

CR-3638-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CR-3638-2023 (O&M)

Date of decision: 05.03.2024.

Abdul Aleem and another

...Petitioners.

Versus

Gram Panchayat, Bibipur, Tehsil and District Nuh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. R.S. Hooda, Advocate
for the petitioners.

Mr. R.N. Lohan, Advocate
for respondents No.1 and 2.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 12.04.2023 (Annexure P-3) passed by learned trial Court, vide which relief of *ad-interim* injunction was declined to the petitioners/plaintiffs and judgment dated 26.05.2023 passed by learned first Appellate Court, vide which the appeal preferred by petitioners/plaintiffs against order dated 12.04.2023, was dismissed.

2. The facts as per the case of the petitioners/plaintiffs are that the plaintiffs filed a suit for declaration with consequential relief of permanent injunction against the respondents pleading that the suit land is Charagah, which is part of land contributed by all the proprietors of the village for common purpose during consolidation. As per Sharat-Wajib-Ul Arz, the suit

land was reserved for common purpose, namely Charagah, which is being continuously used as same and as such recorded in the revenue record till date. The natives of the village have been using the land for various common purposes i.e. grazing of cattle, dry wood etc. which are lifeline for the villagers and for maintaining the ecological balance by keeping greenery in the area, to ensure it to be pollution free and environmental harmony in the village. It was alleged that as per the nature and purpose of the land, it cannot be alienated or transferred in any manner and its nature cannot be changed in any way either by Gram Panchayat or the proprietors or anybody else. It was further alleged that new Sarpanches of Gram Panchayats, Bibipur and Kalinjar decided to release the land to certain private persons in the garb of illegal lease without complying with the necessary pre-requisites. The petitioners/plaintiffs filed a complaint before respondents No.3 to 5 but to no avail. Hence, the aforesaid suit was filed before the trial Court alongwith an application under Order XXXIX Rules 1 and 2 CPC seeking ad-interim injunction against respondents/ defendants.

3. Thereafter, vide order dated 12.04.2023 of trial Court, relief of ad-interim injunction was declined to the petitioners/ plaintiffs. The appeal against the said order was preferred before the first Appellate Court of learned Additional District Judge, Nuh and the said appeal was also dismissed. Hence, the present revision petition has been filed and the order dated 12.04.2023 of trial Court as well as judgment dated 26.05.2023 of the first Appellate Court have been challenged.

4. Learned counsel for the petitioners has contended that both the

Courts below adopted an erroneous approach and did not pay heed to the factum that the suit land being reserved for Charagah cannot be allotted for any other purpose, as it would amount to change the nature of the suit land to the detriment of natives of village. He has further contended that no reason has been assigned by the trial court for refusing the ad-interim relief. He has submitted that as the suit land is Charagah, as shown as such in the revenue record, so it is the duty of the Gram Panchayat to maintain open spaces i.e. Charagah where the animals graze and trees and plants are planted, which are actually lifeline for the villagers, so a prima facie case is made out in favour of the plaintiffs. He has further submitted that if the nature of the suit land is changed then it will cause irreparable loss and injury to the plaintiffs and natives of the village and the balance of convenience also lies in favour of the petitioners/ plaintiffs. He has urged that as the case of the petitioners fulfills all the necessary ingredients which are pre-requisite for the grant of temporary injunction, so the impugned orders be set aside and relief of ad-interim injunction be granted to the petitioners. In support of his contentions, he has relied upon the judgment of Hon'ble Supreme Court in **Hinch Lal Tiwari** vs. **Kamala Devi and others, 2001(6) SCC, 496** and judgments of this Court in **Jagdish Singh** vs. **State of Haryana and others, 2005(4) R.C.R.(Civil) 322** and **Shimbhu Dayal** vs. **Gram Panchayat, Haluhera and others**, in CR-3719-2013, decided on 24.09.2013.

5. On the other hand, it has been contended by counsel for the respondents/ defendants that in the revenue record defendants have been

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incorporated as owners in possession over the suit land. The land is being used since 1992 for common purpose primarily for agricultural during the season and during non-agricultural season it is being used for Chragah purpose. He has further contended that in this regard the documents of the appellants itself clarified that *Sharat-Wajib-UlArz* land is agricultural land for Shamlat purpose and after the harvesting of crop it could be used for grazing/ Chragah purpose. He has argued that there had not been any irregularity or different use of common land and the common purpose for which land has been reserved has not been violated. He has submitted that after the change of newly elected Panchayat the appellant being the earlier Sarpanch has filed this frivolous suit and the appellants are pressing for granting of ad-interim injunction without any basis. In support of his contentions, he has relied upon the judgments of **Bishamber Dayal Vs. State of Haryana, 1987, R.R.R. 335 (P&H), Shish Ram Vs. State of Haryana, 2000(3), R.C.R. (Civil) 279 (SC), Baljinder Singh and others Vs. State of Haryana and others, 2012(5) R.C.R. (Civil) 294 (P&M), Jagdish Singh Vs. State of Haryana and others, 2005(4) R.C.R. (Civil) 322 (P&H).**

6. I have heard learned counsel for the parties and have gone through the relevant record.

7. Perusal of the order dated 26.05.2023, passed by the appellate Court, shows that the specific direction was given to the trial Court to decide the stay application pending before it, at the earliest. But the counsel for the parties have apprised that the said application is still pending and are ad-idem that the trial Court may be directed to decide the stay application pending before it on merits, at the earliest.

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8. So, keeping the above in view, the trial Court is directed to decide the stay application of the petitioners pending before it, at the earliest, in accordance with law, after hearing both the parties, preferably within a period of one month from the date of receipt of a copy of this order.
9. The present revision petition is disposed of in the aforesaid terms.
10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

05.03.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No