
(2000) 12 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4907 of 1996

Jasminder Singh and Others

APPELLANT

Vs

Gram Panchayat, Boparai Kalan

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Citation : (2001) 3 CivCC 144 : (2002) 2 RCR(Civil) 458

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Sumeet Mahajan, for the Appellant; J.S. Chaudhary and Mr. P.S. Bath, for the Respondent

Judgement

M.L. Singhal, J.—This is Civil Revision against the order dated 16.9.96 of Additional District Judge, Ludhiana whereby he set aside the order dated 12.11.93 of Sub Judge IInd Class. Jagraon, who had restrained the Gram Panchayat from constructing the drain for discharging sullage water through site shown by letter ABC in the plan attached to the plaint.

2. Facts:

Jasininder Singh etc. filed suit for permanent injunction restraining the defendant Gram Panchayat of village Boparai Kalan from constructing drain for discharging the sullage and rainy water through site ABC shown in red in the site plan attached to the plaint situated in the area of village Boparai Kalan. It was alleged in the plaint that Jasininder Singh plaintiff No. 1 is owner of residential house shown in yellow in the said site plan, Gurpreet Singh minor plaintiff is the owner of residential house shown in blue in the said site plan attached. Gurdev Kaur plaintiff No. 3 is the owner of the residential house shown in green in the said site plan. Jeon Singh plaintiff No. 4 is owner of residential house shown in Jamuni in the said site plan. These residential houses abut the site ABC. Sullage and rainy water of these houses has been following towards eastern side and then falling into the pond situated on the eastern side shown in blue in the said-plan

for the last so many years, no body has ever made any obstruction in the flow of the sullage and rainy water of these houses towards the pond Gram Panchayat has never made any obstruction in the flow of sullage and rainy water of these houses towards the eastern side. Defendant Gram Panchayat is proposing to construct drain for discharging the sullage and rainy water of these houses through site ABC towards the western side of the houses of the plaintiffs. There is no out let of water towards the western side of the houses of the plaintiff. On the western side, there is a canal minor, water cannot go beyond as there is canal minor on the western side of the houses of the plaintiffs. Sullage and rainy water of the village will be blooded into the houses of the plaintiffs and emit obnoxious and foul smell. Slope of the site shown red in the plan is from west to east.

3. Along with the plaint, plaintiffs made application for the grant of temporary injunction restraining Gram Panchayat from constructing drain through site ABC for the discharge of sullage and rainy water of heir houses through site ABC.

4. Defendant Gram Panchayat opposed this prayer of the plaintiffs urging that the plaintiffs do not have any genuine grievance to be redressed by the Court. They are hampering the development work of the village. Site plan furnished by the plaintiffs showing the location of their houses is wrong. I was denied that the sullage water of the-houses of plaintiffs No. 1 to 3 falls in the village pond. Village Panchayat with a view 10 provide drainage facility in that locality started the construction of the drain per. the natural flow which is east to west. It was urged that out of 400 feet of proposed drain about 1/3rd of the drain has been constructed. Defendant has decided to provide disposal of the water of this drain in its land located just close to the canal minor. There is sufficient land belonging to the Gram Panchayat located at the point, which can serve as disposal site for the water to be drained through the disputed drain. There is also another proposal to put the water of this drain into existing drain along the canal minor and through that drain to take water into the "Badrao" existing underneath the-canal minor. There is another piece of land of the Gram Panchayat across the minor just close to the aforesaid badrao. Sullage and rainy water will/lot be flooded into the houses of the plaintiffs, if this drain is constructed for the draining the sullage and rainy water from east to west, which is the natural flow of water. Vide order dated 12.11.93 Sub Judge IInd Class, Jagraon allowed this application and gave temporary injunction to the plaintiffs restraining the Gram Panchayat from constructing drain through site ABC for the discharge of dirty and sullage water through site ABC.

5. Not satisfied with this order, Gram Panchayat went in appeal, which was allowed vide order dated 16.9.96 by Additional District Judge, Ludhiann who vacated the temporary injunction granted to the plaintiffs by the trial Court.

6. Not satisfied with the order of Additional District Judge, Ludhiana dated 16.9.96. plaintiffs have come up in revision to this Court.

7. It was submitted by the Learned Counsel for the petitioners-plaintiffs that there will be irreparable injury to them if the respondent-Gram Panchayat is not restrained from constructing the drain through site shown by letters ABC in red in the plan attached to the plaint inasmuch as shamlat land where the sullage and rainy water of the village is proposed to be drained through this drain is not adequate enough to contain that water and the result will be that the water will over flow and flood their houses. It was submitted that their houses are abutting the proposed drain and the shamlat land. Spill over of that water will emit obnoxious smell which would be health hazard and nuisance to the plaintiffs. It was submitted that one Jawahar Lal JE was appointed local commissioner. who visited the site. He prepared level sheet regarding the level of the drain and the canal distributary and he was of the opinion that if water was allowed to flow towards the shamlat land and further along the canal distributary upto siphon, there is no permanent disposal point available with the Panchayat. Shamlat land is insufficient to absorb so much of sullage water which otherwise will create nuisance. It was submitted while granting or not granting temporary injunction. Court should have taken into consideration three cardinal principles namely prima facie case, balance of convenience and irreparable injury. It was submitted that temporary injunction should have been granted to the plaintiffs when they had a prima facie case, balance of convenience was in their favour and further if no temporary injunction was allowed to them, there would be irreparable injury to them inasmuch as the spill over of water would flood their houses and thereby there would be emission of obnoxious smell affecting their health. It was submitted that their houses abut the site ABC and said water of their houses flows towards the east and then falls into the pond situated towards the east and water has been flowing towards the eastern side and then falling into the pond since time immemorial, construction of this drain for the discharge of that water towards the western side of their houses would be in conducive to the natural flow of water and the opinion of the local commissioner. It was submitted that there is a pond situated on the eastern side of their houses. Why should the Panchayat have thought of changing the course of water towards the western side of their houses into the shamlat land, which is not adequate for the disposal of the said water when the said water had been flowing since times immemorial towards eastern side of their houses and falling into village pond? It was submitted that due weightage should have been given to the report of the Local Commissioner according to which, if water is allowed to flow towards shamlat land and further along the canal distributary upto syphon, there is no permanent disposal point available with the Panchayat and the shamlat land is inadequate to absorb sullage and rainy water which will be health hazard.

8. It was submitted that the natural flow of water is from east to. west and not from west to east. It was submitted that if the proposed drain is constructed and water is drained towards west to east, water after flowing into the shamlat land would flow towards east into the houses of the plaintiffs.

9. Learned Counsel for the respondent-Gram Panchayat, on the other hand,

submitted that the plaintiffs do not have a prima facie case. Balance of convenience is in favour of the Gram Panchayat and also there will be irreparable injury to Gram Panchayat (inhabitants of the village) if the proposed drain is not constructed. If the proposed drain is constructed the sullage and rainy water of the village would flow into the shamilat land, which is adjoining canal minor and then to the drain adjoining the canal minor and after crossing the canal minor through Badrao to the shamilat across the canal minor and there will be no nuisance, as slope of the land is towards the shamilat land and the sullage water will flow towards the shamilat land where it will be absorbed. It was submitted that the houses of the plaintiffs do not abut the main street where through the proposed drain is to be constructed. Rainy water of the houses of the plaintiffs and other inhabitants of the village flows from east to west and not from west to east. It was submitted that there is no drainage system to drain the sullage water of the houses of the plaintiffs No. 1 to 3. They have made their own arrangement within their own houses for the purpose of Jeon Singh plaintiff No. 4 has only a vacant plot and not a residential house. Defendant-Panchayat with a view to provide drainage facility in that locality where houses of the plaintiff's are situated started constructing drain as per the natural flow. It was submitted with 1/3rd drain has been constructed and the plaintiffs should not be stumbling block in the completion of the remaining part of the drain proposed to be constructed. In the level sheet, the local commissioner has shown the level of the drain and the canal distributary. In his opinion, levels allow the water to flow towards shamilat land. Gram Panchayat has decided to provide disposal point in its land situated close to the canal minor. It was submitted that Panchayat has sufficient land at that point which can absorb the sullage water to be drained through the disputed drain. It was submitted that there is another proposal also to put the water of the disputed drain into the existing drain along the canal minor and through that drain into the badrao existing underneath and canal minor. It was submitted that there can be no question of accumulation of water in the house of the plaintiffs or the flooding of their houses with water when there will be adequate space available with the Panchayat for draining out water to be absorbed.

10. It was submitted that plaintiffs should have a strong prima facie case so that they could be allowed to stall the execution of work by a public body. It was held in *Bhagwan Das and Others v. Surinder Kumar and Another*, (1988) 119 PLR 179 that "where by the erection of electric poles in the land in possession of the plaintiffs, they are not likely to suffer any damage as the land would still remain cultivable inspite of the electric poles, placing of electric poles in the land is in the interest of general public, injunction should not be granted to the plaintiffs."

11. In the exercise of its revisional jurisdiction, this Court should be slow in reversing the exercise of discretion by the lower Court in matters like the grant or refusal of temporary injunction, if that discretion appears to have been exercised rationally and keep in view the well defined principles governing the grant of temporary injunction. Gram Panchayat is executing a work of public

utility, which should not be stalled on the apprehension of the plaintiffs which according to the Panchayat is illusory and is unfounded.

For the reasons stated above, this revision fails and is dismissed.