

(2011) 03 P&H CK 0395

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2215 of 2011 (O and M)

Varinder Kumar Gupta and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2011) 163 PLR 329

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 8913-CII of 2011

1. Application is allowed subject to all just exceptions.

Civil Revision No. 2215 of 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for quashing of impugned order dated 1.11.2010, Annexure P4, and order dated 13.12.2010, Annexure P5, vide which application filed by Petitioners under Order 39 Rules 1 and 2 of the CPC (hereinafter to be referred as 'the Code') for grant of ad interim injunction order has been dismissed.

3. I have heard learned Counsel for the Petitioners and have gone through the whole record carefully including the impugned orders passed by learned courts below.

4. Facts relevant for the decision of present revision petition are that a suit for permanent injunction was filed by present Petitioners Plaintiffs restraining Respondents-Defendants from constructing underground water tank in the alleged children park shown in red colour in the accompanying site plan situated

at Arya Nagar, Mahesh Nagar, Ambala Cantt, on the ground that a Housing society was floated in the year 1956.

5. Land was acquired by the Society, plots were carved out and property in dispute was developed as a children park and, however, Respondents Defendants intend to construct water tank over the same without any right. On the similar facts, an application under Order 39 Rules 1 and 2 of the Code has also been filed.

6. Suit as well as application has been contested by Respondents Defendants on the ground that Respondents are acting in public interest to supply water to all the residents of the locality, i.e., Arya Nagar, in which Plaintiffs are also residing as well as to other nearby localities. It has been contended that earlier one tube well was installed for supply of water to the residents of Arya Nagar on their request. Later on due to scarcity of water in the area, another tube well was installed in the year 1993 and again on the request of the residents of the area, another tube well was installed in the year 1995 and the buildings for installing the said tube wells were also constructed at the spot. It is further pleaded that due to scarcity of water, another tube well was installed in the month of February 2004 and now they received several requests from residents of the localities as well as a request from the local MLA of the Constituency for fulfilling the need of drinking water and for that purpose, as per policy of the Government, an underground tank was proposed to be constructed instead of tube well, on the basis of water supply scheme based on canal water for the area along with booster so as to fulfill the requirement of water in this area.

7. It has been specifically contended that the rights in the land in dispute were transferred to Municipal Committee, Ambala, by the residents of the area and, hence, development work was carried out by Municipal Committee, Ambala, and later on Municipal Committee, Ambala, transferred those rights in favour of Respondents No. 2 and 3 vide order dated 2.4.1993 of Director Local Bodies, Haryana, Chandigarh. It has been stated that there is no such alleged park in existence on the spot and rather there are transformer and four tube wells in the site in dispute and that even roads, street lights and other common places within the vicinity of Arya Nagar are being maintained by the Municipal Committee. Plea has also been taken that underground water tank of canal based was proposed in the year 1990, and after the requisite sanction, the tenders were called in the year 2008 and, however, Petitioners- Plaintiffs intend to obstruct the implementation of the scheme floated by Haryana Government for welfare of the public at large.

8. Learned trial Court dismissed the application for ad interim injunction order filed on behalf of the Petitioners-Plaintiffs by observing as under:

6. Admittedly, the water works has already been in existence at the spot. Four tube wells already stand installed by the public Health Department for providing water to the inhabitants of the Arya Nagar as well as other nearby localities. The

scarcity of water is well known. The scheme was proposed by the Public Health Department for providing canal water to the inhabitants of the concerned area along with booster, so that the requirement of water is fulfilled. The inhabitants of the locality and nearby areas including the local MLA requested for installation of the booster pump for meeting the water requirement. A grant of 35.65 lakhs has already been approved for implementation of water scheme based on canal water for Ambala Sadar at Ambala Cantt., for Arya Nagar vide office memo No. 5273 dated 31.3.2008 issued by Superintending Engineer, PWD, Water Supply & Sanitation Division, Ambala Cantt. The work for the construction of the underground water tank has already started at the spot. There is nothing on record which may prima facie show that any objection was raised by any inhabitant of the locality at the time when tube wells were installed in the site in dispute. All the public/common places including streets, parks etc., vest in the Municipal Council of the area. The water supply and sewerage works within the municipal areas were transferred to the Public Health Department vide letter bearing memo No. 14091 to 14182 dated 2.4.1983 issued by the Director, Local Bodies, Haryana. The Public Health department thus has every right to utilize the land which vests in it for implementing the welfare schemes initiated by State Government for welfare of the public at large. When underground water tank is being constructed by the applicants at the same place where the tube wells have already been installed and the building raised thereon, it cannot be said that the applicants would suffer irreparable loss and injury by the construction of the underground water tank, more so, when the same is itself for their own benefit.

7. There is nothing on record which may prima facie show that the site shown as children park in the site plan has ever been used for the said purpose. Admittedly, there also no swings/rides etc., in existence at the spot. No photograph or other document has been placed on file which may prima facie show that the site in dispute has ever been used as children park. On the other hand, the Respondents have placed on file the photograph of the spot which prima facie show that no such children park has been in existence at the spot. There is also nothing on record which may prima facie show that any such children park is being maintained by the inhabitants of the locality at the spot. Rather the sites reserved for common purposes vest in the Municipal council of the area. The applicants are also not the original members of the Ambala National Cooperative House Building Society. Apart from the photocopy of the site plan, no other document has been placed on file by the applicants which may prima facie prove that the society formed at the time of purchase of the land is still in existence. No minutes of the meeting of the members of the society, if any have been placed on file by the applicants.

8. The learned Counsel for applicants has placed reliance upon the rulings Dr. G.N. Khajuria and Ors. v. Delhi Development Authority AIR 1996 253 (SC) and The Nav Nirman Cooperative Group Housing Society Ltd. v. A.K. Murarka and Ors. W.P. No. 588/2009 decided on 1.10.2010 by the Hon'ble High Court Delhi. However, both these rulings cited by learned Counsel for the applicants are

clearly distinguishable on facts. In the ruling 'The Nav Nirmal Cooperative House Building Society Ltd., v. A.K. Murarka and others' (supra), the allottees of the flats in the Society were held entitled to transfer of rights in respect of the garages as it was observed that the enjoyment of the garage is incidental to the flat allotted the transfer of the land reserved for garages cannot be made in favour of a third party. In the ruling Dr. G.N. Khajuria and Ors. v. Delhi Development Authority (supra), the land reserved for park was allotted to a school by the Delhi Development Authority. In the present case the land is not being put to personal use by any person or Authority. Rather the same is being put to use for the benefit of a public at large which is also going to benefit the applicants.

9. Appeal filed by present Petitioners-Plaintiffs against the said order has been dismissed by learned first appellate Court by observing as under:

12. After hearing learned Counsel for the parties and going through the record of the case, this Court has arrived at the conclusion that there is no infirmity in the order passed by the learned trial Court. It has to be borne in mind that the principles governing the grant of injunction are:

(i) Prima facie case;

(ii) balance of convenience;

(ii) irreparable loss and substantial injury in case the injunction is not granted. It has also to be borne in mind that the appellate Court is normally very slow in interfering with the orders of injunction passed by the learned trial Court and would normally not interfere in the order unless and until the order is shown to be perverse. In the instant case, the Appellants-Plaintiffs failed to even prima facie prove that the land in dispute was being used as a children park. On the contrary, in the photograph, which has been brought on record, it is shown that the land is being used for tube well etc.. It has come on record that tube wells were installed on the land in dispute many years back. In the year 1993-94 another tube-well was installed and, thereafter, again in the year 1995, a tube well was installed and a building was also constructed. Finally a big bore tube well was installed in February 2009. Now on the representation of the residents of the locality and those of neighboring localities, an underground water tank is proposed to be constructed by the authorities. The Appellants, however, opposed to the development work. The Appellants have not been able to prove on record that they had raised any objection when the tube wells were installed on the earlier occasions. Document dated 2.4.1993 is also on record which shows that the water supply and sewerage work within the municipal area has been transferred to the Public Health Department. The department, therefore, has every right to utilize the land for the welfare schemes initiated by the Government.

10. Both the Courts below have given sufficient reasons for declining request of Petitioners-Plaintiffs restraining Respondents Defendants from constructing

underground water tank so as to provide drinking water to the residents of the locality. Even if it is taken that initially the land was acquired by the society in the year 1956, however, thereafter, the entire area is being maintained by the Municipal Committee, as the same is within its limit. Basic amenities including roads, lights, water are being provided by Municipal Committee to the entire area. Petitioners-Plaintiffs filed the present suit in their individual capacity and they were not authorized by all the residents to file the present suit. Hence, they cannot be permitted to create hindrance in the development work being carried out by Respondents-State as per the scheme of the Government to provide drinking water to the entire area including residents of Arya Nagar.

11. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned courts below in passing the impugned orders and that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

12. Moreover, law is well settled in *Surya Dev Rai v. Ram Chander Rai and Ors.* 2004(1) RCR (Civil) 147 that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

Hence, the present revision petition is, hereby, dismissed being devoid of any merit.