

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4200-2022 (O&M)

Reserved on : 14.12.2023

Date of Decision: 01.02.2024

Bhulan and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Rupinder S. Khosla, Sr. Advocate with
Mr. Yogender Karma, Advocate and
Mr. Puneet Kakkar, Advocate,
for the petitioner.

Mr. Neeraj Sheoran, DAG, Haryana

Mr. B.R.Mahajan, Sr. Advocate with
Mr. Anil Chawla, Advocate,
for respondent No.2.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioners/plaintiffs seeking setting aside of order dated 22.7.2022 passed by the Court of Additional Civil Judge, Senior Division, Panipat whereby an application filed by the petitioners under Order 39 Rule 1 and 2 CPC was dismissed and order dated 20.8.2023 passed by the Court of Additional District Judge, Panipat whereby the appeal filed by the petitioners against the aforesaid order dated 22.7.2022 was also dismissed.

2. Brief facts of the case are that the petitioners/plaintiffs filed suit for declaration to the effect that there exists public street 59 feet wide in Khasra No.126 (4-17) situated in Taraf Afgan, Tehsil and District Panipat and that the said public passage was being used by the inhabitants of the

locality since long, with consequential relief of permanent injunction restraining the defendants/respondents from raising any illegal construction in the aforesaid public street which is marked as ABCD and is shown in red colour in the site plan attached with the plaint and further, relief of mandatory injunction directing the respondents to remove the illegal construction already raised in the suit property. Along with the suit, the petitioners/plaintiffs also filed an application under Order 39 Rule 1 and 2 CPC to restrain the respondents from raising any further illegal construction in the suit property during the pendency of the suit.

3. The suit as well as the injunction application was contested by the respondents and they filed written statement and written reply. Plea of the respondents in nutshell is that a primary school was running in the suit property by the government; that with the passage of time, the building of the school got dilapidated and about 2 years back, it was demolished to raise a new school building; that after getting necessary approval and NOC, the authorities started raising a new building at the same spot; that in order to encroach the suit property, previously one Ram Singh filed similar suit regarding same subject matter wherein injunction application was dismissed vide order dated 21.3.2022 by the Court of Civil Judge, Junior Division, Panipat; that thereafter, the petitioners claiming themselves to be the residents of the area filed the present suit with ulterior motive to grab the suit property. It was denied that the suit property is a public street or that any public street is encroached by the respondents.

4. After taking into consideration the submissions made by both the parties, learned trial Court dismissed the injunction application vide impugned order dated 22.7.2022.

5. The petitioners preferred an appeal against order dated 22.7.2022 whereby the injunction application of the petitioner was dismissed. However, the appeal was also dismissed by the Court of learned Additional District Judge, Panipat vide order dated 20.8.2022. Being aggrieved the petitioners have filed the present petition.

6. I have heard the counsel for the parties.

7. Learned Senior counsel appearing for the petitioners has, *inter alia*, submitted that the suit property is part of Khasra No.126 which is a *Gair Mumkin* passage as per jamabandi (Annexure P-1); that *Aks-Shajra* showing position of Khasra No.126 is Annexure P-2. Learned Senior Counsel has further contended that the said common passage was being used by the petitioners and other inhabitants of the locality. He has further submitted that the respondents started raising construction in the site in dispute and while doing so, they encroached area shown in red colour in the site plan which is part of Khasra No.126 and was used as a passage. Learned Senior Counsel has further contended that the plea of the respondents is that the building under construction will be used for running a school. Learned Senior counsel further submitted that total area of the site in dispute is 100 feet x 22 feet and as per the respondents, large number of rooms are going to be constructed at the spot. Learned Senior Counsel has further contended that area of 2200 square feet is not suitable to run a school having no playground and no sufficient space for students as well as staff; that thus, making it clear that previously, there was no school building existing at the spot and even the alleged construction raised at the spot is not meant for school as the area available at the spot is not sufficient to run a primary school. Learned Senior counsel has further contended that the

petitioners were not party to the civil suit if any filed by Ram Singh and the order, if any, passed against said Ram Singh is not binding on the petitioners and will not prejudice the rights of the petitioners qua the suit property in any manner. It has been further contended that the respondents are having no right to encroach the public passage having Khasra No.126.

8. On the other hand, learned senior counsel appearing for respondent No.2 has contended that the school building which was existing at the spot was in dilapidated condition and was demolished and after getting necessary permission, the Government authorities started constructing a new school building at the same spot. It has been further contended that from the perusal of photograph (Annexure P-3) relied upon by the petitioners, it is evident that basic structure including boundary wall is already raised at the spot. It has been further contended that from the perusal of site plan (Annexure P-12) which is relied upon by the petitioners, it is apparent that on the eastern side of the site in dispute, there are shops while on its western side, there is a vacant land of temple and the area of the site in dispute is 100 feet x 22 feet. It has been further contended that on the northern side of the suit property, there is a proper metalled road and on its southern side, there is a street. It has been further contended that the site in dispute being bounded on all the four sides, it is not possible to say that it was being used as a common passage by the inhabitants of the locality. Learned Senior counsel appearing on behalf of respondent No.2, while referring to photograph (Annexure R-10) submits that number of electricity poles are there in the northern side of the site in dispute and the newly constructed boundary of the school building is alongside the said electricity poles which are existing at the spot since long; that the electricity poles are

always installed on the extreme left or right side of a road. It being so, the possibility of alleged encroachment as alleged by the petitioners is very remote. Learned Senior counsel appearing on behalf of respondent No.2 has further contended that actually the inhabitants of the locality intend to encroach the site in dispute and the present suit has been filed by the petitioners with ulterior motive; that previously also, one Ram Singh filed suit to restrain the respondents from raising construction in the site in dispute and the injunction application filed by him was dismissed by the learned trial Court vide order dated 21.3.2022. Learned Senior counsel has further contended that there is no illegality or infirmity in the impugned orders and that scope of interference by this Court is very limited only on the grounds if the Courts below have acted arbitrarily, perversely or against the legal principles without considering all the relevant record which is not so in the present case. In support of his contentions, learned Senior counsel appearing for respondent No.2 has placed reliance upon the decision of this Court in **Guru Nanak Education Trust vs. Balbir Singh** 1995 (2) PLR 625.

9. I have considered the submissions made by the counsel for the parties.

10. The case of the petitioners is that the site in dispute is a common passage comprised in Khasra No.126 and was used by the inhabitants of the locality. There is no dispute between the parties with regard to location of the suit property and is shown in red colour in the site plan (Annexure P-12) which has been relied upon by the petitioners. As per site plan (Annexure P-12), length of the site in dispute is 100 feet while its width is 22 feet and the width is constant throughout. From the perusal of

site plan (Annexure P-12), it is also apparent that on the eastern side of the disputed site, there are shops while on its western side, there is vacant land of temple. On the northern side of the suit property, there is a road while there is a street on its southern side. Thus, making it clear that the disputed site is bounded in all the four directions as described above. Even as per photograph Annexure P-3 relied upon by the petitioners, it appears that the basic structure including the boundary wall is already raised in the disputed site. The respondents also produced one computer generated black and white photograph Annexure R-10, as per which, it is apparently visible that number of old electricity poles with overhead wires are there in the road on the northern side of the disputed site and the newly constructed boundary wall of the building in question is just alongside the said electricity poles. Undoubtedly, such like electricity poles are generally erected on the extreme left or right hand side of a road. In the given circumstances, the site in dispute having dead end on its eastern and western side, there is remote possibility of the alleged encroachment that too by the Government authorities.

11. From perusal of Annexure R-8 and other documents relied upon by the respondents, it appears that the construction of the building in question was started after getting proper approval of the competent authorities.

12. It is apparent that the boundary wall on the northern and eastern side of the site in dispute is already constructed and the remaining building is being raised inside the said boundary wall only.

13. Grant of temporary injunction is governed by 3 basic principles

are required to be considered in proper perspective under the facts and circumstances of each case. The existence of *prima facie* case is a *sine qua non* but the consideration of other two principles is equally important.

14. In the instant case, the documents relied upon by the petitioners i.e. jamabandi (Annexure P-1), Aks-shajra (Annexure P-2), photograph (Annexure P-3) and other documents namely Annexure P-9 and Annexure P-13 are not sufficient to establish *prima facie* case in favour of the petitioners. This Court is of the view that the petitioners have also failed to show that the balance of convenience lies in their favour. The petitioners have also failed to establish that they would suffer irreparable loss in case raising of further construction at the spot is not stayed.

15. The petitioners are unable to show that the Courts below acted in an arbitrary manner and they further failed to point out any illegality or perversity in the impugned orders which were passed by the Courts below as per the settled legal principles after going through the entire relevant record. So, no case for interference is made out in the present petition filed by the petitioners under Article 227 of the Constitution of India. The petition is hereby dismissed being devoid of merits.

16. Pending application(s), if any, also stand disposed of in the same terms.

17. However, any observations made hereinabove are not to be construed as expression of opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

February 01, 2024
Paritosh Kumar