

HIGH COURT OF DELHI**Date of Decision : March 27, 2024.****Bench: JUSTICE SHALINDER KAUR**

CM(M) 1485/2022, CM APPL. 56796/2022—stay, CM APPL. 3099/2023 Modification of the order dt. 30.12.2022, CM APPL. 3328/2023—recalling order dt. 30.12.2022, CM APPL. 4899/2023— dir. To respondent to remove the iron gate

SH. SAT NARAIN AND ANR ...PETITIONERS**versus****NALANDA MODERN PUBLIC SCHOOL AND ORS ...RESPONDENTS****Legislation:**

Article 227 of the Constitution of India, 1950

Section 151 of the Code of Civil Procedure, 1908

Order XXXIX Rule 1 & 2 of the CPC

Subject: Petition under Article 227 for setting aside the order allowing the respondents to install a gate on the disputed property, involving the issue of ownership and rights over a common passage.

Headnotes:

Civil Procedure Code, 1908 – Sections 151, Order XXXIX Rule 1 & 2 – Modification and Recall of Orders – Installation of Iron Gate – The court considered the petition challenging the order of the Trial Court allowing the respondents to install a gate on the disputed gali (lane) and the subsequent modification and recall of orders related to the status quo on the property. [Para 1-10]

Property Rights – Right to Property – Common Gali (Lane) Dispute – The petitioners, being legal heirs of a share holder of the disputed property, challenged the claim of the respondents (school authorities) over the gali, which the latter alleged to be a common area for ingress and egress. The court evaluated the assertions of ownership and the legality of the constructions made by both parties. [Para 3-5, 16]

Maintenance of Status Quo – Emphasized the importance of the status quo order issued by the Trial Court and its relevance in the interim period until the dispute is fully resolved. The court scrutinized whether the actions of the respondents, including the construction of the gate, complied with the status quo order. [Para 6-7, 17, 20]

Security Concerns in Educational Institution – The respondent's application for installing an iron gate on the subject property was evaluated in the context of safety and security for school students, alongside the claims of ownership and rights over the disputed property. [Para 14, 21]

Decision – Setting Aside of Trial Court Order – The High Court set aside the Trial Court's order allowing the installation of the iron gate on the disputed property. It was found that the order partly allowing the application under Section 151 CPC was not in line with the earlier status quo directives and lacked substantial reasoning related to safety concerns. The decision to allow the levelling of the gali was not interfered with, following the petitioners' no objection. [Para 22-23]

Referred Cases: None.

Representing Advocates:

Petitioners: Mr. Aschim Vachher and Mr. Mukesh Tyagi

Respondents: Mr. Sandeep Sharma, Mr. Aman Dhyani, Mr. M. A. Khan,
and Ms. Kanchan Semwal

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 by the petitioners for setting aside the order dated 24.12.2022 passed by the court of Learned Civil Judge-07, District Central, Tis Hazari Courts, Delhi (hereinafter referred to as "Trial Court") in SCJ No. 403/2018, titled as "*Nalanda Modern Public School & Ors. V Sat Narain & Anr.*" whereby the application filed by the respondents under Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as CPC) has been partly allowed by permitting respondents to install a gate in front of the suit property.
2. Petitioners herein are the defendants and respondents herein are the plaintiffs in SCJ No. 403/2018 which is pending adjudication before the learned Trial Court.
3. Before this court deals with the relevant facts of the present case, it is considered vital to descriptively put forth the background of the suit property. Initially, khasra no. 857/1, admeasuring (4-08) Extended Lal Dora, Abadi, Burari, Delhi was owned by Mir Singh, Devi Singh and Hari Ram, all sons of late Ram Dass, having 1/3rd share each. Mir Singh was survived by his widow namely; Javitri Devi, who became owner of 1/3rd share of the aforesaid property after the demise of her husband. Whereas, Devi Singh was having his two sons namely; Bhim Singh and Dharambir who became the sole owners of share of Devi Singh. Both the sons of Devi Singh sold their shares to Javitri Devi vide four separate registered sale deeds all dated 07.02.2011. The petitioners before this court are the legal heirs of the 3rd share holder of late Hari Ram. The land of all the co-sharers was mutually and orally partitioned and subsequent thereto the respective parties had raised their respective construction without any hindrance from either side.
4. Respondents in their plaint filed before the learned Trial Court have averred that the plaintiff no. 2 to 6 are the owners of the suit property, respondent no. 1/plaintiff no. 1 is the lessee, who has been running the school namely, Nalanda Modern Public School since 1995. The subject property is the common gali between the properties of the petitioners and respondents which

is 12 x 330 feet. The petitioners have constructed their houses, having their windows, entry and exit in the common gali and even the school of respondent no. 1 is having gate, entry and exit and window opening towards the subject property since the very beginning. The respondents have further averred in their plaint that, petitioners have no right, title or interest in the subject property.

5. Based on the allegations made by the respondents, the respondents herein filed a suit for permanent injunction on 30.01.2018 against the petitioners seeking a decree of permanent injunction against the petitioners, their officials, associates, employees, attorneys, family members etc. thereby restraining them from encroaching upon or raising any kind of construction or digging the land underneath the gali in question or from creating any kind of hindrance or nuisance in free and smooth entry or exit of the respondents. Needless to say, that the petitioners contested the suit by filing their written statement on 09.03.2018. The respondents also preferred an application under Order XXXIX Rule 1 & 2 CPC read with Section 151 CPC seeking following relief:-

“It is, therefore, most respectfully prayed that this Hon’ble court may kindly be pleased to pass an Exparte ad-interim injunctions, in favour of the plaintiff against the defendants, their- officials, associates, attorneys, family members etc, thereby restraining the ~ defendants, their family members etc. from encroaching upon or raising any kind of construction. or digging the land underneath the Gali in question or from creating any kind of hindrance or nuisance in free and smooth entry or exit of the plaintiffs, as shown in red colour in the annexed site plan situated between the property of the plaintiffs and the defendants bearing kh. No. 857/1, Sant Nagar, Main Road, Extended Lal Doara Abadi, Burari, Delhi- 84 admeasuring 12x330 and further defendants be directed to level the soil in the Gali in question and to fill the holes or plaintiffs be allowed to level the soil in the Gali, till the final disposal of the case.”

6. The said application came to be decided vide order dated 16.03.2018 wherein the learned Trial Court granted status quo with respect to the subject property till pendency of the suit.
7. The aforesaid status quo order was challenged by the parties by way of filing cross-appeals before the learned Senior Civil Judge. Vide order dated 11.04.2018, the learned Senior Civil Judge maintained the status quo order by observing that at the same time, mandate of orders passed under Order XXXIX Rule 1 & 2 CPC is to protect the suit property in question till disposal

of the suit, the said suit property in this case is the gali in question. Therefore, that gali has to be protected till the disposal of the suit. In addition, learned Senior Civil Judge restrained the respondents i.e. Sat Narain and others from digging up the said gali, not to further construct in the gali in question and also restrained them from causing any hindrance in the ingress and egress of the appellants. So far as the levelling of the already dug up gali is concerned, the learned Senior Civil Judge directed the appellant i.e. Nalanda Modern Public School and others to level the same within a week from 11.04.2018.

8. It is the case of the petitioners that, on 08.09.2020, the respondents brought bricks/raw materials at the subject property and they started laying down the road on it and started converting it into a pacca road with a view to make it a passage for usage of the subject property. Consequently, the petitioners filed an application under Section 151 CPC seeking necessary interim directions against the respondents restraining them from indulging into any such activities for changing the nature of the subject property. Upon the said application, the respondents filed their undertaking dated 23.10.2020 before the learned Trial Court stating that they will not raise any type of construction/cemented/metal road in the gali/subject property in question except permissible filling/levelling in case of holes in the subject property in question as per the court direction.
9. Subsequently, on 05.03.2021, the respondents filed an application under Section 151 CPC for passing necessary directions for them to construct pacca road and installation of iron gate on the subject property. The said application was refuted by the petitioners by filing a reply. However, at that time the respondents did not press the said application and the matter was proceeded further. Meanwhile, petitioners filed the contempt proceedings against respondents on 08.07.2022 for breach of undertaking dated 23.10.2020, the said contempt application is pending adjudication.
10. The issues were framed vide order dated 30.01.2019. The respondents have already filed evidence before the learned Trial Court. In the meantime, the respondents moved an application for early hearing and disposal of the application under Section 151 CPC dated 05.03.2021. The said application was taken up for hearing on a preponed date, thereby allowing the application seeking early hearing. The learned Trial Court vide the impugned order dated 24.12.2022 partly allowed the said application filed under Section 151 CPC of the respondents whereby permitting them to install a gate in the front of the

main road on the subject property. Aggrieved petitioners have assailed the said order before this Court through the present petition.

Submissions by the Petitioner

11. Mr. Aschim Vachher, learned counsel for the petitioners submitted that the Learned Trial Court did not appreciate that the respondents have no locus standi to file the suit and to seek any relief against the petitioners qua the subject property as the petitioner are the owners of the said property. The respondents have falsely claimed that the land of the petitioners is a passage and under the garb of it, the respondents want to grab the land of the petitioners.
12. Learned counsel further submitted that the prayer for installation of an iron gate by virtue of an application under Section 151 CPC is impermissible as the same is beyond the pleadings, the fact which has not been considered by the learned Trial Court while passing the impugned order.
13. The learned counsel submitted that, the Learned Trial Court did not appreciate that already a status quo order dated 16.03.2018 passed by the learned Predecessor Court is operating till date. Thus, the impugned order partly allowing the application of the respondents to install a gate towards the main road on the subject property is in violation and contradiction of the status quo order dated 16.03.2018 and thus is liable to be set-aside.

Submissions by the Respondents:

14. Conversely, Mr. Sandeep Sharma, learned counsel for the respondents submitted that the iron gate affixed at the main 100 ft. road in the subject property is necessary for security purposes and will be beneficial for both the parties. Moreover, students in school of respondent no. 1 use the disputed subject property to commute and hence for their safety, security and smooth functioning of the school, gate is required.
15. It is submitted that the petitioners dug up the subject property and due to rainy season, respondents were facing problem in using the subject property and hence it needed to be made pacca/mettled. More so, since the subject property is a gali leading to the main 100 feet road towards western side of the petitioners and some anti-social elements in the night come from the said main road and create nuisance and even for security purpose the iron gate is essential as it will be beneficial for both the parties. The learned Trial Court has passed the impugned order after considering all the relevant facts,

circumstances and submissions, which does not need any interference by this Court.

Analysis & Conclusion

16. The controversy in the present petition revolves around a gali between the properties of the petitioners and respondents, which is 12 x 330 feet and is subject matter of the suit. According to the respondents, it is a common gali of the parties to the suit, whereas, the petitioners have claimed that the respondents have no right, title or interest in the subject property.

17. The application moved on behalf of the respondents under Order XXXIX Rule 1 & 2 CPC has already been decided and the parties to the *lis* have been directed to maintain status quo with respect to the subject property till the pendency of the suit. It is not disputed that the said status quo order, which was challenged by way of cross-appeals before the learned Senior Civil Judge is still in operation with certain modifications vide orders dated 11.04.2018. More so, the respondents on 08.09.2020 had tried to lay down a pacca road on the subject property and alarmed by their actions, the petitioners filed an application under Section 151 CPC seeking directions restraining the respondents from indulging into such an activity for changing the nature of the subject property. During the hearing of the said application, which came to be disposed of vide order dated 23.10.2022, the respondents made statement before the learned Trial Court thereby undertaking not to raise any construction / cemented / metal road in the gali / suit property in question except permissible filling / levelling in case of holes in the gali / suit property in question as per the Court direction. Accordingly, the learned Trial Court directed the respondents to be bound by their statements and disposed of the application.

18. However, the respondents filed an application on 05.03.2021 seeking further directions from the learned Trial Court allowing them to make pacca road and installation of iron gate in the subject property. The learned Trial Court vide impugned order dated 24.12.2022, partly allowed the application under Section 151 CPC thereby observing as under:-

“(i) Plaintiffs are at liberty to affix the iron gate, as prayed, at their own expenses within 10 days in presence of defendants or their representatives and keys of the said gate shall also be given to defendants.

“(ii) Plaintiffs are also at liberty to only fill/level the said gali (and not to construct it or make it pucca) in terms of orders dated

11.04.2018 passed by the Ld. Appellate Court, at their own expenses within 10 days, for smooth functioning & usage of the same by parties to the suit.”

19. Pertinently, vide order dated 30.12.2022, this court stayed the impugned order till the adjudication of the present petition. Moreover, on 19.10.2023, the respondents before this Court submitted to remove the iron gate installed by them on 31.12.2022 within a period of one week. Thereupon, the petitioners gave their no objection to respondents to level the subject property in terms of permission granted by learned Trial Court vide order dated 24.12.2022 and the parties were bound down by the statements given by them in Court on 19.10.2023. It is not disputed that petitioners removed the iron gate without prejudice to their rights & contentions & made the statement before this Court on 02.11.2023.

20. The admitted position is that status quo order is still continuing with certain modifications made by the learned Senior Civil Judge vide order dated 11.04.2018 as mentioned above. Insofar, the submission regarding security & safety is concerned, it is not disputed that plaintiff no. 1, the school, is operational since 1995 and till 05.03.2021, plea regarding safety concerns was never raised.

21. A reading of the impugned order makes it clear that the learned Trial Court has not assigned any reasons for partly allowing the application under Section 151 CPC except for keeping in view the safety and security of the students of respondent no. 1 / school.

22. In view of the aforesaid, the impugned order granting liberty to respondents to affix iron gate is set aside. Regarding levelling the gali filling of holes, no interference by this Court is required as on 19.10.2023, petitioners gave their no objection for doing so and they are bound by same.

23. The petition along with pending applications accordingly stands disposed of.

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