

(2008) 09 P&H CK 0211

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1501 of 2008 (O&M)

State of Haryana & Ors.

APPELLANT

Vs

Development Strategies (I) Private Limited & Another

RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 795

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. Rameshwar Malik, Addl.A.G., Haryana, Mr. Akshay Bhan,
Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J. (Oral)

1. CM No.18382CII of 2008

Allowed.

Written statement is taken on record.

CM No.1869596CII of 2008

Allowed as prayed.

CR No. 1501 of 2008

The petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India challenging the order dated 27.2.2008 passed by the learned Civil Judge (Junior Division), Jagadhri disposing of an application moved by the plaintiffrespondent under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short the Code) as also against the appointment of local commissioner.

2. Impugned order reads as under :

"The plaintiff, Development Strategies (I) Limited has come to the court seeking to restrain the defendants, State of Haryana, from prematurely terminating the

contract. They have challenged the notice issued by Director, Mines and Geology, Haryana, defendant No. 2, dated 18.1.2008.

The matter was decided by this court a couple of months ago. The judgment of the civil court has been placed on file. Perusal of the judgment, which was based on the earlier notice and the impugned notice dated 18.1.2008 on the basis of which the plaintiff has currently approached the court reveal that the grounds taken by government in the earlier notice and in the resent notice are similar. As per defendants the contract in the name of the plaintiff is liable to be terminated on the ground of violations of the various clauses in the contract agreement whereas the plaintiff alleges that the notice is politically motivated and the civil court has already returned its findings on the various irregularities, alleged by the State of Haryana and no such violation has in fact been committed.

Since the Government of Haryana has based the impugned notice dated 18.1.2008 on the basis of spot inspection which no doubt has been done by their own officials, it shall be in the larger interest of justice if a commissioner is appointed to visit the spot and to bring before the court the existing state of affairs for complete and effectual adjudication of the matter in controversy. The parties are at liberty to suggest the name of any expert who has the knowledge about mining for appointment as commissioner. The defendants have requested to appoint Director, Mines & Safety, Ghaziabad as Commissioner. However, it may not be in the interest of justice and fair play to appoint a serving official of the State as commissioner, in view of the specific stand taken by the plaintiff that the whole exercise is politically motivated and that the defendants will again obtain a favourable report by exerting undue pressure. It shall be, therefore, in the interest of justice to appoint a retired employee as commissioner. Thus Shri Kjuldeepak Ahuja, State Mining Engineer (Retired) is appointed as commissioner with the directions to visit the spot after serving prior notice to both the parties and to report about the existing state of affairs. The commissioner shall report in detail as per the violations, alleged in impugned notice dated 18.1.2008 with specific mention of the villages where the mining work is allegedly in progress. A copy of the impugned notice dated 18.1.2008 be sent to the commissioner along with this reference. His fee is assessed at Rs. 10,000/ to be paid by the plaintiff.

In the meanwhile, status quo order to continue. However, the status quo order shall not preclude the concerned authorities to proceed with the matter in accordance with the rules. The report of the commissioner is awaited for 20.3.2008."

3. Revision filed by the petitioners would not be competent as the order passed under Order 39 Rules 1 and 2 of the Code is an appealable order in view of the availability of statutory remedy of appeal.

4. The order appointing local commissioner is also not revisable in view of the law laid down by this court in the cases of Pritam Singh v. Sunder Lal, 1991(1) RRR 356 : (19901) PLR 191; Niranjana Singh v. Satwinder Singh (20052) PLR 689

and Hari Om v. Manish Kumar, 2005(2) PLR 690.

5. Mr. Rameshwar Malik, learned Additional Advocate General, Haryana appearing on behalf of the petitioners contends that in view of the peculiar facts and circumstances of the present case, the revision filed under Article 227 of the Constitution of India be entertained.

6. The contention of the learned counsel for the petitioners is that the impugned order suffers from an error apparent on the face of record as the learned Civil Judge has failed to appoint Director, Mines and Safety, Ghaziabad to be local commissioner on the presumption that he is an employee of the State. The contention of the learned counsel for the petitioners is that in fact Director Mines and Safety, Ghaziabad is an employee of the Union of India and not of the State.

7. This plea cannot be a ground to invoke the jurisdiction as independent person has been appointed as local commissioner.

8. Learned counsel for the petitioners further contends that the person appointed as local commissioner is an employee of the plaintiff respondent. However, this plea also cannot be looked into by this court in exercise of revisional jurisdiction as it was for the petitioners to raise this contention before the learned Civil Judge. Nothing has been brought on record to show that the point raised herein was actually argued before the learned trial court.

9. The learned counsel for the petitioners contends that the suit filed by the plaintiff respondent was not competent as only show cause notice has been issued for cancellation of the lease.

10. In support of this contention learned counsel for the petitioners placed reliance on the judgment of Hon"ble Supreme Court in the case of Special Director and another v. Mohd. Ghulam Ghouse and another, 2004(1) SCT 671 : (2004)3 Supreme Court Cases 440, wherein Hon"ble Supreme Court has been pleased to lay down as under :

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling inquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises, is a jurisdiction issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries

especially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection not granted."

11. This plea of the learned counsel for the petitioners deserves to be rejected as the petitioners have failed to avail statutory remedy of appeal available to them against the order of status quo passed by the learned trial court. It is well established law that jurisdiction under Articles 226 and 227 of the Constitution of India is not to be exercised when the party has a statutory remedy available.

12. Learned Additional Advocate General, Haryana, appearing on behalf of the petitioners thereafter placed reliance on the judgments of Hon"ble Supreme Court in the cases of State of Rajasthan and Anr. v. Rukhman Kanwar and others (2000) 9 Supreme Court Cases 141 and Union of India and others v. Oswal Woolen Mills Ltd. and others, (1984) 2 Supreme Court Cases 646 to contend that the order of status quo passed by the learned trial court cannot be sustained as the authorities under the statute cannot be precluded from performing their statutory duties.

13. Learned counsel for the petitioners also placed reliance on the judgment of Hon"ble Supreme Court in the case of Reliance Energy Ltd. and another v. Maharashtra State Road Development Corpn. Ltd. and others, (2007) 8 SCC 1 to contend that decision making process by the authorities under the statute is required to be completed and cannot be scuttled by the court in midway.

14. The contentions raised by the learned Additional Advocate General Haryana deserve to be rejected for more than one reasons.

15. As already observed above the remedy of appeal was available to the petitioners. However, they chose not to avail of the said remedy.

16. Consequently it may be noticed that the authorities relied upon by the petitioners would have no application to the facts of the present case in as much as the plaintiff respondent was on earlier occasion issued a show cause notice and thereafter lease was cancelled.

17. The plaintiff filed a civil suit challenging the order. Suit filed the plaintiff was decreed by the learned trial court and the petitioners have preferred an appeal against the judgment and decree passed by the learned trial court. The petitioners have again issued notice for cancellation of lease deed on those very grounds.

18. The plaintiff respondent, therefore, challenged the show case notice on the plea that issuance of notice was mala fide exercise of power under the political influence. This allegations stands prima facie proved as the show cause notice issued seeks to cancel the lease as the grounds which were successfully challenged by respondent/plaintiff in the earlier suit.

19. Learned Additional Advocate General, Haryana also argued that the impugned notice is based on additional grounds also. If that was the case where was the necessity for the petitioners to have raised the same grounds in addition to additional grounds which already stood adjudicated and the matter is subjudice before the appellate court.

20. It is well settled law that the malice is a ground to quash action taken even if it is in exercise of statutory provisions as the authorities under the statute have to act bona fide. Learned trial court on available evidence has formed an opinion that there is a prima facie case in favour of the plaintiff respondent due to earlier decree of the civil court in its favour. The court has further held that the lease is in force and therefore, nongrant of injunction was likely to cause irreparable loss and the balance of convenience is also in favour of the plaintiff respondent. The petitioners have not chosen to avail their statutory remedy of appeal.

No merit.

Dismissed.