

(2024) 04 SHI CK 0002

High Court Of Himachal Pradesh

Case No: CMPMO No. 126 Of 2024

Nishant Mahajan & Anr

APPELLANT

Vs

Divisional Commissioner & Ors

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Himachal Pradesh Public Premises (Rent Recovery And Eviction) Act, 1971 - Section 4, 9

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: T. S. Chauhan, Dalip K. Sharma, Maan Singh

Final Decision: Dismissed

Judgement

Satyen Vaidya, J

1. Petitioners have preferred the instant petition under Article 227 of the Constitution of India for grant of following reliefs:-

(i) That impugned orders Annexure P-23 passed by Ld. Divisional Commissioner as well as passed by respondent No.2, dated 22.08.2022 below may very kindly be set aside.

(ii) The over khasra No. old 1328 new 2262/1328 may be restored during the pendency of appeal before respondent No.1 consequently removing the obstruction created by respondent No.3."

2. The case of the petitioners is that respondent No.2 Divisional Forest Officer, Kullu in the capacity of Collector under Himachal Pradesh Public Premises (Rent Recovery and Eviction) Act 1971 (for short "Act") has passed an order of eviction under Section 4 of the Act against respondents No.4 and 5 vide order dated 22.08.2022 passed in case No. 1(M)/2021/2022, titled State of H.P. vs. Block Development Officer Naggar and another in respect of land comprised in Khasra No.1328 in Village Simsa, Tehsil Manali, District Kullu, H.P.

3. Petitioners claim right of passage to their private land through the land which is subject matter of aforesaid eviction order. As per petitioners, immediately after passing of the eviction order dated 22.08.2022 passed by respondent No.2, the petitioners approached respondent No.2 by way of an application to set aside the ex-parte order dated 22.08.2022 and thereafter to hear them in the case. Respondent No.2 rejected their application, which prompted the petitioners to approach respondent No.1 by way of an appeal under Section 9 of the Act against order dated 22.08.2022 passed by respondent No.2.

4. Petitioners also preferred an application for staying the operation of order dated 22.08.2022 passed by respondent No.2 along with their appeal filed under Section 9 of the Act. Respondent No.1, vide order dated 26.05.2023, stayed the impugned order dated 22.08.2022 till the next date of hearing which was fixed on 25.07.2023. On 16.10.2023, the interim order of stay dated 26.05.2023 was further extended and the matter was adjourned to 02.02.2024. On 1st February, 2024, the matters listed before respondent No.1 on 02.02.2024 were adjourned to different dates in pursuance to a resolution of the Bar Association, Kullu, received by respondent No.1. As a consequence, the appeal of the petitioners was also adjourned to 20.04.2024.

5. It is alleged by the petitioners that since all the cases listed for 02.02.2024 were adjourned by administrative order passed on 01.02.2024, no formal order could be passed on the stay application of the petitioner pending before respondent No.1. It is further alleged that in the meanwhile respondent No.3 obstructed the passage through Khasra No. 1328.

6. It is also submitted on behalf of the petitioners that the petitioner made a request before respondent No.1 to direct opening of khasra No.1328 but instead respondent No.1 passed the impugned order dated 04.03.2024, which led to filing of this petition.

7. I have heard learned counsel for the parties and have also gone through the entire record carefully.

8. The entire thrust of arguments of learned counsel for the petitioners is that though respondent No.1 had not passed any order of extension of stay in favour of petitioners beyond 02.02.2024, but the interim order earlier passed by the said Court was deemed to have remained in operation as it was not specifically vacated or modified by judicial order. He has placed reliance on a judgment passed by this Court on 05.05.2016 in CMPMO No. 139 of 2016, titled as Saber Paper Ltd. vs. State of H.P. & Ors.

9. There cannot be any dispute as to the proposition of law projected by learned counsel for the petitioners. The interim order once granted ordinarily remains in force till the same is vacated or modified. However, the question that arises for consideration of this Court is, whether the order dated 04.03.2024 impugned by the petitioners in the instant petition has resulted from non-observance of any rule of law by respondent No.1 which may be said to be contrary to the above legal proposition.

10. The impugned order dated 04.03.2024 does not reflect the fact situation as propagated by the petitioners. By way of impugned order, respondent No.1 has proceeded to decide the interim application of petitioners on merits. Respondent No.1 has not touched upon either the factual aspect of the alleged violation of interim stay order or effect thereof.

11. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court has restrictive jurisdiction only to interfere with the judicial orders or quasi judicial order, in case such order(s) suffers from perversity or lack of jurisdiction. In the instant case none of these requirements is met or fulfilled. It cannot be said that respondent No.1 did not have jurisdiction to pass the final order on the application of petitioners for interim orders.

12. As regards allegation of the petitioners with respect to alleged violation of interim stay granted in their favour by the officials of forest department, nothing has been placed on record to show that the petitioners had filed any specific application with a prayer to take action against the alleged violators. Even at the time of hearing on a pointed query of the Court, learned counsel for the petitioners admitted that no separate application had been filed by the petitioners before respondent No.1 in this

behalf. That being so, the grievance as raised by the petitioners before this Court is without any merits.

13. As result, there is no merit in the instant petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.