of decision: 22.04.2024

Bawa Jaspreet Singh

..... Appellants

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Mahabir Singh Tanwar, Advocate for the appellant.

Mr. Prateek Mahajan, Advocate and
Ms. Prerna Malhotra, Advocate for respondent No.2.

* * *

DEEPAK SIBAL, J. (Oral)

(1) The present intra court appeal is directed against the order dated 16.04.2024 passed by a learned Single Judge of this Court through which notice in the appellant's writ petition has been issued and the matter is now posted for further proceedings on 13.08.2024.

(2) A complaint dated 14.09.2023 was made to the Sub Divisional Officer (Civil), Kalka (for short – SDO) by the Chief Executive Officer, Haryana Waqf Board (for short – CEO) bringing to his notice illegal construction being made by the appellant on the property which, according to the CEO, was Haryana Waqf Board's property. Acting on such complaint, the SDO passed an order dated 15.01.2024 directing Tehsildar,

Kalka to correct the revenue record on which the appellant relied upon to justify the construction being made by him.

(3) Order dated 15.01.2024 was challenged by the appellant through filing of a writ petition which came up for hearing before a learned Single Judge of this Court on 16.04.2024, on which date, after recording the submissions made on behalf of the appellant, the learned Single Judge issued notice and posted the matter for further proceedings on 13.08.2024. The interim order dated 16.04.2024 passed by the learned Single Judge is the subject matter of challenge through the present intra court appeal.

(4) Learned counsel for the appellant submits that the learned Single Judge erred in not granting interim stay prayed for by the appellant as at the time of passing of the impugned order the appellant had made out at least a *prima facie* case, the balance of convenience was also in his favour and that non grant of interim stay has caused the appellant irreparable loss.

(5) On the other hand, learned counsel appearing for the Haryana Waqf Board, relying upon the judgment of the Supreme Court in ***Midnapore Peoples' Co-op. Bank Ltd. and others Vs. Chunilal Nanda and others*** 2006(5) SCC 399, questions the very maintainability of the instant appeal.

(6) Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

(7) In ***Midnapore's*** case (supra) the Supreme Court has held as follows : -

“16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) Orders which finally decide a question or issue in controversy in the main case.

- (ii) *Orders which finally decide an issue which materially and directly affects the final decision in the main case.*
- (iii) *Orders which finally decide a collateral issue or question which is not the subject matter of the main case.*
- (iv) *Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.*
- (v) *Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.*

The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent."

(8) Thus, the Supreme Court in **Midnapore's** case (supra) has held that an intra court appeal under Clause X of the Letters Patent would lie against interim orders which finally decide a question or issue in controversy in the main case; interim orders which finally decide an issue which would materially and directly affect the final decision in the main case and against those interim orders which finally decide a collateral issue or question which is not the subject matter of the main case. However, no intra court appeal would lie against routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment and against the interim orders which may cause some inconvenience or some

prejudice to a party but which do not finally determine the rights and obligations of the parties to the *lis*.

(9) A perusal of the interim order impugned through the instant appeal reveals that through the same, after recording the submissions made on behalf of the appellant, the learned Single Judge has issued notice to the respondents and has simply posted the matter for further proceedings on 13.08.2024. There is neither any final decision on any of the questions or issues raised in the main case nor any final decision has been taken which would materially and directly affect the decision in the main case. There is also no final decision on any collateral issue or question which is not the subject matter of the main case. The prayer for interim stay, as prayed for by the appellant, has also not been finally adjudicated upon.

(10) In the light of the afore facts and the law declared by the Supreme Court in *Midnapore's* case (supra), the impugned order is not a “judgment” in terms of Clause X of the Letters Patent. Resultantly, the present intra court appeal is held to be not maintainable.

(11) Dismissed.

(12) All pending miscellaneous application(s) also stand disposed of.

(DEEPAK SIBAL)
JUDGE

22.04.2024
sunil yadav

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No