IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 109 of 2015

Date of decision: 26.5.2016

Smt. Ganpatu & Others. **…Petitioners**

Versus

State of H.P. and others. **…Respondents**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioners: Ms. Seema Guleria, Advocate.

For the Respondents: Ms.Meenakshi Sharma, Additional Advocate General with Mr.J.S. Guleria, Assistant Advocate General.

Tarlok Singh Chauhan J. (Oral).

This petition under Article 227 of the Constitution of India is directed against the order passed by learned Additional District Judge, Shimla on 1.12.2014, whereby he affirmed the order passed by learned Civil Judge (Junior Division), Court No. 6, Shimla on 18.1.2014, thereby, declining the prayer for injunction as sought for by the petitioners.

The facts leading to the filing of this petition may be stated thus:-

2. The plaintiffs/petitioners filed a suit for declaration and permanent prohibitory injunction and along with the same also filed a separate application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for restraining the respondents/defendants from transferring, encumbering, damaging or dispossessing the petitioners from the land comprised in Khewat No. 81/77, Khatauni No. 159 old, Khasra No. 1271/38, new Khasra No. 329, measuring 1 bigha 10 biswas, 1272/38, measuring 11 bighas 3 biswas and 1278/44, measuring 17 biswas, new Khasra No 329, situated at Mauza Bajhair (Sheel), Pargana Dhamehr, Tehsil and District Shimla, H.P. (herein after referred to as the suit land). It was averred that the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes.

suit land was owned by the erstwhile ruler of Dhami Estate Raja Dalip Singh, son of Shri Hira Singh. The predecessor-in-interest of the petitioners Sh. Anant Ram was a priest, performing pooja of Deo Kurgan and late Raja Dalip Singh out of gratitude and in lieu of the services of pooja gave the suit land to Sh. Anant Ram in the year 1952. Sh. Anant Ram was put in possession thereof and was assured by late Raja that the entry qua the same would be incorporated in the revenue records. It was averred that the possession of predecessor-in-interest and thereafter the petitioners is continuing since 1952 without any interference, let or hindrance. It was further averred that in the year 1995 Sh. Anant Ram came to know that the suit land under the H.P. Ceiling on Land Holding Act, 1972 (hereinafter referred to as the "Act" in short) has been declared surplus by defendant No. 1 after litigating with the proforma defendants. It was also averred that the petitioners were not aware of this litigation and came to know about the same on filing of the application for correction of the revenue entries by invoking Sections 37 and 38 of the H.P. Land Revenue Act, which was registered as case No. 21/95-96. The successors of late Raja Dalip Singh have admitted the oral transfer by their predecessor-in-interest in favour of Sh. Anant Ram and have also admitted the possession of Sh.Anant Ram over the suit land since 1952, but despite this admission, the case is still pending. The petitioners further alleged that in the month of December, 2013, respondents No. 2 to 6 started interfering in the suit land and uprooted the trees planted by their predecessor-in-interest and despite repeated requests were still interfering in the suit land, constraining the petitioners to file the instant suit.

3. The respondents contested the application by filing reply, wherein it was stated that the petitioners were neither the owners nor were in possession of the suit land. It was further averred that the suit land had been

vested in the State of H.P. as per the provisions of the Ceiling Act on 19.5.1990 and the same was supported by the revenue record.

4. Learned trial Court on the basis of the pleadings and material placed on record dismissed the application and appeal preferred against this order also came to be dismissed by the learned lower appellate Court. Aggrieved by the orders passed concurrently by the learned Courts below, the petitioners have filed the instant petition on the ground that the findings recorded by the learned Courts below are totally perverse and therefore, deserve to be set aside.

I have heard the learned counsel for the parties and have also gone through the records of the case.

5. The first and foremost question that arises for consideration is as to what is precisely the scope of judicial intervention in such like matters. It is well settled that the High Court can exercise jurisdiction under Article 227 when the orders passed by the learned Court below is vitiated by an error, which is manifest and apparent on the face of the proceedings, i.e. when it is based on clear ignorance or utter disregard of the proposition of law and a grave injustice or gross failure of justice has occasioned thereby. The supervisory jurisdiction is wide and used to improve the ends of justice. The power must however be exercised sparingly only to keep the subordinate courts and tribunals within the bounds of their authority. Power is neither available to be exercised to correct mere errors (whether on the facts or laws), nor is it a cloak of an appeal in disguise. The supervisory powers of revision under Article 227 cast an obligation on the High Court to keep the inferior courts and tribunals within their bounds and erroneous decision may not be accorded for exercise of jurisdiction under Article 227 of the Constitution of India, unless the error is referable to the Court or there is dereliction of duty or flagrant abuse of power by the subordinate courts and tribunals resulting in

grave injustice to any party, therefore, the scope of interference in proceedings under Article 227 of the Constitution is limited and the power conferred thereunder has to be exercised within certain parameters.

6. In ***Waryam Singh and another*** vs. ***Amarnath and another, AIR 1954 SC 45,*** the Hon'ble Supreme Court observed:

> *"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in "Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee", AIR 1951 CAL 193 (SB) 1 (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."*

7. In ***Bathutmal Raichand Oswal*** vs. ***Laxmibai R. Tarta, AIR 1975 SC 1297,*** the Hon'ble Supreme Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. The Hon'ble Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

> *"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts".*

The Hon'ble Supreme Court in the case of ***Bathutmal*** (supra) approved the dictum of Morris L. J. in Res v. Northumberland Compensation Appellate Tribunal, 1952 All England Reports 122.

8. In ***Laxmikant Revchand Bhojwani and another*** vs. ***Pratapsing Mohansing Pardeshi Deceased through his heirs and legal representatives, JT 1995 (7) SCC 400,*** the Hon'ble Supreme Court observed:

"The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

9. In ***State of Maharashtra*** vs***. Milind & Others, 2001 (1) SCC 4,*** the Hon'ble Supreme Court observed:

"The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record."

10. Again in ***State*** vs***. Navjot Sandhu (2003) 6 SCC 641,*** the Hon'ble Supreme Court observed as under:

"Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise."

11. In ***Mohammed Yusuf*** vs. ***Faij Mohammad and others, 2009 (1) Scale 71,*** the Hon'ble Supreme Court held as under:

"The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the learned trial Court and revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety".

12. In ***State of West Bengal and others vs. Samar Kumar Sarkar, JT 2009 (11) SC 258***, the Hon'ble Supreme Court held as under:

"10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence."

13. In ***Jai Singh and others*** vs. ***Municipal Corporation of Delhi and others (2010) 9 SCC 385***, the Hon'ble Supreme Court in paras 15, 16 and 42 of the judgment 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 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 can not 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.

16. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not 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.

42. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of The Estralla Rubber Vs. Dass Estate (P) Ltd., [(2001) 8 SCC 97] wherein it was observed as follows:

> *"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."*

14. Bearing in mind the aforesaid principles, it would be noticed that the entire case of the petitioners is set up on the plea of so called oral transfer. Now the question whether the land was in fact given by late Raja Dalip Singh to Sh. Anant Ram and whether he was even competent to do so

is matter of evidence. Even the revenue record does not support the claim of the petitioners, because as per the pleaded case of the petitioners, even the mutation of the land had not been carried out in the revenue record.

15. The factors required to be borne in mind while granting or refusing injunction have been succinctly dealt with by the Hon'ble Supreme Court in ***M.Gurudas and others*** *versus* ***Rasaranjan and others (2006) 8 SCC 367*** in the following manner:-

> *"18.While considering an application for injunction, it is well- settled, the courts would pass an order thereupon having regard to:*
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> *(i) Prima facie case*
> *(ii) Balance of convenience*
> *(iii) Irreparable injury.*
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> *19. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist. There may be a debate as has been sought to be raised by Dr. Rajeev Dhawan that the decision of House of Lords in American Cyanamid v. Ethicon Ltd. (1975) 1 All ER 504 would have no application in a case of this nature as was opined by this Court in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.(1999) 7 SCC 1 and S.M. Dyechem Ltd. v. Cadbury (India) Ltd. (2000) 5 SCC 573, but we are not persuaded to delve thereinto.*
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> *20. We may only notice that the decisions of this Court in Colgate Palmolive (supra) and S.M. Dyechem Ltd (supra) relate to intellectual property rights. The question, however, has been taken into consideration by a Bench of this Court in Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P) Ltd. (2006) 1 SCC 540 stating: (SCC pp. 552-53, paras 36-40)*
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> > *"36.The Respondent, therefore, has raised triable issues. What would constitute triable issues has succinctly been dealt with by the House of Lords in its well-known decision in American Cyanamid Co. v. Ethicon Ltd.(1975)1 All ER 504 holding: (All ER p.510 c-d)*
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> > > *'Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expression as 'a probability', 'a prima facie case', or 'a strong prima facie case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this*

form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.'

It was further observed (All ER pp.511 b-c & 511j)

'Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark on a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

* * *

The factors which he took into consideration, and in my view properly, were that Ethicon's sutures XLG were not yet on the market; so that had no business which would be brought to a stop by the injunction; no factories would be closed and no workpeople would be thrown out of work. They held a dominant position in the United Kingdom market for absorbable surgical sutures and adopted an aggressive sales policy.'

37.We are, however, not oblivious of the subsequent development of law both in England as well as in this jurisdiction. The Chancery Division in Series 5 Software v. Clarke (1996) 1 All ER 853] opined: (All ER p.864 c-e)

'In many cases before American Cyanamid the prospect of success was one of the important factors taken into account in assessing the balance of convenience. The courts would be less willing to subject the plaintiff to the risk of irrecoverable loss which would befall him if an interlocutory injunction was refused in those cases where it thought he was likely to win at the trial than in those cases where it thought he was likely to lose. The assessment of the prospects of success therefore was an important factor in deciding whether the court should exercise its discretion to grant interlocutory relief. It is this consideration which American Cyanamid is said to have

prohibited in all but the most exceptional case. So it is necessary to consider with some care what was said in the House of Lords on this issue.'

38. In Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. (1999) 7 SCC 1, this Court observed that Laddie, J. in Series 5 Software (supra) had been able to resolve the issue without any departure from the true perspective of the judgment in American Cyanamid. In that case, however, this Court was considering a matter under Monopolies and Restrictive Trade Practices Act, 1969.

39.In S.M. Dyechem Ltd. v. Cadbury (India) Ltd. (2000) 5 SCC 573, Jagannadha Rao, J. in a case arising under Trade and Merchandise Marks Act, 1958 reiterated the same principle stating that even the comparative strength and weaknesses of the parties may be a subject matter of consideration for the purpose of grant of injunction in trade mark matters stating : (SCC p.591, para 21)

'21…..Therefore, in trademark matters, it is now necessary to go into the question of "comparable strength" of the cases of either party, apart from balance of convenience. Point 4 is decided accordingly.'

40.The said decisions were noticed yet again in a case involving infringement of trade mark in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.(2001) 5 SCC 73."

21. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only on a mere triable issue.(See Dorab Cawasji Warden v. Coomi Sorab Warden and Others , (1990) 2 SCC 117, Dalpat Kumar v. Prahlad Singh(1992) 1 SCC 719, United Commercial Bank v. Bank of India (1981) 2 SCC 766, Gujarat Bottling Co. Ltd. v. Coca Cola Co. (1995) 5 SCC 545, Bina Murlidhar Hemdev v. Kanhaiyalal Lokram Hemdev (1999) 5 SCC 222 and Transmission Corpn. of A.P. Ltd (supra)."

16. Adverting to the facts of this case, it would be noticed that the petitioners have failed to prove a prima facie case of their being in possession of the suit land, even the balance of convenience is not in their favour and

therefore, there is no question of irreparable loss and injury being caused to the petitioners.

17. Apart from the above, it would be noticed that during the pendency of this petition, the respondents had filed CMP No. 1276 of 2016 for early hearing of the case, wherein it was pleaded that the respondents have proposed construction of divisional and sub-divisional offices and combined office building of various departments over the suit land, for which the tendering process is already completed and the work was likely to be awarded, but had been kept in abeyance due to interim orders passed by this Court on 8.4.2015. Thus, it stands established on record that the work sought to be carried out by the respondents over this land is of larger public interest.

18. At this stage, it would be necessary to advert to the order passed on 1.4.2016, relevant portion whereof reads thus:-

> *".....It is further contended that construction of a Project for which ₹8,00,00,000/-(eight crores) stands sanctioned is being delayed only on account of non service of respondents No.7, 8 and 10. Also, public interest is suffering……"*

19. Once, it is established on record that the building proposed to be constructed over the land is meant for larger public interest, it is more than settled that in such circumstances, injunction otherwise cannot normally be granted as the right of an individual is subservient to the rights of public at large. Public interest is one of the material and relevant considerations in either exercising or refusing to grant injunction. The Courts in the cases where injunctions are to be granted should necessarily consider the effect on public purpose thereof and, therefore, also suitably mould the relief and injunctions as against public purpose, especially, in cases relating to public purpose like construction or widening of the road should normally not be granted.

20. In ***Mahadeo Savlaram Shelke and others*** *versus* ***Pune Municipal Corporation and another 1995 (1) Scale 158: (1995) 3 SCC 33***, the Hon'ble Supreme Court held as under:-

> *"7. In Shiv Kumar Chadha v. Municipal Corporation of Delhi (1993) 3 SCC 161, a Bench of three Judges of this Court held that(SCC p. 175, paras 30, 31)*
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> > *".....A party is not entitled to an order of injunction as a matter of course. Grant of injunction c is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles-ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."*
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> *Further*
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> > *"The court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court."*
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> *8. In Dalpat Kumar v. Prahlad Singh(1992) 1 SCC 719, a Bench of two Judges (in which K. Ramaswamy, J. was a Member) of this Court held that the phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. The Court further held: (SCC p.721, para 5)*

"The existence of prima facie right and infraction of the enjoyment of him 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 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 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. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession. It is true that the appellants placed reliance in their plaint on resolutions passed by the municipality on 11-11-72 and 29-11-72. A reading of those resolutions would prima facie show that possession would be taken where the acquisition proceedings have become final and land acquisition proceedings would not he pursued where award has not been made as on the date of the resolutions. In this case since the acquisition proceedings have become final, then necessarily possession has to be taken by the Corporation for the public purpose for which the acquisition was made. In that context the question arises whether the appellants can seek reliance on two resolutions. They furnish no prima facie right or title to the appellants to have perpetual injunction restraining the Corporation from taking possession of the building. The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the appellants to remain in possession. Their possession in unlawful and that therefore, they cannot seek any injunction against the rightful owner for evicting them. There is thus

neither balance of convenience nor irreparable injury would be caused to the appellants.

10. In Woodroffe's Law Relating to Injunctions, 2nd revised and enlarged Edn., 1992, at page 56 in para 30.01, it is staled that

> *"an injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant who must have a personal interest in the matter. In the first place, therefore, an interference by injunction is founded on the existence of a legal right, an applicant must be able to show a fair prima fade case in support of the title which he asserts".*

At page 80 in para 33.02, it is further stated that

> *"if the court be of opinion that looking to these principles the case is not one for which an injunction is a fitting remedy, it has a discretion to grant damages in lieu of an injunction. The grounds upon which this discretion to grant damages in lieu of an injunction should be exercised, have been subject of discussion in several reported Indian cases".*

At page 83, is stated that "the court has jurisdiction to grant an injunction in those cases where pecuniary compensation would not afford adequate relief. The expression "adequate relief is not defined, but it is probably used to mean - such a compensation as would, though not in specie, in effect place the plaintiffs in the same position in which they stood before. The determination of the question whether relief by injunction or by damages shall be granted depends upon the circumstances of each case.

11. In Law of Injunctions by L.C. Goyle, at page 64, it is stated that

> *"an application for temporary injunction is in the nature of a quia timet action. Plaintiff must, therefore, prove that there is an imminent danger of a substantial kind or that the apprehended injury, if it does come, will be irreparable. The word "imminent" is used in the sense that the circumstances are such that the remedy sought is not premature. The degree of probability of future injury is not an absolute standard : what is aimed at is justice between the parties, having regard to all the relevant circumstances".*

At page 116, it is also stated that

> *"in a suit for perpetual or mandatory injunction, in addition to, or in substitution for, the plaintiff can claim damages. The court will award such damages if it thinks fit to do so. But no relief for damages will be granted, if the plaintiff has not claimed such relief in the suit."*

12. In Modern Law Review, Vol. 44, 1981 Edition, at page 214, R.A. Buckley stated that "a plaintiff may still be deprived of an injunction in such a case on general equitable principles under which factors such as the public interest may, in an appropriate case, be relevant. It is of interest to note, in this connection, that it has not always been regarded as altogether beyond doubt whether a plaintiff who does thus fail to substantiate a claim for equitable relief could be awarded damages". In The Law Quarterly Review" Vol 109, at page 432 (at p. 446), A.A.S. Zuckerman under Title "Mareva Injunctions and Security for Judgment in a Framework of Interlocutory Remedies stated that

> *"if the plaintiff is likely of suffer irreparable or uncompensable damage, no interlocutory injunction will be granted, then, provided that the plaintiff would be able to compensate the defendant _for any unwarranted restraint on the defendant's right pending trial, the balance would tilt in favour of restraining the defendant pending trial. Where both sides are exposed to irreparable injury ending trial, the courts have to strike a just balance".*

At page 447, it is stated that

> *"the court considering an application for an interlocutory injunction has four factors to consider : first, whether the plaintiff would suffer irreparable harm if the injunction is denied; secondly, whether this harm outweighs any irreparable harm that the defendant would suffer from an injunction; thirdly, the parties' relative prospects of success on the merits; fourthly, any public interest involved in the decision. The central objective of interlocutory injunctions should therefore be seen as reducing the risk that rights will be irreparably harmed during the inevitable delay of litigation".*

13. In Injunctions by David Bean, 1st Edn., at page 22, it is stated that

> *"if the plaintiff obtains an interlocutory injunction, but subsequently the case goes to trial and he fails to obtain a perpetual order, the defendant will meanwhile have been restrained unjustly and will be entitled to damages for any loss he has sustained. The practice has therefore grown up, in almost every case where interlocutory injunction is to be granted, of requiring the plaintiff to undertake to pay any damages subsequently found due to the defendant as compensation if the injunction cannot be justified at trial. The undertaking may be required of the plaintiff in appropriate cases in that behalf."*

In "Joyce on Injunctions" Vol. 1 in paragraph 177 at page 293, it is stated

> *"Upon a final judgment dissolving an injunction, a right of action upon the injunction bond immediately follows, unless the judgment is superseded. A right to damages on dissolution of the injunction would arise at the determination of the suit at law."*

14. It would thus be clear that in a suit for perpetual 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 would 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 the 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 p 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., which is retrained by an order of injunction made by the court. 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 it 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 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 the part of the adjudication and pass a decree in that behalf without relegating 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 injunction are to be granted should necessarily consider the effect on public purpose thereof and also suitably mould the relief. In the event the plaintiffs losing ultimately the suit, 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."*

21. The petitioners having failed to carve out a prima facie case in their favour and have therefore, rightly been declined the relief of injunction by the learned Courts below. The findings recorded by the learned Courts below do not suffer from any irregularity, illegality, impropriety, much less perversity, so as to call for interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

In consequenti, there is no merit in this petition and the same is accordingly dismissed, leaving the parties to bearing their costs. Pending applications, if any, also stands disposed of.

(Tarlok Singh Chauhan),
Judge.

26th May, 2016
(KRS)