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HIGH COURT OF UTTARAKHAND **AT NAINITAL**

Writ Petition (M/S) No. 2404 of 2024

Divisional Manager and Another ...Petitioners
Versus
Sharda Devi Saxena and Another ...Respondents

Advocates : Mr. Ashish Joshi, Advocate for the petitioners.
Mr. M.C. Kandpal, Senior Advocate for respondent No. 1
Mr. Lalit Sharma, Advocate for Nagar Nigam/respondent No. 2

Hon'ble Manoj Kumar Tiwari, J.

1. Petitioners have challenged the order dated 26.04.2022 passed by learned Civil Judge (Senior Division), Rudrapur, District Udhampur in Civil Suit No. 158 of 2021, whereby Temporary Injunction Application filed by respondent No. 1, was allowed. Petitioners have also challenged judgment dated 07.03.2024, rendered by 3rd Additional District Judge, Rudrapur, District Udhampur, in Civil Appeal No. 19 of 2022, whereby Trial Court's order was affirmed.
2. Learned counsel for the petitioners submits that respondent No. 1 filed a suit for permanent injunction and declaration, in which Divisional General Manager and Assistant Divisional Manager, Uttarakhand Transport Corporation were added as defendant Nos. 1 and 2 and Municipal Corporation, Rudrapur was arrayed as proforma defendant No. 3. He submits that respondent No. 1, in her suit, did not claim that she is owner of the property in question and she simply stated that she is continuing in possession over the



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land in suit for more than 40 years. He submits that the land in question is *nazul* land belonging to State Government, which was allotted to Uttarakhand Transport Corporation for construction of Inter State Bus Terminal (ISBT) vide G.O. dated 04.10.2011; however, due to temporary injunction granted in favour of respondent No. 1, construction work of ISBT is stalled.

3. Learned counsel for the petitioners further submits that learned Trial Court as well as learned Appellate Court have not considered whether plaintiff (respondent No. 1 herein) has been able to make out any *prima facie* case and without considering the said aspect, temporary injunction was granted to her. He submits that plaintiff could not show any *prima facie* case, yet temporary injunction was granted in her favour. He further submits that learned Courts below erred in not considering whether temporary injunction can be granted at the instance of trespasser against the true owner of a property.

4. The order passed by learned Trial Court reveals that petitioner mentioned in its objection that the land in question was *nazul* land and State Government allotted the same to Uttarakhand Transport Corporation for setting up Inter State Bus Terminal, vide G.O. dated 04.10.2011. It further reveals that respondent no. 1 in her plaint admitted that it is a government land and Respondent No. 1 claimed that she applied for freehold right to the State Government, however, she did not add State of Uttarakhand as defendant in the suit.



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5. Stand taken by Nagar Nigam, Rudrapur is considered and discussed in para 4 of Trial Court's order. Nagar Nigam stated that house of the plaintiff is standing over *nazul* land, allotted to Uttarakhand Transport Corporation; although plaintiff claimed that she is in possession over the land in question since last 45 years, however, there is no evidence whatsoever to support that claim; the land which is occupied by plaintiff is under control of Uttarakhand Transport Corporation and Nagar Nigam has nothing to do in the matter, therefore, there is no cause of action available to plaintiff against Nagar Nigam.

6. Learned counsel for the petitioners submits that learned Trial Court has not considered relevant aspects while granting temporary injunction in favour of the plaintiff (respondent No. 1).

7. He submits that injunction was granted merely because plaintiff claimed that she is in unauthorised occupation of the land in question. He submits that even if that claim is taken on its face value, then also, the status of the plaintiff would be that of a trespasser and law is well settled that no injunction can be granted against the true owner of a property at the instance of persons in unlawful possession.

8. He submits that in the absence of a strong *prima facie* case, order of temporary injunction cannot be passed; however, learned Trial Court granted temporary injunction in favour of plaintiff in a perfunctory manner without considering whether there is any *prima facie* case in favour of the plaintiff.



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9. Learned counsel for petitioners placed reliance upon judgment rendered by Hon'ble Supreme Court in the case of ***Mahadeo Savlaram Shelke and others Vs. Pune Municipal Corporation and Another***, reported in **(1995) 3 SCC 33**. In para 9 of the said judgment, Hon'ble Supreme Court has observed that "It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession". Para 14 and 15 of the said judgment are reproduced below:

"14. It would thus be clear that in a suit for perpetual (sic) injunction, the court should enquire on affidavit evidence and other material placed before the court to find strong prima facie case and balance of convenience in favour of granting injunction otherwise irreparable damage or damage would ensue to the plaintiff. The court should also find whether the plaintiff could adequately be compensated by damages if injunction is not granted. It is common experience that injunction normally is asked for and granted to prevent the public authorities or the respondents to proceed with execution of or implementing scheme of public utility or granted contracts for execution thereof. Public interest is, therefore, one of the material and relevant considerations in either exercising or refusing to grant ad interim injunction. While exercising discretionary power, the court should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. Even otherwise the court while exercising its equity jurisdiction in granting injunction has also jurisdiction and power to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction restraining the defendant to proceed with the execution of the work etc. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The pecuniary jurisdiction of the court of first instance should not impede nor be a bar to award damages beyond its pecuniary jurisdiction. In this behalf, the grant or refusal of damages is not founded upon the original cause of action but the consequences of the adjudication by the conduct of the parties, the court gets inherent jurisdiction in doing ex debito justitiae mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the defendant from proceeding with the action complained of in the suit. It is common knowledge that injunction is invariably sought for in laying the suit in a court of



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lowest pecuniary jurisdiction even when the claims are much larger than the pecuniary jurisdiction of the court of first instance, may be, for diverse reasons. Therefore, the pecuniary jurisdiction is not and should not stand an impediment for the court of first instance in determining damages as part of the adjudication and pass a decree in that behalf without relegate the parties to a further suit for damages. This procedure would act as a check on abuse of the process of the court and adequately compensate the damages or injury suffered by the defendant by act of court at the behest of the plaintiff.

15. Public purpose of removing traffic congestion was sought to be served by acquiring the building for widening the road. By orders of injunction, for 24 years the public purpose was delayed. As a consequence execution of the project has been delayed and the costs now stand mounted. The courts in the cases where injunctions are to be granted should necessarily consider the effect on public purpose thereof and also suitably mould the relief. In the event of the plaintiffs losing the suit ultimately, they should necessarily bear the consequences, namely, escalation of the cost or the damages the Corporation suffered on account of injunction issued by the courts. Appellate court had not adverted to any of the material aspects of the matter. Therefore, the High Court has rightly, though for different reasons, dissolved the order of ad interim injunction. Under these circumstances, in the event of the suit to be dismissed while disposing of the suit the trial court is directed to assess the damages and pass a decree for recovering the same at pro rata against the appellants.”

10. Learned Senior Counsel appearing for respondent No. 1 supports the order passed by Trial Court and the Appellate Court and submits that Nagar Nigam, Rudrapur is the owner of the land and not Uttarakhand Transport Corporation. He submits that possession of respondent no. 1 dates back to 1980 and the house constructed by her is situated in Mohalla Darianagar, Rudrapur, District Udhampur Singh Nagar, which is far away from the land allotted to Uttarakhand Transport Corporation.

11. Learned Senior Counsel further submits that respondent no. 1 is having receipts of property tax and electricity charges for the last several decades which



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prove her claim that her house is standing over the land in question since 1980. He further submits that conditional allotment of land was made in favour of Uttarakhand Transport Corporation vide G.O. dated 04.10.2011; he refers to para 4 of the said G.O. where it is mentioned that if the land is not utilised for the purpose it was allotted within three years, then the allotment shall stand cancelled and land will revert back to the Housing Department of State Government. Thus he submits that since the land was allotted in 2011 and Uttarakhand Transport Corporation has not constructed ISBT up till now, even after expiry of more than 13 years, therefore, allotment of land made in favour of Uttarakhand Transport Corporation stood cancelled and the land is now vested in the State Government.

12. The issues raised by learned Senior Counsel for respondent No. 1 touch the merits of the suit, therefore, any observation by this Court on the said issues would not be warranted at this stage, as the suit is yet to be decided by Trial Court.

13. Perusal of the order on temporary injunction passed by Trial Court on 26.04.2022 reveals that learned Trial Court has considered *prima facie* case in a slipshod manner.

14. In the case of **Dorab Cawasji Warden v. Coomi Sorab Warden**, reported in (1990) 2 SCC 117, Hon'ble Supreme Court held as follows:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts



that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief."

15. The expression '*prima facie* case' was considered and discussed by Hon'ble Supreme Court in the case of **Dalpat Kumar and another Vs. Prahlad Singh and others**, reported in **(1992) 1 SCC 719**. Para 5 of the said judgment is reproduced below: -

"5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a *prima facie* case" in his favour which needs adjudication at the trial. The existence of the *prima facie* right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction. *Prima facie* case is not to be confused with *prima facie* title which has to be established, on evidence at the trial. Only *prima facie* case is a substantial question raised, *bona fide*, which needs investigation and a decision on merits. Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely



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to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

16. The discussion made by learned Trial Court on *prima facie* case thus falls short on what is required by law. Therefore, the order passed by learned Trial Court as affirmed by Appellate Court, deserve to be set aside and are hereby set aside. The matter is remitted back to learned Trial Court to decide Temporary Injunction Application, filed by respondent No. 1 afresh, as per law within three weeks. Till disposal of Temporary Injunction Application by the Trial Court, status quo, qua possession over the land in question, as existing today, shall be maintained.

(Manoj Kumar Tiwari, J.)

31.07.2025

Mahinder/