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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5096-2024

Date of decision : 05.09.2024

Mohd. Ashraf

... Petitioner

Versus

Mohd. Razak and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Mohd. Yousaf, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 20.07.2024 (Annexure P-6) passed by the Civil Judge (Junior Division), Malerkotla whereby the application of respondent No.1 for the appointment of a Local Commissioner has been allowed.

2. Brief facts of the present case are that the respondent No.1 had filed a suit with the following prayers:-

“A) Suit for Mandatory Injunction directing the defendant No.1 to remove the illegal encroachment made by him on 35' wide street (towards eastern side of property of the plaintiff) and 38' and 16.6” wide street towards eastern side of the property of the plaintiff fully shown in orange colour in the site plan -X- with heaps of sand bajri etc. placed by the plaintiff on the above mentioned 35' and 38' & 16.6” wide roads fully



shown in the site plan mark 'X' situated at Backside Idasa Factory, Chah Bansan Wala, Near Ludhiana Road Malerkotla District Sangrur and further issuing directions to the defendant No.1 to close /fill the illegal basement constructed by the defendant No.1 over his property, without taking any permission from defendant No.2 and any consent from the plaintiff in which he is running his business in the name and style as Noor Building Material Store, which he has purchased vide sale deed No. 1761 dated 22.10.2014, which is near to the property of the plaintiff and for issuing necessary directions to the defendant No.1 to remove his submersible and fill the bore, which he illegally dug in 38' wide street fully shown in the site plan or any other relief which this Hon'ble Court may deem fit and proper.

B) Suit for Permanent Prohibitory Injunction restraining the defendant No.1 from placing any construction material including sand bajri etc on the above mentioned 35" 38' and 16.5' wide streets and further restraining the defendant No.1 from blocking the passage of aforesaid 35' 38' and 16.6' wide street by way of parking any vehicle or otherwise illegally, forcibly and without due course of law or any other relief, which this Hon'ble Court may deem fit and proper."

3. In the plaint, it was stated that the plaintiff-respondent No.1 had purchased a property measuring 1318.38 square yards with specific boundaries vide registered sale deed dated 07.07.2009 and the said property of the plaintiff abuts a passage of 35' wide towards the eastern side and 30' wide towards the northern side. It is averred that towards the eastern side of the property of the plaintiff, the defendant No.1/petitioner had purchased property vide sale deed dated 22.10.2014 and that he had encroached upon a

part of the street fully depicted in the site plan and the said act of the

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petitioner was decreasing the area of the street. It was further averred in the plaint that defendant No.1/petitioner also used to place bajri, sand, heavy vehicles etc. on the above mentioned street and thus used to block the said street and that defendant No.1-petitioner had also raised an illegal basement in the property without taking any permission from defendant No.2-Municipal Committee, Malerkotla.

4. A written statement was filed by the present petitioner and the fact that he had purchased the property vide a sale deed dated 22.10.2014 was admitted in the said written statement.

5. An application for the appointment of a Local Commissioner was filed by respondent No.1 to which the reply was filed by the petitioner. The trial Court vide order dated 20.07.2024 had allowed the said application and had appointed the Kanungo Incharge of area as Local Commissioner and the Local Commissioner was further directed to give prior notice to all the parties about the date and time of inspection and then measure and demarcate the road / public street in front of the house of the defendant as well as the area on which the construction has been raised by the defendant as well as report regarding the existence of any submersible motor on the public street and the proceedings of measurement were ordered to be videographed and CD/Pen drive of the same be submitted before the Court.

6. A perusal of the said order would show that it was noticed by the trial Court that the defendant No.2-Municipal Council in its reply had stated that a notice under Section 195-A of the Punjab Municipal Act was issued to defendant No.1-petitioner to stop the construction of the building

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without getting any site plan passed. It was also observed by the trial Court that since in the present case, there was no approved site plan and there was no means available to the parties or for the Court to adjudicate regarding the construction beyond approved measurements, the appointment of a Local Commissioner for the purpose of demarcation of the construction raised by the defendant vis-a-vis the measurements of the street adjoining the property of the defendant would assist the Court in coming to know the actual and factual position. The Local Commissioner was, however, refrained from reporting about any internal construction of the building raised by defendant No.1 and was directed to measure only the outer construction / boundary wall of defendant No.1's property, and the length and breadth of the public street. The fact that earlier an application was also filed by respondent No.1 for the appointment of a Local Commissioner and was dismissed by the trial Court was also considered and it was specifically observed in paragraphs 9 and 13 of the order that both the applications were in essence different and the purpose of seeking the appointment of a Local Commissioner was also different. It is the said order which has been challenged on behalf of the petitioner before this Court.

7. Learned counsel for the petitioner has submitted that in the present case an earlier application for appointment of a Local Commissioner filed by respondent No.1-plaintiff was dismissed vide order dated 02.05.2019 (Annexure P-3) and thus, respondent No.1-plaintiff cannot be permitted to file a second application for the appointment of a Local Commissioner. It is further submitted that in paragraph 2 of the written

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statement, the petitioner had taken a plea that the property of the respondent No.1 is not opposite to that of the petitioner and there exists property of Feroze Khan and Gulam Hussain in between the properties of the respondent No.1 and the petitioner. It is stated that the plot of the petitioner is in an unauthorized colony and the Municipal Committee has already issued notice under Section 195-A of the Punjab Municipal Act to stop the construction and thus, the plaintiff-respondent No.1 has no right to file the present suit.

8. This Court has heard the learned counsel for the petitioner and has perused the paper book and found that the present revision petition is meritless and deserves to be dismissed.

9. Order 26 Rule 9 CPC provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property etc. the Court may issue a Commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Thus, as per the said provision, where the Court is of the opinion that local investigation is required to be done for elucidating any matter in dispute, it has the option to issue a Commission to such person so as to investigate the factual aspects and report to the Court.

10. In the present case, as is apparent from the facts stated hereinabove, the trial Court has come to the conclusion that in order to assist the Court, it is necessary that a Local Commissioner be appointed for demarcating the construction raised by the petitioner-defendant No.1 and

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also the street adjoining the property of defendant No.1 to see if the petitioner was raising construction on the street and also to report about certain factual aspects including whether the petitioner had placed a submersible motor on the street. It has further been ordered that prior notice be issued to both the parties and measurement be duly videographed and CD/ Pen drive of the same be submitted to the Court. The fact that the Municipal Council-defendant No.2 had issued notice under Section 195-A of the Punjab Municipal Act to the present petitioner to stop the construction of the building without passing of a site plan had also been noticed. The relief sought by respondent No.1-plaintiff in the present case, which has been reproduced hereinabove, would show that a mandatory injunction is being sought to remove the illegal encroachment made by defendant No.1 on the street in question in addition to the closure / filling up of the illegal construction raised by defendant No.1. In the said circumstances, the power exercised by the trial Court for the appointment of a Kanungo Incharge of the area as the Local Commissioner cannot be stated to be illegal, perverse or against law as the report which will be submitted by the Local Commissioner, would assist the trial Court in properly adjudicating the case.

11. All the pleas raised by the petitioner to challenge the said order are meritless. With respect to the earlier application filed for the appointment of a Local Commissioner, it would be relevant to note that the said application has not been placed on record and even a perusal of the order dated 02.05.2019, which is the order passed on the said application,

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specifically paragraphs 5 and 6, would show that the application was filed by respondent No.1-plaintiff to highlight that the petitioner was violating the injunction order dated 18.01.2019 passed in favour of respondent No.1-plaintiff and in the said circumstances, the trial Court had observed that it would be open to respondent No.1-plaintiff to file an application under Order 39 Rule 2-A CPC in case there was any disobedience. Moreover, the trial Court in paragraphs 9 and 13 of the impugned order had observed that both the applications are different in essence. Paragraph 13 of the said impugned order passed by the trial Court, which has not been shown to be perverse, is reproduced hereinbelow:-

“13. The objections raised by the defendants are misconstrued. As discussed earlier, the previous application for appointment of Local Commissioner was with respect to placement of construction material on the road whereas the present application is in the need of seeking response of the local commissioner for demarcation and measurements of the constructed portion of the defendant's plot and the street adjoining to the property of the defendant to arrive at an effective conclusion regarding possible construction being raised on public street affecting the rights of the plaintiff. This demarcation by local commissioner does not amount to collection of evidence.”

12. Even the argument sought to be raised on the basis of paragraph 2 of the written statement to the effect that in between the property of the petitioner and respondent No.1, some other property exists and on the said point, the impugned order be set aside, is misconceived inasmuch as the demarcation is being carried out to see as to whether any



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construction is being raised by the petitioner on the road/ public street in front of his house and after the report is submitted it would be open to both the parties to raise all pleas, in accordance with law and thus the impugned order cannot be set aside on the said plea.

13. Keeping in view the above said facts and circumstances, this Court is of the opinion that the impugned order dated 20.07.2024 is legal and in accordance with law and same deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 05, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No