



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2452-2022 (O&M)

Date of Decision: February 11, 2025

Ravinder

...Petitioner

Versus

Manjeet Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajesh Sethi, Ms.Lanica Sachdeva,
Mr.Ashuman Sethi and Mr.Arun Biriwal, Advocates
for the petitioner.

Mr.Sanjiv Gupta and Mr.Naveen Jhajholia, Advocates
for the respondents.

ARCHANA PURI, J.

The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India, thereby, making a prayer for modification of the order dated 07.03.2022 passed by learned Addl. District Judge, whereby, an order dated 23.12.2021 passed by learned Addl. Civil Judge (Sr. Divn.), on the application under Order 39 Rule 1 and 2 CPC, was affirmed.

The essential facts, to be noticed, are as follows:-

That, the respondents-plaintiffs had filed a suit for permanent injunction, thereby, asserting about the petitioner-defendant to be constructing illegal poultry farm, in the agricultural land, owned by his father, in village Bir Mathana. The Government of Haryana issued

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guidelines for setting up of the poultry farm and as per Rules and Direction No.1, the poultry farm should not be located within 500 meter from the residential zone. In this regard, the respondents-plaintiffs had moved an application before BDPO, Pipli and another application before CM Window No.CMOFF/N/2021/109398 dated 24.11.2021 and also moved an application dated 15.11.2021, before District Town Planner, but no action was taken by the concerned authorities.

It is further averred that the petitioner-defendant is setting up the poultry farm within 200 meter from the residential zone and also violated Direction No.2 that the poultry farm shed shall not be located within 20 meter from farm boundary, but he is setting up the poultry farm, adjoining to farm/shed of plaintiff No.2-Randhir Singh.

Furthermore, also it is asserted that as per Direction No.2, the poultry farm shall not be located within 200 meter from public roads, but the petitioner-defendant violated the said direction and set up poultry farm shed within 150 meter from the public roads. Even, as per Direction No.1, all poultry farm shall be set up 500 meter from nearby poultry dairy and another livestock, industries but the defendant violated the above-said direction also.

Further, it is also asserted that in case, the defendant succeeded to install poultry farm, which caused nuisance and foul smell and due to keeping of boiler, great nuisance has been created nearby the residential area, in the shape of filth and dirt and atmosphere has further been deteriorated for the plaintiffs as well as passers-by and neighbours. This

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has created unhealthy environment, which has further resulted into diseases, fever to the plaintiffs and it is a health hazard and has further polluted the whole atmosphere.

Also, it is asserted that the petitioner-defendant has further violated the order dated 27.05.2013 issued by the Principal Secretary to Govt. of Haryana, Environment department. The defendant did not get permission from the Pollution Control Board.

Along with the suit, an application under Order 39 Rule 1 and 2 CPC was also filed.

However, in the written statement, the petitioner-defendant raised various preliminary objections and further, had also asserted that the respondents-plaintiffs have not come to the court with clean hands and they are not entitled to any discretionary relief. It is asserted that father of the petitioner-defendant is the owner in possession of the land in question and further, it is also stated about the construction of poultry farm, in the said land by fulfilling the necessary instructions imposed by the Government. In fact, it was asserted that the petitioner-defendant had filed an application before Tehsildar Thanesar on 26.11.2021, for measuring distance from the abadi of village Bir Mathana for constructing poultry farm in the agricultural land. The Tehsildar marked the said application to Halqa Patwari, who visited and inspected the distance between abadi of village Bir Mathana and construction place of poultry farm. The distance between the abadi and constructed poultry farm is more than 1 k.m. and 1000 meter from water tank of the village and Gram Panchayat of village Bir Mathana had

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passed a resolution dated 04.10.2021. The consent has been given by the Panchayat for constructing the poultry farm and also given the consent for installation of the electricity connection.

Furthermore, an application was filed to the Forest Officer for clarification regarding construction of poultry farm and Divisional Forest Officer also had given the consent for raising construction over the agricultural land. Also, it is asserted that petitioner-defendant followed all the terms and conditions imposed by the Government. There is no nuisance created in the area of village by constructing the poultry farm.

Even, an application was filed before Environment department, for taking 'no objection certificate' and it had also stated that there is no requirement for permission, when the poultry farm has capacity of less than one lakh birds.

During the pendency of the suit, an application was also filed at the instance of the respondents-defendants before trial Court, thereby, making a prayer for appointment of Local Commissioner, to report that the petitioner-defendant is constructing the poultry farm within the residential zone. The said application was allowed vide order dated 10.12.2021 and one Advocate and Halqa Patwari, were appointed as Local Commissioner and report dated 14.12.2021 was furnished.

After hearing counsel for the parties and on appraisal of the material, coming on record, learned Addl. Civil Judge (Sr. Divn.) had partly allowed the application, thereby, dismissing the application qua raising further construction of poultry farm. However, the application for running



of poultry farm over the agricultural land was allowed, to the extent that the petitioner-defendant is restrained from keeping birds in the poultry farm, till the decision of the case.

Aggrieved, the petitioner-defendant had filed an appeal and the same was also dismissed vide order dated 07.03.2022.

In this backdrop, now, the petitioner-defendant has filed the present revision petition.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the petitioner-defendant that the suit, filed at the instance of the respondents-plaintiffs, is based on speculation and misplaced assumptions that if the poultry farm is installed, at the identified location, it would cause nuisance. Rather, it is submitted that the plaint starts with the assumption about nuisance to be already existing. There is no actual basis for such an assumption. In this regard, reference is made to Section 41 (f) of the Specific Relief Act, which predicates that the Court shall not grant injunction to prevent on the ground of nuisance, an act of which, it is not reasonably clear that it will be a nuisance.

Learned counsel submits that the construction part of the poultry farm is already completed. In fact, it is submitted that for the initiation of project of the poultry farm, requisite permissions have already been taken and the entire project is in compliant with the directions issued by the Environment department, Government of Haryana. It is only after working upon the compliance of the directions that the construction was started.



Furthermore, learned counsel for the petitioner has also submitted that even, the Haryana State Pollution Control Board had made clarification vide order dated 13.11.2017 that the poultry farms handling less than one lakh birds, are covered under the white category of industrial sector and they shall not be required to obtain consent to establish and consent to operation from this Board. Further, it is submitted that it was clarified that the environmental guidelines, issued by the Haryana Government/CPCB for poultry farms including minimization of odour pollution, management of solid waste, management of water discharge, good housekeeping practices, shall be applicable to all poultry farms, irrespective of number of birds.

In the given circumstances, it is submitted that requisite compliance, as per the aforesaid order, are also being made by the petitioner-defendant. Learned counsel for the petitioner-defendant has given an undertaking that no such flouting of the instructions of the Government of Haryana, will be made and the number of the birds, in the poultry farm, shall be less than one lakh. It is further submitted that there is no imminent possibility of causing pollution or making living of the people around, unhealthy. Even, learned counsel for the petitioner submits that no sustenance can be drawn from the report of the Local Commissioner, which is quite vague and does not give clear picture.

On the other hand, learned counsel for the respondents-plaintiffs has assiduously submitted that before commencing a poultry farm, the petitioner-defendant was required to obtain necessary sanctions from the local authorities and from the Pollution Control Board, which has not been

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so done. The petitioner-defendant has not produced any such kind of 'NOC' for establishment of the poultry farm. Rather, it is submitted that there is every chance of foul smell, health hazard and mental agony caused to the people around and thus, there is apprehension of nuisance, to be caused, at the behest of the petitioner-defendant.

In the light of the aforesaid submissions, at the very outset, it is pertinent to consider the contents of the plaint, which have already been reproduced aforesaid. A close perusal of the plaint, copy whereof is Annexure P-1, reveals that petitioner-defendant, though had sought relief of permanent injunction, but in the plaint, the respondents-plaintiffs have proceeded with the version of already existing poultry farm, in the agricultural land of father of the petitioner-defendant. By and large, the assertions are made to this extent that there is already nuisance caused and foul smell emitting and also about the unhealthy environment, which has resulted in causing disease to the plaintiffs and adjoining areas and keeping of broiler, hen in the area, has created lot of diseases, fever, nuisance and it has further polluted the whole atmosphere.

However, this version, coming forth, is mere apprehension of the nuisance to the respondents-plaintiffs, even before the start of the poultry farm. This version, as put forth, is also quite vague, more particularly, when it has come in the report of the Local Commissioner that the construction is going on and there are no birds, therein, at the time of inspection, meaning thereby, the poultry farm was yet not operational.

Now, coming to the report of the Local Commissioner itself. It



is pertinent to mention that in the report, the assertions, with regard to the compliance of the directions, are quite vague. In what manner, the measurements were conducted by the Local Commissioner, as such, is not evident from the report. What was the point, so taken and in whose presence the said measurement was conducted, nothing, as such, is coming on record. Leave aside the same, there is also no mention made about the compliance of the specific directions of the Government of Haryana.

Much emphasis has been laid upon the clause 3(iii) of the detail of the distance, as given in the report of Local Commissioner, which talks only about one house and that too, from the residential boundary of village Bir Mathana. It is significant to note that Environment department, Government, had issued certain directions to address the problem of pollution from poultry farms, vide order dated 27.05.2013. Few of the relevant directions relate to the distance of poultry farm from the residential zone, major water course, major drinking water reservoir or catchment side, from any drinking water source like wells, summer storage tanks etc., from nearby poultry, dairy and other livestock enterprises or industry. Besides the same, also the poultry sheds shall not be located within 20 meters from farm boundary, 200 meters from public roads, 20 meters from other sheds, on the same farm and 100 meters from any other dwelling on the same property and further directions related to the management of the collection and discharge of the drainage etc. and process of manure storage and management etc.

Considering the same, it is pertinent to mention that though,



minimum distance requirement of existence of poultry farm is 500 meters from the residential zone, but the report of the Local Commissioner, does not talk about the residential zone, it talks about the existence of one house from the residential boundary of village Bir Mathana and therefore, the said report, in itself is quite vague and from the same, no sustenance can be drawn. As such, it cannot be of any help to the Court.

Besides the report, it should also be noted that even though, the respondents-plaintiffs had stated that they have moved application before the various authorities, but the copies of the same, have not been placed on record.

In the given circumstances, it should be noted that the petitioner-defendant has placed on record the report obtained from the Teshildar, Thanesar, with regard to the verification of distance of the poultry farm from village Bir Mathana, which states about the distance to be of 1 k.m. from the abadi of village and situated at a distance of 1000 meters from the village water tanks and further about the school of the village, 220 KV electricity line, village pond canal, to be at a distance of 1 k.m. and fulfill all the rules mentioned in column No.1 to 3, which are as per the directions of the Government of Haryana.

Besides the same, there is also information sought from the various departments, wherein, it is stated that area obtained, does not fall in the forest area. Even, at this stage, when the number of birds to be put in the poultry farm, as such, is not coming forth, it cannot be stated that any permission, as per office order issued on 13.11.2017 by the Haryana State

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Pollution Control Board, any consent, to begin with the poultry farm is required. Though, it also states about the compliance of various other conditions given by the Government of Haryana i.e. minimization of odour pollution, management of solid waste, management of waste water discharge, good housekeeping practices, to be applicable to all poultry farms, irrespective of number of birds.

In the given circumstances, when the headcount of the birds, as such, is not evident, in any manner, it cannot be considered that the such permission is required from the Pollution Board also. Thus, the question of causing of the nuisance, due to running of poultry farm, is purely a question of fact, which can be decided by evidence only. Rather, at this stage, as observed aforesaid, the aspect of nuisance considered and stated about in the plaint, is based upon mere assumptions.

As such, it is not reasonably clear as to whether the nuisance will be caused or not caused, with the start of the poultry farm. In these circumstances, as per Section 41(f) of the Specific Relief Act, ad-interim injunction, ought to be refused.

In the light of the aforesaid, the revision petition, as such, is hereby accepted and the impugned orders dated 23.12.2021 and 07.03.2022, passed by learned trial Courts, are hereby set aside and consequently, application under Order 39 Rule 1 and 2 CPC stands dismissed.

February 11, 2025

Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)**JUDGE****Yes****Yes/No**