

# RAJASTHAN HIGH COURT

Bhanwar Lal

Vs.

Mahadev Vikash Samiti, Bikaner

Civil Misc. Appeal No. 986 of 2001

(H.R. Panwar, J.)

22.04.2002

## ORDER

**H.R. Panwar, J.**

1. This appeal is directed against the order dated 29-10- 2001 passed by District Judge, Bikaner (hereinafter referred to as 'the trial Court') whereby the application filed by the respondent under Order 39, Rules 1 and 2, Civil Procedure Code was allowed and the appellants were directed not to interfere with the construction of Govt. Girls School building, use and occupation of the land in dispute, education imparted by the school and were further directed not to do any act which adversely affects the rights of the respondents. Aggrieved by the impugned order of the trial Court, the defendant appellants have filed the present appeal under Order 43, Rule 1, Civil Procedure Code.

2. Briefly stated facts to the extent they are relevant and necessary for decision of this appeal are that a suit for declaration and permanent injunction was filed by the plaintiff respondents Sri Mahadav Vikash *Samiti*, Bikaner (hereinafter referred to as 'the *Samiti*') through its Chairman trustee and the Secretary trustee having been authorized by the Trust to file the suit against the defendant appellants stating therein that the land in dispute has been made available to them for construction of building for Govt. Girls School. The Additional Director (Administration), Board of Primary and Secondary Education, Rajasthan, Bikaner by its letter dated 16-9-93 sanctioned construction of Govt. Girls School on the land in dispute. A sum of Rs. 4,00,000/- were sanctioned by the State Govt. from the quota of the local M.L.A. who is presently Minister in the State Cabinet for construction of building for Govt. Girls School on certain conditions mentioned in the order dated 16-9-93. Work of

construction of building for Govt. Girls School has been assigned to M/s. Mayur Construction Co., Bikaner by a contract entered into between the State Govt. through its Executive Engineer of Public Works Department and the construction company. While the construction work was being done, the defendant appellants threatened the members of the *Samiti* and the persons raising construction of the Govt. Girls School building that the respondents being members of Scheduled Caste, would lodge false cases against the School Management and members of the *Samiti*. They tried to obstruct the construction work carried out by the contractor. It is said that the title of the land vests in Maheshwari Nathani Panchayat and the land in dispute has been given to the *Samiti* by the Maheshwari Nathani Panchayat Trust for the purpose of construction of Govt. Girls School, Defendant appellants filed a reply to the application under Order 39, Rules 1 and 2, Civil Procedure Code wherein it was admitted that the title patta for the land might have been in the name of the Maheshwari Nathani Panchayat. In para 10 of the reply, it was averred that the land in question belong to Maheshwari Nathani Panchayat Trust and its Chairman has no right to transfer the land. It was further averred that the land in question is a public land and chowk of Meghwal Samaj. It was further averred that the construction of Ambedkar Bhawan by Meghwal Samaj is proposed on the land in question.

3. Learned trial Court consider the material placed before it. Three essential ingredients for grant or refusal of temporary injunction, namely, *prima facie* case, balance of convenience and irreparable injury, were considered by the trial Court. While considering the *prima facie* case, the trial Court held that on the basis of the documents filed before it, *prima facie*, the land in dispute relates to Patta No. 750 of the year 1919, in the name of Maheshwari Nathani Panchayat. The said Panchayat Trust has issued no objection for construction of building for Govt. Girls School to the Primary and Secondary Education, Department of Education, Rajasthan, Bikaner, Plaintiff *Samiti* is a registered society. There was an earlier suit and an application under Order 39, Rules 1 and 2, Civil Procedure Code filed by Kamla alias Kamalo Meghwal and Santu alias Santosh Kumar Meghwal before Civil Judge (Junior Division), Bikaner with regard to the very same land in question. Vide order dated 4-11-97, the applications filed by Kamla and Santu as also by Dayal Chand and others seeking temporary injunction were rejected. As against the order of the trial Court dated 4-11-97 rejecting the application for temporary injunction, the petitioners therein preferred appeal before the learned Additional District Judge No. 1, Bikaner, which came to be dismissed by the appellate Court vide order dated 9-1-98. The trial Court

also dismissed the main suit vide judgment and decree dated 1-10-2001. The trial Court also considered that a sum of Rs. 4,00,000/- has been sanctioned for construction of building for Govt. Girls School from the M.L.A. quota by the State Government. The trial Court *prima facie* examined the title as well as the question of possession of the land. Trial Court also considered the Commissioner's report. After having considered all the material, the trial Court *prima facie* came to the conclusion that the land is in possession of the *Samiti* and the construction of Govt. Girls School is being raised and as such, came to the conclusion that the *Samiti* has *prima facie* case in its favor. The trial Court also *prima facie* came to the conclusion that the defendant appellants have not produced any document showing the land in dispute to be public land of Meghwal Samaj.

4. While deciding the question of balance of convenience, the trial Court held that from the funds made available by the State Govt. the *Samiti* through contractor is constructing the building for Govt. Girls School and in case the *Samiti* is restrained to construct the building for Govt. Girls School, it will result in inconvenience to the *Samiti* and the larger interest of girls students would be adversely affected. On the contrary, if the injunction is granted, defendant appellants would not be put to any inconvenience. Having considered the totality of the circumstances of the case, the point of balance of convenience was found to be in favor of the respondent *Samiti*.

5. While deciding the point of irreparable loss and injury, the trial Court held that in case the construction of building for Govt. Girls School is restrained, then the *Samiti* would definitely suffer irreparable injury as well as the fund of Rs. 4,00,000/- allotted for construction of building for Govt. Girls School would lapse and the Govt. Girls School building would not be available to the girl students. The trial Court also considered that in case the injunction is granted, the defendant appellants would not suffer any irreparable injury inasmuch as neither the defendant appellants are in possession of the land in question nor they have *prima facie* any title thereto.

6. I have heard learned counsel for the parties. Perused the order impugned and the relevant material.

7. The defendant appellants have filed an application under Order 41, Rule 27 read with Section 151, Civil Procedure Code along with certain documents, namely, map, parcha khatoni relating to Khasra No. 174. The certified copy of the suit filed by one

Khem Chand alias Khema, copy of the plaint, suit filed by Dayal Chand, order of the Civil Judge (Junior Division), Bikaner in Civil Misc. 199/96 dated 4-11-97 were placed on record. The learned counsel for the appellants contended that the trial Court erred in finding a *prima facie* case in favour of the *Samiti*. It is further contended that the finding on *prima facie* case had to be adjudged comparatively. It was further contended that the burden to establish the *prima facie* case is on the plaintiff *Samiti* and not on the defendant appellants. He further contended that the patta (title) might be in the name of the Maheshwari Nathani Panchayat but since the Maheshwari Nathani Panchayat is a trust and its Chairman has no right to give the land to the *Samiti* as also the State Govt. has no right to construct the Govt. Girls School building on the land in question.

8. Learned counsel for the respondent *Samiti* contended that the defendant appellants have not claimed title of the land in dispute in their reply filed before the trial Court. On the contrary, they averred that the patta for the said land is in the name of Maheshwari Nathani Panchayat. Appellant defendants admitted in their reply filed before the trial Court that the land in question belong to Maheshwari Nathani Panchayat Trust. Before the trial Court, the *Samiti* has placed on record the document of its registration, patta issued in Mishal No. 288, Patta No. 750 of the year 1919 in favour of Maheshwari Nathani Panchayat, the order of the trial Court in two different suits filed by Kamla Meghwal, Santu Meghwal and Dayal Chand and others whereby the trial Court dismissed the application seeking temporary injunction and those orders were affirmed even by the appellate Court. The Commissioner's report also shows that the *Samiti* is in possession of the land in question and construction of building for Govt. Girls School had already commenced, the contract for construction of Govt. Girls School building has already been given. The State Govt. has sanctioned the fund of Rs. 4,00,000/- for this purpose. The building for Govt. Girls School is constructed for the public use as the girl students of the area would be largely benefited by education imparted to them through the school. The *Samiti* has also placed on record before the trial Court the order dated 31-8-2001 issued by the Executive Engineer, P.W.D., City Division, Bikaner in favour of Mayur Construction Company, Bikaner for construction of building for Govt. Girls School, Nathusar Bas, Bikaner. The stipulated date of commencement of work was from 10-3-2001. From the various documents placed on record, it clearly goes to show that the *Samiti* is in possession of the land and the Govt. Girls School building was in process of construction when the suit was filed.

9. From the material placed before the trial Court, the plaintiff *Samiti prima facie* established that the land in dispute is in possession of the *Samiti* for the purpose of construction of Govt. Girls School, Nathusar Bas, Bikaner. This fact further finds support from the fact that the State Govt. has sanctioned the fund of Rs. 4,00,000/- for construction of building for Girls School and the contract has already been entered into between the P.W.D. of the State Govt. and M/s. Mayur Construction Co. The *Samiti* has undertaken the work of public development in the area by construction of Girls School through its development programmes. At any rate, the building for Govt. Girls School is constructed by the State Govt. through its Department of Public Works from the public fund of the State. It is settled law that the order for grant or refusal of temporary injunction is absolutely discretionary and equitable. The discretion exercised by the trial Court while granting the temporary injunction can be interfered in appeal if the appellate Court comes to the conclusion that the order of the trial Court suffers from perversity.

10. In *United Commercial Bank v. Bank of India*, <sup>1</sup> the Hon'ble Supreme Court has held that no injunction could be granted under Order 39, Rules 1 and 2, Civil Procedure Code unless the plaintiffs establish that they had a *prima facie* case, meaning thereby that there was a *bona fide* contention between the parties or a serious question to be tried. In the instant case, the *Samiti* is in possession of the land in question. It has derived the land from its original owner *Maheshwari Nathani Panchayat* in whose favor *prima facie* title stands vide patta dated 7-7-1919. From the material placed on record before the trial Court, namely, the patta of the land in question, registration of the *Samiti*, Commissioner's report, sanction of the fund of Rs. 4,00,000/- by the State Govt. the order of construction of Govt. Girls School by the Department of Public Works of the State etc. *prima facie* the *Samiti* has established its case. As against this, the defendant appellants have not shown any document showing the land to be belonging to the Meghwal Samaj. Not only this, in the reply filed by the defendant appellants before the trial Court, they admitted that the patta of the land in question might be in the name of *Maheshwari Nathani Panchayat* and the land in question belong to *Maheshwari Nathani Panchayat*, they have not disputed the title of *Maheshwari Nathani Panchayat*. Not only this, even the documents filed by the defendant appellants before this Court i.e. parcha khatoni for the Samwat 2058 also shows that the land of Khasra No. 174 measuring 0.28, bigha is recorded in the record of rights as gair mumkin chah (a public well). This further goes to establish that

originally the land was recorded as public well of *Maheshwari Nathani Panchayat*. Thus, if the instant case is adjudged comparatively, then also the balance tilt in favor of plaintiff *Samiti*. In this view of the matter, I am of the considered opinion that no error can be found in the order of the trial Court in deciding the *prima facie* case, balance of convenience and irreparable injury in favor of the *Samiti*.

11. In *Wander Ltd. v. Antox India Pvt. Ltd.* <sup>2</sup> the Hon'ble Supreme Court held as under :-

"The appellate Court will not interfere with the exercise of discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion."

12. In the instant case, nothing has been pointed out by the learned counsel for the appellants as to how the discretion exercised by the trial Court is arbitrary or capricious or perverse. Having examined the case in the light of the observations made by the Hon'ble Supreme Court in *Wander Ltd.*'s case (supra), in my considered opinion, the discretion exercised by the trial Court cannot be said to be arbitrary or capricious or perverse. On the contrary, the trial Court has exercised the discretion after having considered the material placed before it in right perspective. Thus, in my considered view, the order of the trial Court calls for no interference.

13. In view of the aforesaid discussion, I find no merit in this appeal. Accordingly, it is dismissed. It is made clear that any observation made either by the trial Court or by this Court should not be taken to be relevant at the trial of the suit on merits. No order as to costs.

Appeal dismissed.

Cases Referred.

1. (1981) 2 SCC 766
2. (1990 (Supp) SCC 727