

2024:PHHC:085004



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3714-2024
Date of Decision: 08.07.2024

RAJESH KUMAR AND ANOTHER
Vs.
..... PETITIONERS

STATE OF HARYANA AND OTHERS
..... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. R.S. Mamli, Advocate, for the petitioners.

DEEPAK GUPTA, J.

This revision is directed against the order dated 31.05.2024 (*Annexure P2*) passed by Id. Civil Judge (Sr. Divn.), Yamuna Nagar, dismissing the application of the plaintiffs (*petitioners herein*) under Order 39 Rule 1 & 2 CPC for grant of temporary injunction in Civil Suit N: CS-957-2024 titled “Rajesh Kumar and another vs. State of Haryana and others”, which order has been upheld by Id. Additional District Judge, Yamuna Nagar vide order dated 14.06.2024 (*Annexure P-4*).

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3.1 According to the plaintiffs (*petitioners herein*), khasra No.91 to 96 comprised in Khewat/Khatauni No.634/885 situated in Village Jagdhauli, Sub Tehsil Saraswati Nagar, Tehsil Jagadhri, District Yamuna Nagar is *Gair Mumkin* land, which is at the same level of the agricultural land. Rainy water is

discharged in the said land by way of bifurcation. It was pleaded further that after Khasra No.96, there is agricultural land of plaintiffs and other co-sharers in a village Ambwala. It was alleged that defendants were threatening to dig a drain/*Khala* in Khasra Nos.91 to 96 in village Jagdhauli in order to discharge water towards the agricultural land of the plaintiffs and other co-shares and in case they succeed in doing so, the water will flow heavily towards the property of the plaintiffs and other co-sharers and will destroy their crops. Prayer was made to restrain the defendants from digging the land comprised in aforesaid khasra Nos. 91 to 96 and constructing any *Khala*/drain therein so as to discharge the rainy water towards the agricultural land of the plaintiffs and other co-sharers. Along with the suit, an application for temporary injunction was moved, seeking temporary relief of the same nature till pendency of the suit.

3.2 The stand taken by the defendants (*respondents herein*) was that Saraswati Dhara (drain) exists in its original shape in khasra No.92 in the length of 200 to 400 ft. since long time, in which the rainy water is accumulated. The remaining area of drain in Khasra Nos.91 to 99 is at level of the adjoining agricultural land. The water accumulated in the low land of village Jagdhauli used to damage the crops and so digging of the drain will help in accumulation of rainy water into drain. It was further pleaded that land of the plaintiffs comes under the natural flow of drainage of the rain water. Representation had been made by the Gram Panchayat of village Jagdhauli for digging up the drain for smooth flow of water and for saving the lives and lands of the residents. On representation, officials of the Water Services Division, Jagadhri, had visited the spot, conducted inspection and prepared report, which was considered in the meeting of Haryana State Drought Relief and Flood Control Board under the Chairmanship of Hon'ble Chief Minister, Haryana. The minutes dated

03.01.2024, were approved. It was alleged that suit had been filed to create hindrance or delay in the progress and completion of the infrastructure project namely '*Excavation of Drain for the Protection of People Abadi and Agriculture Land of Village Jagdhouli*'. With this stand, defendants prayed for dismissal of the suit and further prayed for dismissal of application for temporary injunction.

4. After hearing both the sides, Id. trial Court dismissed the application against which appeal was filed. Id. Appellate Court discussed the issue in para No.14 onwards which reads as under: -

“14. The plaintiffs have prayed for grant of injunction against digging of Saraswati Dhara/Jagdhauli Drain by defendants No.1 to 3. As per revenue record, Khasra No. 91 to 99 have been reserved as 'Gair Mumkin' Saraswati Dhara. There exists remains of old drain upto Khasra No. 96 situated in Village Jagdhauli. Thereafter, land of plaintiffs and other co-sharers falls in Village Ambwala. The plaintiffs have apprehension that in case, the Saraswati Drain/Jagdhauli Drain is cleared upto their land, water flow will destroy their crops.

With the assistance of learned Government Pleader and Sh. Sehdev Dagar, SDO, Jagadhri Water Services, Sub Division, Jagadhri, this Court has gone through the Mussavi/site plan of the area, which reflects that between Khasra No.96 and 97 of the drain, there exists a small strip of about 4 Killa of the land belonging to the plaintiffs and other cosharers. The drain would ultimately be required to be connected. On pointing out this to Sh. Sehdev Dagar, SDO, Jagadhri Water Services, Sub Division, Jagadhri, he got recorded, following statement before this Court:-

“Stated that there is existing Jagdhauli drain upto Khasra No. 96 at the spot. There exists drain in Khasra No. 97 onwards as well. Between Khasra No. 96 and Khasra No. 97 the land of about 4 acres belonging to the plaintiffs and others is existing. The department is finding out as to how the land of the plaintiff and other co-sharers is still continued in their name and checking about feasibility and need for requirement of the land existing in the name of plaintiff, if has not been acquired/vested in the department. In case, internal clearance of the drain is not concluded, it may result into large scale loss than loss, if any, to the plaintiffs.”

15 On the one side of the Saraswati Drain/Jagdhauli Drain, there exists abadi of Village Jagdhauli at a distance of about 300 meters. It has been pointed out that during previous season, there has been loss of lives and property of villagers as water entered into the abadi. This fact narrated by the learned Government Pleader assisted by Sh. Sehdev Dagar, SDO, Jagadhri Water Services, Sub Division, Jagadhri stands further

supported by defendants No.4 and 5. This Court finds that when two losses are inevitable, resorting to minor loss is always recommended. Thus, plaintiffs may suffer some loss but in order to rule out loss to the masses, it required to be ignored.

16. The learned trial court rightly relied upon Section 20-A of the Specific Relief Act, which provides that no injunction can be granted by the Court in a suit involving infrastructure project. Section 41 of the Specific Relief Act further provides condition as to when injunction cannot be granted. As per Section 41(ha) of said Act, an injunction cannot be granted, if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or service being the subject matter of such project. As per Schedule of the Specific Relief Act, Water and Sanitation at Serial No.3 of the Schedule included 'Storm Water Drainage System'. The learned trial court has further also rightly relied upon the Judgment in case of ***National High Speed Rail Corpn. Ltd. Vs. Montecarlo Ltd. (Civil Appeal No.6466 of 2021)***, to non-suit the plaintiffs.

17. The project named 'EXCAVATION OF DRAIN FOR THE PROTECTION OF VILLAGE ABADI AND AGRICULTURE LAND OF VILLAGE JAGDHOULI', has been approved in 55th meeting of HSDR and FCB and fund of Rs.33.21 Lakhs have been sanctioned for the same.

18. If any loss is caused to the plaintiffs by act of defendants, they always have remedy to claim damages, if admissible in law. However, keeping in totality of acts and circumstances, this Court does not find any reason to ignore larger public interest viz-a-viz rights of the plaintiffs. All the three ingredients i.e. prima facie case, irreparable loss and balance of convenience stands not satisfied in the present case."

5. After hearing ld. counsel for the petitioners, this Court does not find any fault in the impugned order passed by the trial Court and upheld by the Appellate Court. It has been held by this Court time and again that an Appellate Court can interfere with the findings recorded by the lower Court in the discretion exercised by it so as to grant or refuse the relief of injunction, only if the order passed by the trial Court is perverse or suffers from any patent illegality. Merely because there is a possibility of forming a different opinion on the basis of facts and findings of the parties, cannot be a valid ground for interference by the appellate authority.

6. In this case, the trial Court has found that infrastructure project cannot be stalled in a casual manner. Any disruption of work, at this stage, is likely to halt the work being done for public cause for an indefinite period of time and will seriously impede the execution of the project.

7. One of the necessary pre-requisites for grant of injunction under Order 39 Rule 1 & 2 of CPC is that in case injunction is not granted, the plaintiff is likely to suffer irreparable loss and that the refusal of injunctory relief will cause more inconvenience to the plaintiff than the defendant. In the present case, as found by the Courts below, in case injunctory relief is granted, the large public interest shall be affected, viz-a-viz the rights of the plaintiffs and thus, it was found that the three necessary ingredients i.e. *prima facie case*, *irreparable loss* and *balance of convenience* were not satisfied in this case.

8. In view of the above, this Court does not find any ground to interfere in the well reasoned order passed by the trial Court and upheld by the appellate Court.

Dismissed.

08.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No