S. No. 70

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on:-31.07.2024
Pronounced on:-22.08.2024

Case No. :-CM(M) No. 173/2024
CM No. 4330/2024
Caveat No. 1135/2024

Kailash Nath, S/o Late Sh. Prem Nath, R/o Kalyanpur, Jhiri, Tehsil Marh, District Jammu. …..Petitioner(s)

Through: Mr. Vikas Mangotra, Advocate.

Vs

1. Mulkh Raj (Sarpanch), S/o Late Sh. Anant Ram, R/o Kalyanpur, Tehsil Marh, District Jammu;

2. S.P. Sharma (Naib Tehsildar) S/o Not known, R/o Marh Jhiri Marh, District Jammu;

3. Khurshid Ahmed (Patwari) S/o not known, R/o Kalyanpur Jhiri Marh, District Jammu.

….. Respondent(s)

Through: Mr. Rakesh Chargotra, Advocate for Caveator.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Caveat No. 1135/2024

1. Heard learned counsel for the caveator.

2. Caveat stands ***discharged.***

CM(M) No. 173/2024

3. Through the medium of instant petition, the petitioner is invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India for setting aside the order dated 29.05.2024 (*hereinafter referred to as the,*

*"**impugned order**"*) passed by the Court of learned 1st Additional District Judge, Jammu (*hereinafter referred to as the, "**Appellate Court**"*) in File No. 162/appeal titled, "***Mulkh Raj Vs. Kailash Nath and ors.***", whereby the order dated 17.09.2020 passed by the learned 3rd Additional Munsiff, Jammu (*hereinafter referred to as the, "**trial Court**"*) in File No. 200176/2019 Civil Suit titled, "***Kailash Nath Vs. Mulkh Raj***", by virtue of which interim order dated 01.08.2018 had been made absolute and the parties to the suit have been directed to maintain status-quo with regard to performing of Pooja of Shiv Mandir, Jhiri and residence of plaintiff/petitioner herein in Dharmshala of the Shiv Mandir at village Jhiri, Tehsil Marh, District Jammu has also been set aside while allowing the appeal of the appellant/respondent No. 1 herein.

FACTUAL BACKGROUND OF THE CASE

4. In order to determine the controversy in question, it is necessary to notice the facts of the case, which, in succinctly, are summarized as under:-

5. The father of the petitioner was the Pujari of Shiv Mandir and after his death, the petitioner has stepped into his shoes and now performing his duties as Pujari for the last more than thirty years to the entire satisfaction of the concerned public and to this effect, an affidavit dated 13.03.2000 executed by Sh. Tilak Raj Nagpal has already been made part of the record of the suit. It is also averred in the instant petition that the respondents being headstrong high handed people, are interfering in the peaceful performance of the petitioner as a Pujari and trying to eject and evict him forcibly from the said Dharmsala.

6. Being faced with the above condition and also in view of the fact that the petitioner is in the continuous and uninterrupted possession in the suit

property coupled with his right to administer pooja and other rituals in the suit temple and right of occupation of residence in Dharmsala, a civil suit for Permanent Prohibitory Injunction titled "***Kailash Nath Vs. Mulkh Raj and ors***." came to be filed by him, *inter-alia*, seeking the following prayers:-

> ***"In the premises, it is, therefore, prayed that a decree in favour of the plaintiff against the defendants restraining them to interfere in any manner in the smooth performance of the puja in Shiv Mandir, Jhiri as the pujari of the said temple and also in his peaceful residence in the Dharamshalla of the said Mandir and also form ejecting and evicting him therefrom in any manner forcibly may kindly be passed with costs.***
> ***Any other relief the Hon'ble Court deems the plaintiff entitled to, may also kindly be passed in favour of the plaintiff against the defendants with costs."***

SUBMISSIONS/ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE PETITIONER

7. Learned counsel for the petitioner submits that initially at the time of filing of the suit, the trial Court after appreciating the *prima-facie* case of the plaintiff/petitioner herein, passed an interim order dated 01.08.2019 and directed the parties to the suit to maintain status-quo with regard to performing of the pooja of Shiv Mandir, Jhiri and residence of the petitioner in Dharmsalla of Shiv Mandir, Jhiri.

8. Learned counsel for the petitioner further submits that on being put to notice of the said civil suit, the respondents filed their written statement to the same, wherein they referred and relied upon a general order bearing No. SDM/M/PS/2019-20/461 dated 17.07.2019 passed by Sub Divisional Magistrate, Marh (*in short, "**SDM**"*), whereby the Naib Tehsildar, Jhiri was directed to evict the illegal occupants of Sarai attached to Baba Jitto Temple. As per the petitioner, the said order, though was not specifically directed against the petitioner, yet the same was made the basis to justify the interference in the suit

property. Moreover, the said order was never communicated to the petitioner and as a matter of fact, the same has not been implemented on spot till date by the concerned.

9. Learned counsel for the petitioner has vehemently argued that the trial Court after hearing the parties to the suit, passed the order dated 17.09.2020, whereby the interim order dated 01.08.2019 was made absolute and the parties to the suit were directed to maintain status-quo with regard to performing of pooja of Shiv Mandir, Jhiri and residence of the petitioner in Dharmsalla of Shiv Mandir, Jhiri, as it existed on the date of filing of the suit. Thereafter, the respondent No. 1 filed an appeal being File No. 161/Appeal titled, "***Mulkh Raj Vs. Kailash Nath and ors.***", which was *allowed* by the Appellate Court vide order dated 29.05.2024, whereby the order dated 17.09.2020 passed by the trial Court was set aside.

10. Learned counsel for the petitioner has further argued in vehemence that since the petitioner is in settled, continuous and uninterrupted possession of the suit premises and has been performing his duties as pujari of the said temple for the last thirty years, however, the Appellate Court has not considered the said plea of the petitioner. As per learned counsel for the petitioner, the Appellate Court has also not appreciated that there is nothing on record to show that the eviction order dated 17.07.2019 was passed by the SDM, Marh after giving proper opportunity of being heard to the petitioner. Further, as per the petitioner there is nothing on record, which would show that before passing the eviction order, the petitioner was ever given opportunity to represent his position/stand.

11. Learned counsel for the petitioner has further strenuously argued that the Appellate Court has not appreciated that it is an admitted case of the

respondents that there is no record of construction of sarai/dharamshala and the respondents have no right to evict anybody from the property. According to him, the issue regarding construction of the said dharamshala/sarian has yet to be adjudicated in the trial. Since, the existence of dharamshala, *prima-facie,* is there, then who constructed and financed the same are the material questions, which are necessary for the just decision of the case. According to petitioner, since these are disputed questions of facts regarding the ownership of the sarian, wherein the petitioner is an occupant, therefore, the respondents have no right to evict him without following/adopting due procedure of law and, thus, the respondents cannot take away and claim the construction on Sarai, which admittedly is not of the Government.

12. With a view to fortify his claim, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in case titled, "***Rama Gowda (D) by LRs Vs. Varadappa Naidu (D) by Lrs***, reported in *(2004) 1 SCC 769*", followed by a judgment titled "***Subramaniaswamy Temple, Ratnagiri Vs. V. Kanna Gounder***, reported in *(2009) 3 SCC 306*".

SUBMISSIONS/ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE CAVEATOR/RESPONDENT No. 1

13. Mr. Rakesh Chargotra, learned counsel for the caveator/respondent No. 1 submits that the appellate Court has properly applied the judicial mind while passing the order, which is under challenge in the present petition.

14. It is also the case of the caveator/respondent No. 1 that the petitioner has filed the suit to defeat the order of eviction passed by the SDM,

Marh by suppressing the material facts, therefore, he is not entitled to any relief of injunction.

15. Mr. Chargotra further submits that the petitioner has not arrayed the State and SDM, Marh, who are the necessary parties and it was incumbent on the part of the petitioner (respondent No.1 therein) to issue notice under Section 80 of the Code of Civil Procedure (*in short the, "**CPC**"*) and, thus, the appellate Court has rightly given the finding.

16. Learned counsel for the caveator further submits that it is not the case of the petitioner/respondent No.1 therein that he was appointed as Pujari and was given possession of the Sarain either by the Government or State or Committee of the Mandir, rather he is relying upon the affidavit given by one-Tilak Raj Nagpal of New Delhi in the year 2000, which does not give him an unfettered right of claiming possession of the said sarain. According to him, an affidavit given by a private party, who has no right to confer ownership on a State land, does not infuse any legal right on a person to claim possession of the said property.

LEGAL ANALYSIS

17. Heard learned counsel for the parties and perused both the orders passed by the Appellate Court dated 29.05.2024 and order dated 17.09.2020 passed by the trial Court.

18. Before going into factual matrix, it is essential to understand the power and jurisdiction, which can be exercised by High Courts under Article 227 of the Constitution of India. The law has been settled by the Apex Court in authoritative pronouncements by holding that the power under Article 227 of the

Constitution of India is to be exercised sparingly in appropriate cases where there is no evidence at all to justify the finding or when the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or the Tribunal has come to. Thus, it is axiomatic that such discretionary power must be exercised only to ensure that there is no miscarriage of justice.

19. The Apex Court in catena of judgments has already held that the High Court has to exercise such wide powers under Article 227 with great care and circumspection and the same cannot be exercised to correct all errors of a judgment of Court and Tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases, where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Even the power to re-appreciate the evidence would only be justified in rare and exceptional situations, where the grave injustice would be done, unless the Court interferes and the exercise of such discretionary power would depend upon the peculiar facts of each case with the sole objective of ensuring that there is no miscarriage of justice. The Hon'ble Apex Court in the case of ***Jai Singh Vs. Municipal Corporation of Delhi; (2010) 9 SCC 385*** has held as under:-

> ***"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The***

jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice."

20. Further, the Hon'ble Apex Court in "***M/S Garment Craft Vs. Praksh Chand Goel;*** reported in *(2022) 4 SCC 181* has held as under:-

"15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at ail to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of

> ***power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."***

21. In light of the various pronouncements, the law stands crystallized that judicial interference by Courts under Article 227 of the Constitution of India will be invoked, only when there is no evidence at all to justify the finding or when the finding is so perverse that no reasonable person can possibly come to such a conclusion which the Court or tribunal has come up to or if the Court finds any grave illegality or flagrant violation of fundamental principle of law so as to warrant judicial interference.

22. In order to find whether the order impugned in the instant case suffers from any perversity or flagrant violation of fundamental principle of law, which could enable this Court to intervene with finding of the Appellate Court, it is apposite to closely scrutinize the findings of the order passed by the Appellate Court, which is impugned in the instant petition.

23. From the meticulous perusal of the order impugned, it is evident that the petitioner’s foundation to the suit filed before the trial Court flows from an affidavit issued by Sh. Tilak Raj Nagpal, who was not a resident of Union

Territory of J&K and, thus, possessed no legal right in the land owned by the State or transfer the same to any other person. Be that as it may, if it is to be assumed that the said affidavit which is issued by Sh. Tilak Raj Nagpal and registered before a notary is an unregistered Agreement to sell document, still the same cannot be the basis to transfer any right over the State land in favour of the petitioner. Thus, this Court is in agreement with the finding recorded by the Appellate Court that no *prima-facie* case has been made out by the petitioner.

24. This Court is fortified with the judgment of this Court rendered in case titled, "***Surinder Partap Singh and Another Vs. Vijay Kumar and ors.,*** decided on *20.04.2023 in CM(M) No. 50/2023*, wherein at paras-9 & 10, following has been held:-

> ***"…..9.A perusal of the record reveals that agreement to sell dated 17.10.2018 relied upon by the petitioners executed between them and respondent Nos. 1 & 2 through respondent No. 3, is an un-registered and insufficiently stamped instrument. The learned appellate Court while passing the impugned order has held that ab unregistered agreement to sell cannot be used by the petitioners to protect their possession. It will be relevant to take note of section 49 of the Registration Act, 1977 as was applicable in the erstwhile State of Jammu and Kashmir, when the suit for injunction was filed by the petitioners. Section 49 of the Act (supra) reads as under:-***
>
> > **"49.** ***Effect of non-registration of documents required to be registered.—No document required by section 17(2)[or by any provision of the Transfer of Property Act] to be registered shall–***
> > ***(a) affect any immovable property comprised therein,***
> > ***(b) confer any power to adopt, or***
> > ***(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered."***
>
> ***10.Section 49 of the Registration Act, 1977 as was applicable in the erstwhile State of Jammu and Kashmir was different vis-a-vis section 49 of the Registration Act, 1908 as was applicable in rest of India but now applicable in Union Territory of J&K as well. Thus, a document that is required to be registered under section 17 of the Registration Act but is not registered, cannot affect the immoveable property that is the subject matter***

> ***of that instrument. Thus when the petitioners had based their suit for injunction demonstrating their alleged possession in respect of suit land on the basis of unregistered and insufficiently stamped instrument, which under law does not affect such immovable property, the petitioners had no prima facie case in their favour. Once the petitioners had no prima facie case in their favour, then there was no need to consider the existence of other two trinity principles i.e. Balance of convenience and irreparable loss. In Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy, 2010 AIR (SC) 296, the Hon'ble Apex Court has held as under: -***
>
> **16.** ***It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court."***

25. The perusal of the record further shows that the SDM, Marh while exercising his authority had issued letter No. SDM/M/PS/2019-20/461 dated 17.07.2017, whereby the Naib Tehsildar and Patwari were directed to evict the illegal occupants from Sarai. Further, the record reveals that the petitioner herein chose not to implead the SDM, Marh as party to the suit, who has passed the order of eviction being a necessary party to the suit. Thus, this Court does not find any legal infirmity with respect to the finding of the Appellate Court with regard to suit being non-maintainable on account of non-joinder of SDM, Marh and, accordingly, the same does not warrant any interference by this Court.

26. This Court is further fortified with the judgment of this Court in case titled, "***Manzoor Ahmad Dar and etc. Vs. State of J&K and Anr.,*** reported in *1988 AIR (J&K) 52*", wherein it has been held by this Court as under:-

> ***"…..8. In a suit where the plaintiff is not entitled to the grant of permanent injunction, under any provision of law, temporary injunction cannot be granted. Section 56(d) of the Specific Relief Act bars the granting of an injunction to interfere with any of the public duties of a department of Government by a civil Court……..."***

27. Further, from perusal of record, it transpires that the respondent No.1/ Appellant therein took a specific stand that respondent Nos. 2 and 3 in the suit are the Government officials, who were required to be given prior notice in terms of Section 80 of the CPC. Pertinently, the Appellate Court examined the law in this facet and observed in the impugned order that non-issuance of notice under Section 80 of the CPC makes the maintainability of the suit as ***core issue*** and, thus, no relief can be granted in absence of fulfillment of this requirement. To understand this observation of the Appellate Court, this Court feels it apposite to reproduce Section 80 of Code of Civil Procedure.

> ***"Section 80:- Notice.***
>
> ***[(1)] [Save as otherwise provided in sub-section (2), no suits 3 [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been 4 [delivered to, or left at the office of]***
>
> ***(a) in the case of a suit against the Central Government, 5 [except where it relates to a railway] a Secretary to that Government;***
>
> ***(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;***
>
> ***(bb)in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]***
>
> ***(c) in the case of a suit against 8 [any other State Government], a Secretary to that Government or the Collector of the district; and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of***

residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (I); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be , a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties that no urgent or immediate relief need be granted in the suit return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (I), if in such notice

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

28. The Section (*supra*) provides for issuing notice by a person to the Government and its officials for resolving his grievances and further allows such person to file a suit only after completion/expiry of two (2) months from the date of issuance of notice. Also, Sub Section 2 of the Section 80 of the CPC, provides for an exemption to issue such notice to Government or its officials, subject to getting leave of the Court, where the suit has been filed.

29. However, in the instant case, the petitioner has neither issued any prior notice under Section 80(1) of the CPC nor any leave has been sought from the Court under Section 80(2) of the CPC. Thus, the petitioner without adopting the due procedure, as envisaged under law, has proceeded to file the suit and subsequently, an interim relief was also granted by the trial Court vide order

dated 01.08.2019 in favour of the petitioner, which could not had been granted, keeping in view the mandatory provisions of the aforesaid Section. Thus the finding recorded by the appellate court with respect to the maintainability of the suit for non compliance of Section 80 of CPC cannot be faulted.

30. In so far as the issue pertaining to non-compliance of Section 80 of the CPC, this court draws support from the judgment of the Hon'ble Apex Court delivered in case titled, "***State of Maharashtra and Another Vs. Chander Kant,*** reported in *(1977) 1 SCC 257"*, wherein it has been observed as under:-

> ***"……13.No distinction can be made between acts done illegally and in bad faith and acts done bona fide in official capacity. See Bhagchand Dagadusa's case (supra). Section 80 of the Code of Civil Procedure therefore is attracted when any suit is filed against a Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity.***
>
> ***14. The language of section 80 of the Code of Civil Procedure is that a notice is to be given against not only the Government but also against the Public Officer in respect of any act purporting to be done in his official capacity. The Registrar is a Public Officer. The order is an act purporting to be done in his official capacity.***
>
> ***15. In the present case, the suit is to set aside the order made by a Public Officer in respect of an act done in the discharge of his official duties. Therefore, notice under section 80 of the Code of Civil Procedure was required.***"

31. This Court is in agreement with the finding of the Appellate Court that the petitioner herein has not arrayed SDM Marh as party defendant, who is a necessary party and that the trial Court has also not taken note of the fact that the proforma respondents (respondent Nos. 2 & 3 herein) were acting in their official capacity and, thus, were required to be served by way of a notice under Section 80 of Civil Procedure Code and without complying the said requirement, the suit was not maintainable.

32. This Court is also in agreement with the finding of the Appellate Court, wherein it has been observed that the trial Court after discussing the facts of the case, has taken into account the requirements and ingredients for grant or refusal of temporary injunction, but has not rightly appreciated the pleadings and material on record while passing the order of temporary injunction. The learned trial Court has not correctly appreciated the settled legal position while passing the order of temporary injunction that the interim relief of injunction flows from the main relief and if the main relief due to some lacunae cannot be granted, the same cannot be granted by way of interim injunction. Since, the main suit was not maintainable and liable to be dismissed for the reasons mentioned in the preceding paragraphs, then the very passing of the interim relief by the trial Court in favour of the petitioner herein was perverse in the eyes of law and rightly so, the Appellate Court has set aside the order.

33. This Court has perused the order passed by the trial Court and the Appellate Court minutely and, accordingly, is of the view that the finding of the trial Court is contrary to the facts and law because the petitioner has not chosen to implead SDM, Marh and State as party defendant, as SDM, Marh is within his authority to evict an unauthorized person from the State land or the structure made thereon. This Court is also of the view that the petitioner while filing a suit against the respondents has suppressed the relevant documents, i.e., order passed by the SDM, Marh to gain an advantage and has not approached the trial Court with clean hands, therefore, he was not entitled to relief of injunction.

34. The issue of suppressing material facts and approaching the Court with unclean hands has been settled in catena of judgments. In this regard, this Court deems it proper to place reliance on the judgment of the Hon’ble Apex Court

rendered in case titled, "***S.P Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs.***, reported in *1994 AIR SC 853"*, wherein at paras-7 & 8, being relevant to the instant case, following has been held:-

> ***"…..7. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.***
>
> ***…8. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."***

35. This Court is also fortified with the judgment of the High Court of Madras titled, "***N. Umpathy and others vs. Secretary to Government, Revenue Deptt. And ors.,*** reported in *2019 SCC Online Mad 23445*", wherein it has been observed as under:-

> ***"18. The decision in the case of Dalip Singh v. State of U.P. and others, supra, has been relied upon by the Supreme Court in the case of V.Chandrasekaran and another v. The Administrative Officer and others, reported in (2012) 12 SCC 133. In V.Chandrasekaran and another v. The Administrative Officer and others, supra, the Supreme Court observed that the appellants did neither approach the statutory authority nor the Court with clean hands and therefore, they do not warrant any relief.***
>
> ***19. Similar view has been taken by the Supreme Court in the decision in Kishore Samrite v. State of U.P. and others, reported in (2013) 2 SCC 398, in which, it was held that no relief can be granted to a litigant, who has not come with clean hands before the Court and in fact, an unfair litigant needs to be deprived of any relief.***
>
> ***20. A person approaching a superior Court must come with clean hands. He should state all relevant facts and not suppress any material fact. In the present case, the petitioners have not disclosed that they have filed a Civil Suit in O.S.No.248 of 2018 in respect of the very same land. In these circumstances, we are of the considered view that the petitioners did not approach the Court with disclosure of true facts. Thus, the petitioners have not approached the Court with clean hands. Hence, they are not entitled to the relief sought for."***

36. This Court is in agreement with respect to the finding recorded by the Appellate Court that no proceedings initiated by the public authorities can be stalled by grant of injunction, particularly, without arraying the public authority as necessary party and that the sarain in dispute has been constructed over the State land, so the same is public property and petitioner has no inherent right over the said property and the trial Court has not dealt with the said issue in right perspective, while passing the order under challenge before the Appellate Court, which renders the same as illegal and perverse.

37. Thus, this Court is of the view that the order of the appellate Court, which is impugned in instant case, has been passed after meticulous and proper application of mind and, thus, there is no error, perversity or any such finding given by the Appellate Court, which may look so unreasonable to compel this Court to interfere and exercise the discretionary power vested in this Court under Article 227 of the Constitution of India. This Court is of the further view that the Appellate Court has not committed any jurisdictional error while setting aside the order dated 17.09.2020 passed by the trial Court. Therefore, the impugned order dated 29.05.2024 passed by the Appellate Court does not call for any interference by this Court and the challenge thrown by the petitioner to the same is ill-founded and without any basis.

38. The judgments relied upon by the petitioner passed by Hon'ble Supreme Court in case titled, "***Rama Gowda (D) by LRs Vs. Varadappa Naidu (D) by Lrs***, reported in *(2004) 1 SCC 769*", followed by a judgment titled "***Subramaniaswamy Temple, Ratnagiri Vs. V. Kanna Gounder***, reported in *(2009) 3 SCC 306*", are not applicable to the instant case.

CONCLUSION

39. Keeping in view the pleadings of the parties, material on record and also bearing in mind the aforesaid enunciations of law, this Court is of the view that the petitioner has no legal right to possess the suit property and he has filed the suit without arraying the State and SDM, Marh as necessary parties, who were required to be impleaded. Besides, this Court is also of the view that notice in terms of Section 80 of the CPC has not been issued to the respondents before filing of the suit and, as such, the petitioner has filed the suit by concealing the material facts, i.e., the eviction order dated 17.07.2019 passed by the SDM, Marh. Therefore, this Court is in agreement with the finding by the Appellate Court that the petitioner was not entitled to any interim injunction because of the legal defect in the suit and, thus, the appeal was allowed and the order passed by the trial Court, which was under challenge before the Appellate Court, was set aside.

40. Since, the opinion, which has been expressed by the Appellate Court was limited for disposal of the appeal only, which, however, will not influence the merits of the suit, pending before the trial Court. Accordingly, this Court deems it proper that before proceeding further in the matter, the trial Court shall decide the question of maintainability of the suit keeping in view the objections raised in the written statement filed by the defendants/respondents herein, within a period of four weeks from the date copy of this order is served to the trial Court by either of the parties. In addition, Registry is also directed to serve copy of this order to the learned trial Court (3rd Additional Munsiff, Jammu). The parties are directed to appear before the trial Court on 02.09.2024.

41. Thus, in view of the above, the instant petition preferred by the petitioner is found bereft of any merit and the same is, accordingly, ***dismissed in limine*** alongwith connected applications.

(Wasim Sadiq Nargal)
Judge

JAMMU
22.08.2024
Ram Krishan

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No