
(2002) 05 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 493 of 2001 and Civil Stay Application No. 893 of 2001

Shivraj Singh

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2004) 2 RLW 714

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : S. Kasliwal, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—Heard learned counsel for the parties, perused the memo of appeal and the impugned order.

2. In this appeal filed u/s 104 r/w Order 43 Rule 1 CPC the challenge has been made to the order dated 27.2.2001 of the Addl. District Judge No. 5, Jaipur City Jaipur in Misc. Case No. 20/2000. Under this order the application filed by the plaintiff appellant under Order 39 Rule 1 and 2 CPC came to be rejected. During the course of arguments, learned counsel for the respondent has given out that the Corporation has given up its proposal to construct the Sulabh Complex at the disputed place, and it is not going to construct same. This statement of the counsel for the defendant-respondent cannot be doubted. So to this extent the grievance of the plaintiff appellant does not survive. The dispute between the parties is whether the construction of Kiosks which has been made by the defendant respondent is an encroachment and that too to the extent where it has to be ordered to be removed by the court by grant of temporary injunction.

3. After going through the documents produced by the plaintiff appellant himself a sketch map of the site and the Commissioner's report and map enclosed to it,

the court below has found as a fact that it is not a foot path but the land of the Municipal Corporation, Jaipur the title of which vests in it. A finding of fact has also been recorded on the basis of material produced that the construction is not put by the Municipal Corporation on the foot path. Not only this on the land in dispute, the court has found that there are two water huts and one tin shed. The plaintiff appellant has admitted that the construction of 10 kiosks have been put about 4-1/2 ft. ahead of the boundary wall. The Municipal Corporation is doing this work of construction of kiosks in public interest. Whole-sum unemployment is there in the country and all endeavour are to be made by the State Government, Municipal Corporation, the statutory authorities and the Corporations to find out the ways to provide maximum employment to the unemployed youth. In furtherance of fulfilment of this object the construction of 10 kiosks has been undertaken and the courts ordinarily may not have come in the way of this work in public interest. Moreover, I find from the order of the learned trial court that this construction of kiosks is undertaken for rehabilitation of those displaced persons who were carrying on business at another place in the derive of removal of encroachment on the Corporation land. This court in appeal filed under Order 43 Rule 1 CPC has very very limited power of judicial review. It is not a case where it can be said that the order passed by the court below is perverse. It is the case where the plaintiff appellant at the cost of the unemployed youth to, be rehabilitated there on completion of these kiosks to have this land open for its use. By constructing of these kiosks there shall not be complete obstruction in the way in case where the plaintiff appellant proposes to open gates in his boundary wall towards this land.

4. The grant of temporary injunction under Order 39 Rules 1 and 2 CPC is a discretion of the court below. The appellate court seldom to interfere with the exercise of discretion and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perverse or where the court had ignored the settled principles of law refusing interlocutory injunction. Where the discretion has been exercised by the trial court reasonable and in a judicial manner, the fact the the appellate court would have taken a different view cannot justify interference with the trial court exercise of discretion. The matter yet can be examined from another aspect. Here in case any temporary injunction is granted by the court below or by this Court in this matter ultimately the evicted persons, those displaced young unemployed disabled persons who are to be rehabilitated there in these kiosks on construction thereof will suffer heavily. An order of the court if it goes adversely affecting the right of the third persons who are not before it or against the public interest seldom to be made. The temporary injunction where it adversely affects public interest is to be granted only in the rarer of the rarest case and not as a rule or matter of course. Here in case the temporary injunction as prayed for is granted, the persons who have been displaced from the other places in the derive of removing encroachment, they will remain unemployed for all times to come i.e. till the suit is decided and this is directly against the public interest.

Where a conflict come in between the alleged right of the individual and public interest, in my humble opinion the court has to take care, look into and as far as possible to pass the order which goes in consonance with the maintenance of public interest.

5. As a result of the aforesaid discussion, this appeal fails and the same is dismissed with costs which is quantified to Rs. 2000/-.

As a result of the dismissal of the appeal, the stay application is also dismissed.